
(1998) 08 AP CK 0038
In the Andhra Pradesh High Court
Case No : CRP No. 1849 of 1996

Guthula Satyamma and Others	Vs	APPELLANT
Rudraraju Venkataraju and Others		RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10(3)

Citation : (1998) 5 ALD 410 : (1998) 5 ALT 95

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : Mr. M. Lakshmana Sarma, for the Appellant; Mr. S.A. Chari, for the Respondent

Judgement

1. This revision is filed by the defendants 2, 3, 6 and 7 in O.S. No. 76 of 1989 on the file of the District Munsif, Alamuru, East Godavari District questioning the impugned order dated 21-3-1996 passed in I.A. No. 883 of 1995, entrusting the warrant of commission to another advocate for inspecting the suit locality and for filing his report.

2. The first respondent herein is the plaintiff in the suit and he filed the suit originally in the vacation Court (District Court) at Rajahmundry. He also filed a petition for appointment of Commissioner to inspect the suit locality and file his report. The vacation Court appointed an advocate of Rajahmundry as Commissioner. The Commissioner visited the suit locality and prepared his report and plait and filed it in the Court on 1-6-89, As some more features have to be observed and in view of the objections filed by the present petitioners the warrant was re-entrusted to him for execution and the Commissioner accordingly visited the suit locality second time and filed his report on 13-12-1995 in the Court. Subsequently the plaintiff filed I.A. No. 883 of 1995 requesting the Court to entrust the warrant of commission to another advocate at Alamuru contending that the Commissioner who had previously filed his report on two occasions did not carry out the work as per the work memo furnished to him and report

submitted by him is not satisfactory and does not consider the points raised by him, that the advocate who was first appointed as Commissioner is resident of Rajahmundry and he is not interested in carrying out the work entrusted to him and that, therefore, another advocate at Alamuru may be appointed to inspect the suit locality. The present petitioners who are the defendants 2, 3, 6 and 7 in the suit opposed the said petition. The lower Court passed interim orders dated 21-3-1996 allowing the said petition and re-enlisted the warrant to an advocate at Alamuru for inspecting the suit locality and for filing his report. Questioning the said order the present revision is filed by the petitioners who are defendants 2, 3, 6 and 7 in the suit.

3. Heard both the Counsel.

4. On perusal of the impugned order it is seen that the lower Court is justified in re-entrusting the warrant to another advocate at Alamuru having come to the opinion that the two reports filed by the earlier advocate Commissioner on 1-6-1989 and 13-12-1995 are not satisfactory as there is no similarity in those reports regarding various points and that one report and plan filed by the said Commissioner is different from the other report and the Commissioner also did not discuss the cause for such variation in his two reports. It is further observed in the impugned order that the report of the Commissioner must aid the Court with possible clarity regarding matters in dispute and on the other hand the earlier reports of the Commissioner are confusing the points in dispute and as such there are valid reasons for re-entrusting the warrant of commission to another Advocate at Alamuru for executing the warrant, evidently to clarify the disputed aspects.

5. Order 26 Rule 10(3) CPC specifically enables the Court "to make further enquiry through the Commissioner in case the Court is dissatisfied with the proceedings in the earlier report of the Commissioner. In the present case the lower Court has given reasons for being dissatisfied with the report of the earlier Commissioner and it is justified in re-entrusting the warrant to another advocate. As such, the orders passed by the Court below cannot be said to be illegal in view of the provisions of Order 26 Rule 10(3) CPC.

6. The learned Counsel for the petitioners has relied upon the decisions in *P. Dhana Koteswara Rao v. Guntha Ramesh Babu*, 1990 (2) ALT 499 and *Kushal Rao v. Shyam Rao*, 1997 (1) ALD 3, in support of his contention that the orders of the lower Court re-entrusting the warrant to another Commissioner are not valid and legal. But, on a perusal of the said decisions, it is clear that re-entrustment of warrant to another Commissioner can be made when the Court is dissatisfied with the report of the earlier Commissioner.

7. In *S. Seetharamacharyulu v. S. Ranganayakamma*, AIR 1958 AP 304, it is observed that if the report of the first Commissioner is unsatisfactory and the Court is dissatisfied with his proceedings, a second Commissioner may be appointed under the provisions of Order 26 Rule 10(3) CPC. In *Shib Charan v.*

Sarda Prasad, AIR 1937 Patna 670, the same view is expressed to the effect that it is in the power of the trial Court to send out a second or even a third commission and when all the materials are before the Court it may at the time of delivering judgment attach very little or no weight to the first Commissioner's report, but this is very far from saying that this amounts to requiring the first report to be wiped out off the record and not considered as evidence. In Nazir Singh v. Lakhu Ahir, AIR 1935 All. 422, also it is observed that if the report of one Commissioner was unsatisfactory in certain respects it was permissible for the Court to remit the case to the same Commissioner or to appoint another Commissioner. In Sone Kaur v. Baidyanath, AIR 1926 Patna 462 (2) also the same view was expressed to the effect that if the report of the earlier Commissioner was not satisfactory it is in Courts discretion to order another Commissioner to be appointed.

8. In view of these circumstances and in view of the fact that the lower Court has categorically observed that earlier reports of the Commissioner are creating confusion regarding points in dispute and such reports are not satisfactory, re-entrustment of warrant to another advocate cannot be said to be illegal. Therefore, there are no valid reasons to interfere with the impugned order of the lower Court.

9. The Revision is dismissed. No costs.