

THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION No.700 OF 2023

K.Vijaya Bhaskar Reddy, S/o K.Chinna Rami Reddy, Aged about 54 years, Residing at D.No.1-23, Pedda Kannaki Village & Post, Tottambedu Mandal, Tirupati District and two others.

... Petitioners/Defendants

Versus

P.Jayalakshmi @ S.Jayalakshmi Devi, W/o.P.Padmakar, Aged about 47 years, Residing at D.No.18-2-243/1A, Abbanna Colony, Tirupati, Tirupati District.

... Respondent/Plaintiff

Counsel for the petitioners : Sri O.Udaya Kumar

Counsel for respondent : Sri T.Ashok Srivastava

ORDER

Defendants in suit O.S.No.101 of 2022 filed the above revision petition against the order dated 24.02.2023 in I.A.No.382 of 2022 in O.S.No.101 of 2022 on the file of the Principal Senior Civil Judge, Tirupati, Chittoor District.

2. Suit O.S.No.101 of 2022 was filed seeking damages to a tune of Rs.40.00 lakhs along with interest at 24% from the defendants. Plaint schedule property is a vacant house plot admeasuring 411 Sq.Yards in Sy.No.8/1 sub divided as 8/1B. There is a dispute regarding mentioning of survey numbers

(presently sub divided as 8/1B). Plaintiff in the plaint contended that schedule property is a vacant house plot purchased by her under a registered sale deed dated 15.09.1994. Defendant Nos.1 to 3 - land grabbers tried to interfere with her possession, plaintiff filed suit O.S.No.695 of 2019 for declaration regarding abutting road. The vendor of the plaintiff purchased the property under registered sale deeds bearing document Nos.1108/1994 and 1107/1994. Plaintiff constructed compound wall and shed in the schedule property and the same was assessed to tax by local authorities. Plaintiff, in fact, incurred nearly 25 lakhs for levelling the plaint schedule property and also for raising super structures over the same. On the intervening night of 03 /04.07.2022, defendants with the help of their henchmen demolished the superstructure and hence, plaintiff lodged a report before police and eventually suit was filed.

3. Along with the plaint, plaintiff filed I.A.No.382 of 2022 to appoint advocate-commissioner to note down the physical features of the plaint schedule property. In the affidavit filed in support of the petition the averments in the plaint were reiterated.

4. Third respondent filed counter and opposed the application. It was specifically contended in the counter that there was no averment either in the affidavit as to when the structure and compound wall was constructed. It was further contended that plaintiff earlier filed suit O.S.No.695 of 2019 and the plaint schedule property in that suit was shown as item A in the present suit. In the said suit also it was mentioned that schedule property is vacant. It was specifically denied regarding demolition of structure on the intervening night of 03/04.07.2022. It was further contended that petition schedule property shown in I.A.No.381 of 2022 is the absolute property of wife of respondent No.2 and that there is no such alleged plaint schedule property claiming by the petitioner and the alleged plaint schedule was acquired by TUDA for road widening and eventually prayed to dismiss the application.

5. Trial Court by order dated 24.02.2023 appointed advocate-commissioner to note down the physical features. Aggrieved by the same, above revision petition is filed.

6. Heard learned counsel for the revision petitioners and learned counsel for the respondent.

7. Learned counsel for the revision petitioner would contend that there is no averment in the plaint or affidavit in support of the petition as to when the construction was made. In the absence of such averment, appointment of advocate-commissioner to note down the physical features is nothing, but sort of collecting the evidence and the same is impermissible. He would further submit that plaint schedule property, as mentioned in O.S.No.101 of 2022, was not in existence and hence, appointment of advocate-commissioner does not arise. He would also submit that the trial Court without considering the documents filed, appointed the advocate-commissioner. He would also submit that in the schedule of the plaint there was interpolation. However, trial court without considering all these aspects ordered the petition.

8. Learned counsel for the respondent on the other hand supported the order of the trial Court.

9. The point for consideration is:

Whether the advocate-commissioner to note down the physical features, in the facts and circumstances of the case, is warranted and the report will help the court in adjudicating the lis judiciously?

10. Appointment of Commissioner etc., is contemplated under Section 75 of Code of Civil Procedure.

75. Power of court to issue commissions: - Subject to such conditions and limitations as may be prescribed, the Court may issue a commission –

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition;
- (e) to hold a scientific, technical, or expert investigation;
- (f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;
- (g) to perform any ministerial act.

Order XXVI Rule 9: Commissions to make local investigation:-

11. 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.

12. The object of local inspection under Order XXVI Rule 9 of CPC is to elucidate information and the same normally may not

be available to the Court but could be taken only from its peculiar nature on the spot. Advocate Commissioner, in fact, is a projection to the Court appointed for a particular purpose. The report of the Commissioner within the suit shall form part of the record. Under the guise of local investigation, party who is making application will not be allowed to collect the evidence. The Court must keep these factors in mind while ordering or rejecting application for appointment of Advocate Commissioner basing on facts of each case.

13. Court has ample power to appoint an Advocate Commissioner to elucidate required information for the effective disposal of the suit. Of course, appointment of Advocate Commissioner does not facilitate the parties to collect evidence. Even after commissioner's report it is always open to the parties to file objections and, in fact, the objections will be considered by the Court.

14. Suit O.S.No.101 of 2022 was filed seeking damages. Plaintiff averred in the plaint regarding construction of a shed and compound wall and also further stated about getting electricity connection. It is further averment in the affidavit that

superstructure was demolished on the intervening night of 03/04.07.2022.

15. Respondents on the other hand denied the intervention on 03/04.07.2022. In fact, respondents denied the existence of plaint schedule property.

16. As stated supra, the suit was filed for damages and along with the suit, plaintiffs filed photographs and other material. Plaintiff has to prove the existence of construction of the superstructure and demolition of the structure thereupon at later point of time. To prove whether a structure exists or not, burden lies on the petitioners. It is pertinent to mention here that defendants are denying the existence of schedule property.

17. When there is a dispute as to the existence of property itself, appointment of advocate commissioner to note down the physical features does not amount to collection of evidence. In fact, the report of the Advocate Commissioner will help the Court while adjudicating the issue. Regarding the title etc., and denial by defendants, will be decided during the course of trial. However, noting down of physical features will help the Court.

18. Thus, in view of the discussion supra, this court doesn't find any illegality in the order passed by Court below warranting interference by this Court exercising powers under Art 227 of the Constitution of India. The revision is liable to be dismissed.

18. Accordingly, this Civil Revision Petition is dismissed at the stage of admission. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand dismissed.

JUSTICE SUBBA REDDY SATTI

Date : 27.04.2023
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