
(1958) 03 AP CK 0005

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 761 of 1956

Chalapati Veeranna and Others

APPELLANT

Vs

Chalapati Venkatachalam

RESPONDENT

Date of Decision : 12-03-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 18, Order 26 Rule 9

Citation : AIR 1959 AP 170

Hon'ble Judges : P. Chandra Reddy, O.C.J.; Seshachalapati, J

Bench : Division Bench

Advocate : V. Pardhasarathi, for the Appellant; R.V. Vidyasagar, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, Offg. C.J.

1. This matter was referred to a Bench as in the opinion of the referring Judge (Justice Qamar Hasan) there was a conflict of authorities on the point whether a court can appoint a Commissioner without notice to the other side, The relevant provision of the CPC is Order 26 Order 9 which recites:

"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.

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It is urged by the Revision Petitioner that the court is bound to issue a notice before a commission is issued having regard to the provisions of Order 18 of the same Order. That rule provides;

"(1) Where a commission is issued under this Order, the Court shall direct that

the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence."

We do not think that a combined reading of the two rules can lead to the result contended for by the petitioner. Rule 18 contemplates a situation after the appointment of a Commissioner and not before the commission is issued. There is nothing in Order 9 to warrant a contention that a duty is cast on the court to issue notice before an order is passed under that rule. It is open to the Court to issue an ex parte commission if it deems that a local investigation is requisite for the purpose of the suit.

2. It is argued by the counsel for the petitioners that since a report of the Commissioner and the evidence taken down by him shall be evidence in the suit and shall form part of the record, it is obligatory on the part of a court to hear the opposite party before an order under Order 26 Rule 9 is passed. We are unable to see the bearing of Order 18 on Order 26 Rule 9. In our opinion, Order 18 has relevancy only in connection with the issue of notice after the commission is issued. It is a principle of natural justice that it is only evidence taken in the presence of a party that should be used against him.

It is for that reason that Order 18 requires the court to direct the parties to the suit to appear before the Commissioner after the commission is issued. If the contention of the petitioner, that in every case a notice is to issue before an order is passed under Order 26 Rule 9 is to be accepted, the very purpose of appointing the Commissioner may often be frustrated. As pointed out by Justice Ramaswamy in *S KUPPUSWAMI Vs. COMMISSIONER OF Income Tax, MADRAS*. OCTOBER 20, 1953., ,

"if a commission is not going to be issued until the defendant appears, most often there will be no point in taking out a commission because the object of the commission itself would be lost and incriminating circumstances would be obliterated."

While we feel that it is mandatory on a court to issue a notice after the appointment of a commissioner so that each party may have a chance of presenting his or her case, no such obligation exists before the appointment of a commissioner under Order 26 Rule 9.

3. The judgment of Justice Cornish in *(Modalvalasam) Latchan Naidu and Another Vs. Rama Krishna Ranga Rao Bahadur Bobbili Samasthanam*, does not carry the petitioner very far. That was a case where no notice was given to the defendant either before or after the appointment of the Commissioner and the commissioner made inspection and submitted a report behind the back of the defendant. In such a situation, the learned Judge remarked that it was improper that one party should be given a commission and the advantage of a report by

the commissioner without the knowledge of the opposite party and consequently it was a fit case for interference in revision u/s 115 C. P. C.

It is true the learned Judge observed that there was no power in the Court to issue an ex parte commission. We do not know whether he intended to lay down as an absolute rule of law that a notice should precede the issue of a commission in every case. If that is so, we cannot agree with that remark as the language of the rule cannot bear that interpretation. In our opinion, it is not a condition precedent to the issue of a commission for local investigation to serve notice on the opposite party.

4. On merits also, there is nothing to be said in favour of the petitioner. The petitioner was present throughout the proceedings and raised objections to the commissioner's report and when the objections were overruled and the commissioner's report was accepted he filed an application for the appointment of a second commissioner. It is only when that petition was dismissed he resorted to this Court invoking its jurisdiction u/s 115 C. P. C.

5. The question under reference is answered as above and the revision petition is dismissed with costs.