



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE SIXTH DAY OF JUNE
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU
CIVIL REVISION PETITION NO: 1838 OF 2017

Between:

1. SELVARAJU DHANASEKHAR, KKD, E.G.DIST S/o.V.Selvaraj, Aged 54 years, Hindu, Business, R/o.D.No.16-23-33/A, Dairy Farm Centre, Kakinada, East Godavari Dist.

...PETITIONER(S)

AND:

1. VISWANADHA VENKATA YEGNESWARA SASTRY, KKD, E.G.DIST & ANR S/o. Late Balasubramanyasan-na, Aged 58 years, Hindu, Cultivation, R/o.D.No.39-2-23, Rangayyanaidu Street, Kakinada, East Godavari Dist.
2. Rao Venkata Mahipathi Ramaratnarao, S/o.Suryarao, Bahadur, aged 65 years, Occ: Nil, R/o.D.No.5-2-132, Pithapuram Palace, Pithapuram, East Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): S SUBBA REDDY

Counsel for the Respondents: E V V S RAVI KUMAR

The Court made the following: ORDER



2019:APHC:15811

HIGH COURT OF ANDHRA PRADESH :: AMARAVATHI

THURSDAY , THE SIXTH DAY OF JUNE
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION NO: 1838 OF 2017 ✓

Petition under Article 227 of the Constitution of India, against the Judgment and Decree in I.A.No.2088 of 2016 in O.S.No.141 of 2015 dated 21-02-2017 on the file of the Court of the II Additional Junior Civil Judge, Kakinada

Between:

1. Selvaraju Dhanasekhar, S/o.V.Selvaraj, Aged 54 years, Hindu, Business, R/o.D.No.16-23-33/A, Dairy Farm Centre, Kakinada, East Godavari Dist.

...Petitioner/Petitioner/1st Defendant

AND

1. Viswanadha Venkata Yegneswara Sastry, S/o. Late Balasubramanyasarma, Aged 58 years, Hindu, Cultivation, R/o.D.No.39-2-23, Rangayyanaidu Street, Kakinada, East Godavari Dist.
2. Rao Venkata Mahipathi Ramaratnarao,, S/o.Suryarao, Bahadur, aged 65 years, Occ: Nil, R/o.D.No.5-2-132, Pithapuram Palace, Pithapuram, East Godavari District.

...Respondents/Respondents/Plaintiff/2nd Defendant

I.A. NO: 1 OF 2017(CRPMP. NO: 2430 OF 2017)

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 further proceedings in suit OS No.141 of 2015 on the file of the court of the II Additional Junior Civil Judge, Kakinada, East Godavari District.

Counsel for the Petitioner(s):SRI. S SUBBA REDDY

Counsel for the Respondents: E V V S RAVI KUMAR

The Court made the following: ORDER

✓

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****CIVIL REVISION PETITION No.1838 of 2017****ORDER:**

This Civil Revision Petition is filed questioning the Order dated 21.02.2017 passed in I.A.No.2088 of 2016 in O.S.No.141 of 2015, by the learned II Additional Junior Civil Judge, Kakinada.

The suit in O.S.No.141 of 2015 is filed for a permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the schedule property. In the said suit, during the progress of the trial I.A.No.2088 of 2016 was filed for appointment of an Advocate Commissioner. The said application was dismissed. Questioning the same, the present Civil Revision Petition has been filed.

This Court has heard Sri S. Subba Reddy, learned counsel for the revision petitioner and Sri E.V.V.S.Ravi Kumar, learned counsel for the respondents.

Learned counsel for the petitioner argued the matter with his usual passion and submitted the following case law:

- 1) **Smt. A. Laxmamma v Smt. A. Venkatamma¹**
- 2) **Velaga Narayana & Others v Bommakanti Srinivas & Others²**

¹ (2016) 6 ALT 795

² (2014) 4 ALT 152



- 3) **Nambada Varaha Narasimhulu v Karanam Dalamma & Others**³
- 4) **Haryana Waqf Board v Shanti Sarup & Orrs.**,⁴
- 5) **K. Dayanand v P. Sampath Kumar**⁵ and finally,
- 6) **Bandaru Mutyalu & Another v Palli Appalaraju**⁶

The argument of the learned counsel for the petitioner is that although the suit is filed for an injunction there is no bar or prohibition against the appointment of an Advocate Commissioner. It is his contention that the learned single Judges of this Court in all the cases cited and also the Hon'ble Supreme Court of India have held that the appointment of an Advocate Commissioner is permissible while deciding a suit for injunction. He submits that in view of the peculiar facts and circumstances of this case the appointment of an Advocate Commissioner to note down the physical features of the property is necessary and that therefore the appointment of an Advocate Commissioner is needed in this case. He submits that the lower Court committed an error in dismissing the application. It is his contention that the present Civil Revision Petition should be allowed and an Advocate Commissioner should be appointed to visit the site and to note down the physical features and not for visiting the site and comparing the photographs.

³ (2014) 6 ALT 94

⁴ (2008) 8 SC 671

⁵ (2015) 4 ALT 560

⁶ (2013) 6 ALT 26



In response to this, learned counsel for the respondents submits that while that there is no bar for the appointment of an Advocate Commissioner in a suit for injunction as per the settled law, this Court should see the facts and circumstances of the decided cases and the present case in order to come to a conclusion whether the appointment of Advocate Commissioner is actually required or not. Learned counsel submits that a judgment is an authority for what it decides only. He also submits that facts of the judgment have to be considered very carefully before the same is treated as a precedent to apply to the other cases. Learned counsel submits that even one single fact in the decided case can make a difference. In addition, he submits that the prayers made in the present case are for appointment of an Advocate Commissioner to “compare the photographs” that are filed along with the plaint and also to “note down the physical features of the plaint schedule property”. The learned counsel submits that this amounts to clear gathering of evidence.

This Court after hearing both the counsel notices that the application to appoint an Advocate Commissioner is filed during the examination of the witnesses i.e., during the oral evidence. According to the averments in the petition the affidavit is filed seeking appointment of an Advocate Commissioner because P.W.1 (1st plaintiff) denied the photographs, which were confronted to him. A statement is made in the affidavit that P.W.1 in order to avoid the admission



stated that the photograph does not relate to the suit schedule property. In these circumstances, an application is filed to appoint an Advocate Commissioner.

The question is: Whether the Court rightly or wrongly decided the application?

Even if the plaintiff's witnesses denies the photographs there are other modes and methods available to the defendant to prove the photograph / the contents of the photograph or even the existence of a thatched hut inside the suit schedule property. Comparison of photographs by an Advocate Commissioner and verification of the ground reality is not really countenanced by the law. The existence of a thatched hut has to be proved first by the defendant since it is a plea that has been taken by him. He has made an attempt to confront the witness of the photographs showing the existence of hut in the site. The witness denied it. Therefore, the defendant has a duty to establish that there is a thatched hut and that this particular photograph pertains to that site or that it records the existence of the hut. These are all matters which are capable of being proved and the appointment of an Advocate Commissioner to compare the photographs is not a correct method of proving the photograph or its contents in the opinion of this Court.



The other point that arises for consideration of this case is that whether the Advocate Commissioner should be appointed to note down the physical features?

The case law cited by the learned counsel for the petitioner shows that the Advocate Commissioner can be appointed, even in a suit for injunction, to note down the physical features. There is no doubt with regard to the settled proposition of law, but the submission of the learned counsel for the respondents that the facts in each case have to be seen before the law is uniformly applied deserves attention. As per the settled law on the subject even one fact can make a fundamental difference in the applicability of a decision. The law is so well settled that it does not require repetition. A judgment is an authoritative pronouncement for what it decides and not for what logically follows. Against this backdrop if the case law cited by the learned counsel for the petitioner is examined it is evident that in most of the cases, that are relied upon by the learned counsel for the petitioner, there actually was a dispute about the identity of the property. In **Smt. A.Laxmamma case (1 supra)** it is averred that the plaint schedule property is imaginary and that the wrong boundaries are shown. In **Velaga Narayana case (2 supra)** there is a dispute regarding the identity of the property covered by Sy.No.257/D and 280 and in **Nambada Varaha Narasimhulu case (3 supra)** in para 3 it is very clear that there is a very serious dispute about the identity of the property and



the survey number in which the property is located. Similarly, in **Bandaru Mutyalu case (5 supra)** learned judge has clearly held in para 19 as follows:

“I hold that in situations where there is controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that the parties are aware of the report of the Commissioner and go to trial prepared. The party against whom the report may have gone may choose to adduce evidence in rebuttal.”

In **Haryana Waqf Board case (4 supra)** the matter was remanded to the High Court with observation that in view of the nature of the disputes whether the local Commissioner should be appointed should have to be decided by the High Court. Last but not the least in **K. Dayanad case (5 supra)**, a learned single Judge of this Court after considering all the judgments on the subject came to the conclusion that there is no bar for appointment of an Advocate Commissioner to note down the physical features. In that case, respondent stated that he has constructed a small room, erected a fencing and went on to state that the schedule property is still agriculture land, that there are no house plots or roads in existence. Therefore, a case was made out for appointment of Advocate Commissioner. Hence, the learned single Judge held that appointment of Advocate Commissioner is not really prohibited by law and that the Advocate Commissioner could be appointed. Learned trial Judge also pointed out that if there is



a need to localize the property the same should be carried out at the beginning of the litigation only.

Against this legal backdrop if the present case is examined this Court is of the opinion that the lower Court did not really commit any error in passing the impugned order. Comparison of photographs is not a local investigation that is contemplated by Order 26 of CPC. Local investigation would mean an investigation for ascertaining of certain facts on the ground because the Court cannot physically go there and note down the actual physical features. In cases where there is a serious dispute about the identity of the property, dispute about the boundaries or about the relevant survey numbers etc., in which the property is situated then an Advocate Commissioner could be appointed to aid and assist the Court by verifying the facts at the ground level and submitting a report to the Court. This list is not exhaustive and is only illustrative. But in the case on hand there is no such dispute about the very existence of the property or survey number etc., in which it is situated. The crux of the defense of the defendant is that he is in peaceful possession and enjoyment of the property and that he has constructed a hut thereon. This court is of the opinion that this is a matter that can be proved even without the appointment of an Advocate Commissioner. The existence of the hut, construction of the hut etc., can be proved by the defendant. Hence, this Court is of the opinion that the



lower Court did not commit any error in passing the impugned order.

For all these reasons the Civil Revision Petition is dismissed. But in the circumstances, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending shall stand dismissed.

**SD/- K. VENKAIAH
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER
**[One Fair Copy to the Hon'ble Sri Justice D.V.S.S. SOMAYAJULU,
For his Lordships Kind Perusal]**

To,

1. The II Additional Junior Civil Judge, Kakinada, East Godavari District.
2. One CC to SRI. S. SUBBA REDDY Advocate [OPUC]
3. One CC to SRI. E.V.V.S. RAVI KUMAR Advocate [OPUC]
4. 9 L.R. Copies.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary, A.P. Advocates Association Library, High Court Buildings, A.P.
7. Two C.D. Copies.

Chp

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HIGH COURT

2019:APHC:15811

DATED:06/06/2019

18/7/2019
OC

Rs-13:50

ORDER

CRP.No.1838 of 2017

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DISMISSING THE CIVIL REVISION PETITION

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