



A.No.4438 of 2022 and T.O.S.No.40 of 1995

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G.CHANDRASEKHARAN, J.

This application is filed to appoint an Advocate Commissioner preferably Retired District Judge or Directing the III Additional Master to act as the Commissioner to record the evidence of PW-2 at Government Hospital at Government Hospital Road, No.13th ward, Sathyanarayanapuram, Bapatla, Andhrapradesh - 522 101 or Mandal Revenue Office, No.N46C87, Addanki Main Road, Bapatla District, Andhrapradesh.

2.The affidavit is not filed by the parties to the suit or the witness, but was filed by Mr.A.Gopalan, Junior Advocate, attached to the plaintiff's counsel. He filed this application stating that he is well acquainted with the facts of the case. PW1 was examined in part and due to the poor health of PW1, he remained incommunicado. Therefore, the Court directed the recording of evidence of PW2 on 14.09.2022. The two legs of PW2 are paralysed and immobilized. PW2 is staying at Samjduripalem, which is 73km away from Bapatla District and he is having some disease which



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requires intensive medical treatment. He is unable to travel nearly 497 km from his house to Madras High Court to give evidence. Due to heavy rainy season, roads are very badly damaged and even the travel in the Ambulance is cruel to PW2. A Doctor and two paramedical staff and a nurse have to accompany with him. Further a caravan modeled Ambulance is required for him for attending the nature's call. Therefore, this application is filed for the aforesaid reliefs.

3.This application is strongly objected by the learned counsel for the sixth respondent/sixth defendant alleging that this application is filed only to drag on the proceedings endlessly and it is an abuse process of Court. This case is of the year 1995 and even after a lapse of 27 years, the trial is not over. This affidavit is filed by one A.Gopalan without even giving the enrolment number. The settled law is that a counsel cannot file an affidavit. Moreso, when further evidence of PW1 was dispensed with and she was not subjected to cross examination. It is seen from the affidavit of K.Nageswar Rao son of K.Subba Rao, the address given is No.4, Aziz Nagar Main Road, Rangarajapuram, Kodambakkam, Madras -24. Neither his residential



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address nor the full address is furnished. The address given for PW2 is vague and commission cannot be issued to a vague address like “Government Hospital at Bapatla or Revenue Mandal Office at Bapatla”. The learned Additional Master – III cannot be nominated to go and record the evidence as requested by the applicant. Therefore, the learned counsel for the sixth respondent/sixth defendant prayed for dismissal of this application.

4. When this matter was first taken up for hearing on 31.10.2022, this Court wanted to know what exactly is the disease of PW2 that is preventing him from moving out of the hospital and therefore, the learned counsel for the applicant was directed to produce medical records of PW2 to justify the application seeking appointment of Advocate Commissioner. At request of the learned counsel for the applicant, this matter was posted to 07.11.2022. On 07.11.2022, it was submitted by the learned counsel for the applicant that he was not able to communicate with PW2 and therefore, he was not able to produce the medical records of PW2 to show that he is ill and immobile. He prayed for another one week time for producing the medical records. Accordingly, this matter was adjourned to 14.11.2022. When the



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matter was taken up on 16.11.2022, no medical records of PW2 was produced and at request of the learned counsel for the applicant, the matter was adjourned to 18.11.2022 as a last chance for producing the medical records of PW2. On 18.11.2022 also, the medical records of PW2 was not produced. There was no representation for the applicant as well. Therefore, the matter was ordered to be listed under the caption for dismissal on 21.11.2022. On 21.11.2022, the learned counsel for the applicant was present and requested that he may be given a last opportunity to produce the medical records, else he would abide by this Court's order, including the order to pay the costs. Therefore, the matter was posted to 28.11.2022.

5. When the matter is taken up today on 28.11.2022, the same story is repeated again and it is submitted by the learned counsel for the applicant that due to the counsel suffering from Conjunctivitis, he was not able to go Bapatla at Andhrapradesh and get the medical records of PW2. This Court has given a long rope to the learned counsel for the applicant to satisfy that PW2 Nageshwara Rao is really ill, immobile and that he is not able to come to this Court for giving evidence, necessitating the appointment of Advocate



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Commissioner. Despite giving several opportunities, one reason or other is given on every hearing to seek adjournment.

6.This Court finds substance in the submissions of the learned counsel for the sixth respondent/sixth defendant that this application is filed only to drag on the proceedings and there is no merits in the claim of the applicant for appointing an Advocate Commissioner in a Retired District Judge or the learned Additional Master for recording evidence of PW2 at Andhrapradesh. Therefore, this application is dismissed with costs of the sixth respondent/sixth defendant.

7.Send the matter to the concerned learned Additional Master for examination of any further evidence on the side of the plaintiff and on the side of the defendants, if any. The parties are directed to appear before the concerned learned Additional Master on 05.12.2022. The learned Additional Master is directed to complete the exercise within a period of two weeks from 05.12.2022.

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28.11.2022



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