

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE ELEVENTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
CIVIL REVISION PETITION NO: 1447 OF 2023

Between:

1. C.MAMATHA W/o. Subramanyam, Aged about 36 years, Cultivation,
R/o. Kammavaripalli Village, Nariganipalli Post,
Ramasamudram Mandal, Chittoor District.

...PETITIONER(S)

AND:

1. K.PARVATHAMMA , W/o late K. Reddeppa, Aged about 70 years, Occ.
Agriculture
2. T. Gangadhar, S/o late T. Venkataswamy, Aged about 50 years, Occ.
Agriculture.
3. T. Gangulamma, W/o T. Gangadhar, Aged about 45 years, Occ.
Agriculture.
4. C. Venkataramana, S/o late C. Thimmaiah, Aged about 60 years, Occ.
Agriculture.
5. C. Prameela, W/o C. Venkatramana, Aged about 55 years, Occ.
Agriculture.
6. K. Sekhar , S/o late K. Venkatramana, Aged about 26years, Occ.
Agriculture.
7. K. Chandrakala, W/o late K. Venkatramana,
Aged about 48years, Occ. Agriculture.
8. C. Siva kumar , S/o late C. Venkatramana,
Aged about 28 years, Occ. Agriculture.
All the respondents are the residents of Kammavaripalli Village,
Nariganipalli Post, Ramasamudram Mandal, Chittoor District.

...RESPONDENTS

Counsel for the Petitioner(s): S PARINEETA

Counsel for the Respondents:

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No.1447 OF 2023

Between:

C. Mamatha.

.....Petitioner.

AND

K. Parvathamma and others

.....Respondents

DATE OF JUDGMENT PRONOUNCED:11.07.2023**SUBMITTED FOR APPROVAL:****THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

1. *Whether Reporters of Local newspapers may be allowed to see the Judgments?* Yes/No
2. *Whether the copies of judgment may be marked to Law Reporters/Journals* Yes/No
3. *Whether Your Lordships wish to see the fair copy of the Judgment?* Yes/No

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+ CIVIL REVISION PETITION No.1447 OF 2023

% 11.07.2023

Between:

C. Mamatha

.....Petitioner.

And

\$ K. Parvathamma and others

.....Respondents

! Counsel for the Petitioner : Ms. S. Parineeta

^ Counsel for the respondents : Nil

< Gist :

> Head Note:

? Cases Referred:

¹ 2011 SCC OnLine AP 218: (2011) 4 ALD 231

² . (2011) 4 ALT 541 at para No.10

³ . 2015(2) ALD 206

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**CIVIL REVISION PETITION No.1447 OF 2023****JUDGMENT:**

1. Heard Ms. S. Parineeta, learned counsel for the petitioner.
2. The plaintiff in the suit has filed this petition under Article 227 of the Constitution of India. The respondents are the defendants in the suit.
3. The petitioner filed O.S.No.153 of 2021 in the Court of Principal Junior Civil Judge, Punganur for permanent injunction for the plaint schedule property.
4. The 2nd defendant (2nd respondent) filed affidavit submitting inter alia that the plaint schedule property originally belonged to his ancestors and the vendor of the plaintiff who without giving full extents and correct boundaries executed documents in favour of the plaintiff. The defendants are the co-owners and there are houses, grave yard, tombs of their ancestors but suppressing the same the suit was filed to change the physical features by getting injunction order. He filed I.A.No.378 of 2023 and prayed for appointment of an Advocate Commissioner to note down the physical features as per the

boundaries of survey numbers with the assistance of Mandal Surveyor.

5. The plaintiff filed the objection/counter opposing the appointment of the Advocate Commissioner.

6. The learned Principal Junior Civil Judge by order dated 10.05.2023 allowed I.A.No.378 of 2023 and appointed the Advocate Commissioner to note down the physical features by identifying the houses, tombs and other existing features with the assistance of Mandal Surveyor and such other points raised at the time of execution of the warrant and file report along with the sketch and photographs.

7. The plaintiff has filed the present petition challenging the order dated 10.05.2023.

8. Learned counsel for the petitioner submitted that at the initial stage of the suit, at the instance of the defendant-respondent No.2, the Commission could not be issued. The learned trial court committed error in allowing the application. She placed reliance in **Arvind Kumar Agarwal v. Legend Estates (P) Ltd., Ranga Reddy District, Hyderabad**¹.

¹ 2015(2) ALD 206

9. I have considered the submissions advanced by the learned counsel for the petitioner and perused the material available on record.

10. The short point raised for consideration is whether the Commission could be issued under Order 26 Rule 9 CPC, at the initial stage of the suit?

11. Order 26 Rule 9 of CPC reads as under:

“9. COMMISSIONS TO MAKE LOCAL INVESTIGATIONS.

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

12. A bare reading of Order 26 Rule 9 CPC makes it evident that there is no restriction or bar imposed with respect to the stage of issuance of Commission.

13. In any suit in which the court deems a local investigation to be requisite or proper inter alia, for the purpose of elucidating any matter in dispute, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. So the Commission can be issued if in the view of the court, it is so necessary for elucidating any matter in dispute.

14. The learned civil judge in its order, considered that the contention of the defendant that the plaintiff suppressed the existence of grave yard, houses, tombs of the ancestors of the defendant in the suit schedule property. There were rival contentions; one that the suit schedule property were not divided and the other that the plaintiff purchased the suit schedule property with a specific extents and within a specific boundaries. There were also rival contention; one denying the existence of tombs in the suit schedule properties and the other asserting the existence thereof. In view thereof the learned civil judge considered it necessary, to elucidate the matter in dispute, to issue the Commission. The learned civil judge in that

regard also placed reliance in the case of **Shaik Zareena Kasam vs. Patan Sadab Khan**².

15. In **Shaik Zareena Kasam** (supra), this Court held that whenever there is a dispute regarding boundaries or physical features of the property, the facts have to be physically verified because recitals of the documents may not reveal the true facts and measuring of land on the spot by a Surveyor may become necessary.

16. Para 10 of **Shaik Zareena Kasam** (supra), is reproduced as under:

“10. Whenever there is a dispute regarding boundaries or physical features of the property or any allegation of encroachment as narrated by one party and disputed by another party, the facts have to be physically verified, because, the recitals of the documents may not reveal the true facts and measuring of land on the spot by a Surveyor may become necessary. Therefore, in view of the facts and circumstances of the case and relying on the above decision this Court is of the view it is just and necessary to appoint Advocate Commissioner as prayed for to elicit the matter in dispute with regard to boundaries and existence of physical features. Therefore, this court is inclined to allow the petition. Accordingly, this point is answered in favour of petitioners/defendants.”

17. In the present case, there was a dispute regarding the boundaries and the physical features of the property and

² (2011) 4 ALT 541 at para No.10

consequently if the learned civil judge issued the Commission, any illegality cannot be imputed in the impugned order.

18. In **Arvind Kumar Agarwal** (supra), upon which the learned counsel for the petitioner placed reliance, it was held as under in paras 3 and 4.

“3. Ordinarily, in a suit for injunction, an Advocate Commissioner is not 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 (See : Haryana Wakf Board Vs. Shanti Sarup and others and Varala Ramachandra Reddy Vs. Mekala Yadi Reddy and others (2010 (4) ALD 198).**

4. A perusal of the plaint shows that the petitioner has given specific boundaries to his property. Therefore, the initial burden lies on him to prove the identity of his property by adducing his own evidence. It is only after both the parties adducing their respective evidence, if any ambiguity prevails with reference to the identity of the property, that the Court on its own or on the application of either party, may appoint an Advocate-Commissioner. In my opinion, in a case of this nature, an application for appointment of an Advocate-Commissioner at the threshold itself cannot be entertained as the same will amount to gathering evidence.”

19. In **Arvind Kumar Agarwal** (supra), the plaintiff filed the suit giving specific boundaries to his suit property and he

himself applied for issue of Commission. As such, in the case of such a nature, it was held, that the application for appointment of an advocate commissioner at the threshold itself could not be entertained, as the same would amount to gathering of evidence, whereas the initial burden was on the plaintiff to prove the identity of his property by adducing his own evidence. A perusal of the said judgment shows that there was no dispute raised by the defendant regarding identity of the property or boundaries. In the present case serious dispute is raised regarding boundaries and existence of physical features. Even applying the law as in **Aravind Kumar Agarwal** (supra) the order under challenge stands the test thereof, as in **Aravind Kumar Agarwal** (supra), itself, it was held that 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.

20. **Aravind Kumar Agarwal** (supra) does not lay down that in no case, at the initial stage, advocate commissioner cannot be appointed. It was, considering the nature of that case that it was held that an application at the threshold could not be entertained.

21. The appointment of commissioner under Order 26 Rule 9 CPC is a discretionary power. I find that the discretion has been exercised judiciously. The court has recorded the reasons for issuance of the commission. If the court considered it necessary, for elucidation the matter in dispute, by getting the report of the advocate commissioner, this court would not interfere in such exercise of discretion of the trial court, under Article 227 of the Constitution of India.

22. The civil revision petition is dismissed. No order as to costs.

Consequently, the miscellaneous petitions, if any, pending in the petition shall stand closed.

RAVI NATH TILHARI, J

Date:11.07.2023

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION No.1447 OF 2023

Date: 11.07.2023

Gk