



THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL REVISION PETITION No.1078 of 2019

ORDER :

This Civil Revision Petition arises out of the order dated 07.03.2019 passed in I.A.No.68 of 2018 in O.S.No.27 of 2018 on the file of the Court of the Principal Junior Civil Judge, Kurnool.

2. Heard the learned counsel for petitioners and the learned counsel for respondents.

3. The revision petitioners are the defendants in O.S.No.27 of 2018 on the file of the Court of the Principal Junior Civil Judge, Kurnool, filed by the respondents/ plaintiffs for permanent injunction against the petitioners / defendants from ever interfering with the peaceful possession and enjoyment of the plaint schedule property. The respondents have also filed I.A.No.68 of 2018 under Order XXVI Rule 9 and Section 151 of Code of Civil Procedure,1908, for appointment of an Advocate Commissioner to measure the suit schedule land and the same was allowed. Aggrieved by the said order, petitioners have preferred this revision.

4. The learned counsel for the petitioners submits that in a suit for injunction, a Commissioner cannot be appointed after adducing evidence by both the parties in this case and the respondents /plaintiffs are trying to gather the evidence during trial.



5. The learned counsel relied upon a Judgment in the case of **Aravind Kumar Agarwal Vs. Legend Estates (P) Limited¹**, wherein it is held in Para No.3 that-

“.....3. It is only after both the parties adducing their respective evidence, if any ambiguity prevails with reference to the identity of the properties, that the Court on its own or on the application of either parties, may appoint an Advocate Commissioner. In my opinion, in a case of this nature (Injunction suit) an application for appointment of an Advocate Commissioner at the threshold itself cannot be entertained as the same will amount to gathering evidence...”

In fact, in the instant case, the identity of suit schedule property is in dispute.

In another case on the file of this Court, in **Aravind Kumar Agarwal Vs. Legend Estates (P) Limited²**, wherein it is held in Para No.3 that-

3. Ordinarily, in a suit for injunction, an Advocate Commissioner cannot be appointed to gather evidence. Only in cases where there is a serious dispute regarding identity of the property or boundaries thereof, an Advocate Commissioner can be appointed even in the suits filed for injunction

This Court has also relied on another Judgment in the cases of **Haryana Walk Board V. Shanti Sarup and others³** and **Varala Ramachandra Reddy V. Mekala Yadi Reddy and others⁴**.

¹ ALD 2015 (2) 206

² 2015 (2) ALT 484

³ (2008) 8 SCC 671 = 2008 AIR SCW 2500

⁴ 2010 (4) ALD 198



6. He also placed reliance in ***Bandi Samuel and another V. Medida Nageswara Rao***⁵, wherein, it is held as follows :

As per Section 75 and Order XXVI Rule 9 of CPC, 'Elucidating any matter in dispute'. There is some confusion as to in what circumstances an advocate Commissioner is to be appointed in a civil suit. To answer this question, we have to understand the expression of "elucidating any matter in dispute" in Order XXVI, Rule 9 of CPC. There are several expressions in this regard. Some are under the impression that no advocate commissioner is to be appointed in suit for injunction. For example, the claim for injunction made by the plaintiff is based on the plea that there is only one way to his house and that he is being prevented by the defendant from using said way, any amount of evidence in this regard may not help the Court to render a correct finding on this aspect, as evidence in this regard would be available on the spot at the ground / field. So, a situation such as this would definitely fall within the expression of "elucidating any matter in dispute" to avoid adducing of much oral evidence by consuming time of Court and parties and ultimately with no possibility of practical approach for accurate determination of the *lis*. No doubt, before appointing an advocate commissioner, Court shall examine pleadings, relief claimed and real controversy between parties. Court has to keep in mind there from to decide whether there is an actual necessity to appoint advocate commissioner to decide any real controversy between parties.

7. As per the Judgment in ***Arvind Kumar Agarwal***, in a suit for injunction, Commissioner cannot be appointed at the threshold to gather evidence, but when there is a serious dispute with regard to the boundaries after evidence is adduced by both parties. An Advocate Commissioner can be appointed in an injunction suit. Accordingly, the trial Court, basing on the facts and circumstances

⁵ 2017 (1) ALT 493



of the case, felt that a Commissioner has to be appointed for the purpose of elucidating the matter in dispute and appointed a Commissioner.

8. On considering the submissions, it is obvious that in a suit for permanent injunction, the Court prima facie has to see the title and possession of the parties by the date of the filing of the suit. The petitioners / defendants have to file necessary documents and produce evidence to prove their possession and title by the date of filing of the suit. When the Court feels that elucidation of the matter requires an appointment of Commissioner, it may appoint the Commissioner for that purpose. More particularly, in a suit for injunction, appointment of a Commissioner is very essential as the dispute is mainly with regard to the extent and boundaries. In view of the facts and circumstances of the case, it is essential to appoint an Advocate Commissioner to elucidate the matter in dispute and for an effective adjudication.

9. In the instant case, the order of the trial Court in I.A.No.68 of 2018 clearly reveals that an Advocate Commissioner was appointed to ascertain the boundaries and identity of the property. Therefore, this Court is of the considered view that the finding of the trial Court does not require any interference.

10. In view of the aforesaid discussion, this Civil Revision Petition is dismissed and the order dated 07.03.2019 passed in I.A.No.68 of 2018 in O.S.No.27 of 2018 on the file of the Court of the Principal Junior Civil Judge, Kurnool, is hereby confirmed.



11. With the above observation, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in this petition shall stand closed.

G.SHYAM PRASAD, J

Dated : 12.02.2020
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L.R. copy to be noted.



HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL REVISION PETITION No.1078 of 2019

Dated : 12.02.2020

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IN THE HIGH COURT OF ANDHRA PRADESH AT
AMARAVATI

CIVIL REVISION PETITION No.1078 of 2019

Between:

A.Rajagopal Reddy and others

....Petitioners.

And

G.Swamy Reddy and others

....Respondents

DATE OF ORDER PRONOUNCED : 12.02.2020

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

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| 1. Whether Reporters of Local Newspapers
may be allowed to see the order? | Yes/No |
| 2. Whether the copy of order may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to
see the fair copy of the order? | Yes/No |

JUSTICE G. SHYAM PRASAD



*** THE HON'BLE SRI JUSTICE G.SHYAM PRASAD**

% 24.01.2020

Between:

A.Rajagopal Reddy and others

....Petitioners.

And

G.Swamy Reddy and others

....Respondents

! Counsel for the Petitioners : Sri G.Sravan Kumar

^ Counsel for the Respondent : Sri R.Srikanth

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> Head Note:

? Cases referred:

1. ALD 2015 (2) 206
2. 2015 (2) ALT 484
3. (2008) 8 SCC 671 = 2008 AIR SCW 2500
4. 2010 (4) ALD 198
5. 2017 (1) ALT 493

This court made the following :