

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY, THE TWENTY SIXTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SMT JUSTICE K. SUJANA

CIVIL REVISION PETITION NO: 164 OF 2023

Petition under Article 227 of the Constitution of India, aggrieved by the Order, dated 05-12-2022 passed in I.A.No. 114 of 2022 in O.S.SNo. 81 of 2013 on the file of the Court of Learned Principal Junior Civil Judge, Khammam.

Between:

Kona Govinda Rao, S/o Seetharamaiah, Aged 71 years, Occ: Retired Employee,
R/o H.No. 10-3-132/1, Mamillagudem, Khammam City and District.

...PETITIONER/PETITIONER

AND

Popuri Samar Sen, S/o Ravi Maruthi, Aged 38 years, Occ: Medical Practitioner,
R/o H.No. 11-2-51, Balajinagar, Khammam City and District.

...RESPONDENT/RESPONDENT

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all the further proceedings of suit in O.S.No. 81 of 2013 on the file of Learned Principal Junior Civil Judge at Khammam pending disposal of the above Civil Revision Petition.

Counsel for the Petitioner: SRI. SHAIK MADAR

Counsel for the Respondent: KIRAN PALAKURTHI

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE K. SUJANA

C.R.P.NO.164 OF 2023

ORDER :

This Civil Revision Petition is filed by the petitioner against the order of the trial Court dated 05.12.2022 in IA.No.114 of 2022 in OS.No.81 of 2013, wherein, the petition is filed under Order 26 Rule 9 r/w 151 of Civil Procedure Code (for short 'C.P.C.') praying the Court to appoint an Advocate Commissioner for re-fixing of boundaries basing on the report filed by the Advocate Commissioner in I.A.No.153 of 2002 in OS.No.274 of 2002 by way of bifurcation of Sy.Nos.140 and 142 for better clarification.

2. The brief facts of the case are that the petition is filed by the plaintiff for appointment of an Advocate Commissioner and the suit is filed for perpetual injunction against the defendant restraining the defendant from entering into the peaceful possession and enjoyment of the property stating that he is the owner and possessor of the suit schedule property i.e., house plot bearing No.1089.06 Sq.yrds. The respondent filed a written statement stating that he had purchased the plot Nos.1 and 22 in Sy.No.142 to an extent of Ac.300 Sq.yrds each through registered documents with the specific boundaries. The vendors of the

defendant by name P.Babu Rao and M.Krishnaiah have purchased the same through their respective vendors and in turn the vendors purchased from Khammam District Telangana Non Gazetted Officers Cooperative House Building Society Ltd., The petitioner further submitted that it was mentioned in written statement that the vendors of the defendant has filed suit against TNGO before the Khammam Court and the same was dismissed on 28-07-2006. In the said suit, there was an IA.No.153 of 2002, wherein, with the help of Assistant Director, Survey and Land Records conducted survey and boundaries of defendant were mentioned and of the society also fixed stone pillars and the same is part and parcel of proceedings and the said document was marked in this Court for the purpose of proper adjudication of the matter. Basing on the said I.A. Commissioner report, the petitioner prays this Court to appoint an Advocate Commissioner.

3. Respondent filed a counter in the trial Court opposing the petition and stated that there is no reason mentioned by the petitioner, it is nothing but collecting evidence from the Court and there is no document filed by the petitioner to prove that the Advocate Commissioner report was filed in OS.No.274 of 2002 basing on which the present suit schedule property is to be re-fixed, hence, prayed the Court to dismiss the petition.

4. The trial Court after hearing both sides, dismissed the petition stating that there is no proper reason assigned by the petitioner to appoint an Advocate Commissioner to re-fix the boundaries and the Court could not ascertain whether the facts and circumstances in OS.No.274 of 2002 and parties are one and same or not. Mere filing the report in IA.No.153 of 2002 does not specify any aspect and also observed that the suit is for perpetual injunction, re-fixation of boundaries would cause hindrance to parties.

5. Aggrieved by the said observation, the present petition is filed by the petitioner stating that the trial Court ought to have allowed the petition holding that it is maintainable in law, because the respondent has categorically pleaded in his written statement and also mentioned in his chief examination as DW.1 and also cross-examined on behalf of the previous suit in OS.No.274 of 2002. The trial Court ought to have allowed the petition to re-fix the boundaries by appointing an Advocate Commissioner, since there is ambiguity regarding the property. The trial Court ought to have perused the written statement and the deposition of the respondent (DW.1) to ascertain the facts and circumstances of the previous suit and present suit, as such, requested the Court to

set aside the order of the trial Court by appointing an Advocate Commissioner.

6. Heard both sides.

7. The learned counsel for the petitioner would submit that as there is ambiguity in the boundaries of the suit schedule property, in view of the IA filed by the respondent herein in OS.No.274 of 2002 *vide* IA.No.153 of 2002, wherein, survey was conducted and fixed stone pillars and if the Advocate Commissioner is appointed in the present case, it would serve the purpose. Basing on the said IA.No.153 of 2002 in OS.No.274 of 2002, the trial Court not considered this application stating that petition is not maintainable in the eye of law. It is further submitted that if the Commissioner is appointed, it will not cause any prejudice to the respondent, as such, requested the Court to consider his application. The petitioner relied on a Judgment in **'Budarthy Janaki Vs. Sikha Krishna and Another'**¹, it was held that

"13. As such, it is considered fit to allow the revision case setting aside the order of the trial court in I.A. No.1 of 2022 in O.S. No.143 of 2017 appointing advocate commissioner at this stage. Only after defendants adduced their evidence, if the court still considers Dr.GRR,J necessary to appoint an advocate

¹ 2023 (1) ALD 165 (TS)

commissioner, then the court below can appoint the advocate commissioner as the same would not amount to gathering of evidence.

14. In the result, the civil revision petition is allowed setting aside the order dated 26.07.2022 passed in I.A. No.1 of 2022 in O.S. No.144 of 2017 by the Principal Junior Civil Judge cum Judicial Magistrate of First Class, Kothagudem, appointing the Advocate Commissioner. However, the trial court can appoint the Advocate Commissioner only after the defendants adduced their evidence, if it considers necessary, as the same would not amount to gathering of evidence".

8. On the other hand, the learned counsel for the respondent would submit that the suit is filed for perpetual injunction and the plaintiff has to prove his claim that the specific boundaries of the property and also the defendant herein interfering into the possession of the plaintiff property and encroached into his boundaries and when he is not ascertain with his boundaries, he cannot seek relief of injunction. Furthermore, appointment of an Advocate Commissioner for re-fixing the boundaries in a suit for injunction is nothing but a collection of evidence, as such, praying the Court to dismiss the petition. He relied on a Judgment of Hon'ble Supreme Court in '*AIR 2013 Supreme Court 1099*', in which it was held that :

"13. While the bar under Section 6(3) of the SR Act may not apply to the instant case in view of the initial forum in which the suit was filed and the appeal arising from the interim order being

under the Letters Patent issued to the Bombay High Court, as held by a Constitution Bench of this Court P.S. Sathappan (Dead) by Lrs. v. Andhra Bank Ltd. & Ors.[1], what is ironical is that the correctness of the order passed in respect of the interim entitlement of the parties has reached this Court under Article 136 of the Constitution. Ordinarily and in the normal course, by this time, the suit itself should have been disposed of. Tragically, the logical conclusion to the suit is nowhere in sight and it is on account of the proverbial delays that have plagued the system that interim matters are being contested to the last court with the greatest of vehemence and fervour. Given the ground realities of the situation it is neither feasible nor practical to take the view that interim matters, even though they may be inextricably connected with the merits of the main suit, should always be answered by maintaining a strict neutrality, namely, by a refusal to adjudicate. Such a stance by the courts is neither feasible nor practicable. Courts, therefore, will have to venture to decide interim matters on consideration of issues that are best left for adjudication in the full trial of the suit. In view of the inherent risk in performing such an exercise which is bound to become delicate in most cases the principles that the courts must follow in this regard are required to be stated in some detail though it must be made clear that such principles cannot be entrapped within any straitjacket formula or any precise laid down norms. Courts must endeavour to find out if interim relief can be granted on consideration of issues other than those involved in the main suit and also whether partial interim relief would satisfy the ends of justice till final disposal of the matter. The consequences of grant of injunction on the defendant if the plaintiff is to lose the suit alongwith the consequences on the plaintiff where injunction is refused but eventually the suit is decreed has to be carefully weighed and balanced by the Court in every given case. Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. Though experience has shown that

observations and clarifications to the effect that the findings recorded are prima facie and tentative, meant or intended only for deciding the interim entitlement of the parties have not worked well and interim findings on issues concerning the main suit has had a telling effect in the process of final adjudication it is here that strict exercise of judicial discipline will be of considerable help and assistance. The power of self-correction and comprehension of the orders of superior forums in the proper perspective will go a long way in resolving the dangers inherent in deciding an interim matter on issues that may have a close connection with those arising in the main suit".

9. Also relied on a Judgment reported in '**Sarala Jain and others vs. Sangu Gangadhar and others**'², wherein it was held that :

To appoint an Advocate Commissioner, Court has to keep in mind the following:

- (1) Total pleadings of both parties;
- (2) Relief claimed in suit;
- (3) Appointment of Advocate Commissioner for specific purpose at interlocutory stage shall not amount to grant pre-trial decree; and
- (4) Necessity to appoint Advocate Commissioner to decide real controversy between parties.

10. Having regard to the submissions made by both the parties and on perusal of the material available on record, originally, the suit is filed by the petitioner for perpetual injunction claiming that the defendant is trying to encroach his property and

² 2016 (3) ALD 197

he is in possession of the suit schedule property, wherein, he filed the present Interlocutory Application for appointment of an Advocate Commissioner praying the Court to re-fix the boundaries in view of the order in IA.No.153 of 2002 in OS.No.274 of 2002 by way of bifurcation of Sy.Nos.140 and 142 for better clarification and proper adjudication of the matter. When the suit is filed by the petitioner herein for perpetual injunction, it is the burden on plaintiff to prove his case basing on the available documents on behalf of the petitioner-plaintiff. When the suit is filed for perpetual injunction, the only question before the trial Court is to see whether the plaintiff is in possession of the suit schedule property and defendant is encroaching into the same. It is not the title suit or any other suit. **'Sarala Jain and others'** (*supra*) mentioned the parameters for appointing an Advocate Commissioner, wherein, it is stated that to appoint an Advocate Commissioner, keeping in mind :

- (1) Total pleadings of both parties;
- (2) Relief claimed in suit;
- (3) Appointment of Advocate Commissioner for specific purpose at interlocutory stage shall not amount to grant pre-trial decree;
and
- (4) Necessity to appoint Advocate Commissioner to decide real controversy between parties.

11. In the present case, dispute between the parties is not the boundaries or the bifurcation of survey numbers. The plaintiff filed the suit only to restrain the defendant from interfering with his possession of property and further, there is no clarity in the petition itself why he filed the petition for appointment of an Advocate Commissioner, as such, there is no illegality in the order of the trial Court and there are no merits in the petition and the petitioner herein relied on judgments of this Court in '**Sarala Jain and others**' (*supra*), the grounds wherein which the Commissioner is appointed is similar to the present case, as such, there are no merits in the present petition and the petition is liable to be dismissed.

12. In the result, revision petition is dismissed.

Consequently, Miscellaneous applications if any, are closed.

No costs.

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Sd/- MOHD. ISMAIL
ASSISTANT REGISTRAR


SECTION OFFICER

To

1. The Principal Junior Civil Judge at Khammam.
2. One CC to SRI. SHAIK MADAR, Advocate [OPUC]
3. One CC to SRI. KIRAN PALAKURTHI, Advocate [OPUC]
4. Two CD Copies

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HIGH COURT
DATED: 26/12/2024

ORDER
CRP.No.164 of 2023



CRP IS DISMISSED

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06/02/25
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