
(1999) 03 AP CK 0009
In the Andhra Pradesh High Court
Case No : CRP No. 605 of 1999

Gatti Umamaheswara Rao	Vs	APPELLANT
Jarajana Simhachalam and others		RESPONDENT

Date of Decision : 19-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10, Order 26 Rule 9

Citation : (1999) 3 ALD 112 : (1999) 3 ALT 134 : (1999) 1 APLJ 390

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. D. Ramalinga Swamy, for the Appellant;

Judgement

1. The learned Counsel for the revision petitioner reports that notices have been served and that he filed a memo with acknowledgments in the Registry in proof of service of notices. No appearances has been made on behalf of the respondents.
2. This revision petition is directed against the order said to have been passed in IA No.865 of 1996 in OS No.39 of 1996 on the file of the District Munsif (Junior Civil Judge) at Rajam. The revision petitioner herein is the 1st plaintiff and the 1st respondent in the said IA. Respondents 1 to 8 herein are the defendants in the suit and the petitioners in the said IA.
3. It would appear that the said 1A No. 865 of 1996 was filed for appointment of Commissioner to localise and determine the boundaries of Survey Nos.21-1 and 21-1B or in Survey No. 14 of Santhakaviti village. Advocate Commissioner was accordingly appointed.
4. The learned Counsel for the petitioner states that the order allowing the appointment of Commissioner also directed that assistance of the Surveyor may be taken by the Advocate-Commissioner for executing the work entrusted under the Commission. It is stated that the Commissioner after conducting the survey with the help of the Mandal Survey Officer has filed his report. The petitioners in

the said IA have not filed any objections on the said report but the petitioner herein (1st respondent in the said IA) filed his objections. It appears that the objections filed by the petitioner herein apart from pointing out various infirmities and defects in the report of the Commissioner, made a request for re-surveying the land by another advocate-Commissioner or for directing the Commissioner appointed by the Court to re-survey it and file another report. The learned District Munsif, it appears, has gone into the objections of the petitioner herein and passed the impugned order stating that he accepted the report overruling the objections.

5. It is apparent that the petitioner herein could not have asked for appointment of another Commissioner in a petition for appointment of Commissioner filed by the opposite party. However, it would have been proper if the learned junior civil Judge instead of giving his finding on the objections raised by the petitioner herein on the Commissioner's report when the trial was still pending could have directed the objections to be filed as a part of the record and gone into objections during the final hearing of the suit in the light of other evidence on record including the evidence of Commissioner. An elaborate discussion on the report of the Commissioner at this stage and a determinative finding that objections of the petitioner filed on the report of the Commissioner are overruled, would smack of pre-judging the matter.

6. Under these circumstances, it is directed that the learned Junior Civil Judge will ignore his observations on the objections of the petitioner herein on the report of the Commissioner, and his findings as to its correctness or validity shall be treated as final. These questions ought to be addressed during the final hearing of the suit itself in the light of entire evidence relevant to the question brought on record.

7. As to the request of the petitioner herein for appointment of Commissioner as observed above, he could not have claimed for appointment of Commissioner in the petition filed by the opposite side for appointment of Commissioner specially when the petitioner at whose instance the Commissioner was appointed himself was satisfied with the report of the Commissioner. It is open to the petitioner herein to approach the Court for appointment of fresh Commissioner on his request if he is so advised. If and when such application is filed, it is for the Court to decide it on its own merits.

8. With these observations, this Revision Petition is ordered.