
(2025) 04 AP CK 0342

In the Andhra Pradesh High Court, Amaravati

Case No : Civil Revision Petition No: 2318 Of 2019

Kalluru Narayana Reddy

APPELLANT

Vs

Kalluru Chenchugandla Jaya Chandra Reddy And Others

RESPONDENT

Date of Decision : 07-04-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Order 26 Rule 9
Constitution Of India, 1950 — Article 227

Citation : (2025) 04 AP CK 0342

Hon'ble Judges : Dr. V.R.K. Krupa Sagar, J

Bench : Single Bench

Advocate : Jayanti S C Sekhar, Venkata Reddy Chittem

Final Decision : Dismissed

Judgement

Dr. V.R.K. Krupa Sagar, J

1. Defendant No.1 filed this civil revision petition under Article 227 of the Constitution of India assailing the order dated 26.07.2019 of the learned III Additional Junior Civil Judge, Kadapa in I.A.No.1458 of 2018 in O.S.No.752 of 2017.
2. Heard arguments of Sri Jayanti S.C. Sekhar, the learned counsel for revision petitioner and Sri Venkata Reddy Chittem, the learned counsel for respondent No.1.
3. O.S.No.752 of 2017 is a suit filed for declaration of title and for permanent injunction in respect of the suit schedule property. Plaintiff refers to an unregistered Will dated 14.12.1948 executed by Sri K.Chinnaiah in favour of the father of the plaintiff. That the Will came into effect on the death of the testator. Thereafter on the death of the father, plaintiff succeeded the property. The other averments in the plaint are to the effect that the plaintiff has been in possession and enjoyment of this property as he has been keeping manure heaps in it and tying his cattle and he mentions about three other people who also keep their

cattle manure in the suit schedule property. It is further averred that there is also a choultry in the property. That there is a tamarind tree in existence in the property. Refuting the claims, defendant No.1 in the suit filed his written statement stating that the property has been in his possession and he has been cultivating the crops in it. That the suit was filed only with a view to grab the property unlawfully.

4. The issues in the suit were not yet settled. It was at that stage the plaintiff filed I.A.No.1458 of 2018 in O.S.No.752 of 2017 under Order XXVI Rule 9 C.P.C. praying for appointment of an advocate commissioner to note down the physical features of the property and also to note down the nature of the property as to whether it is agricultural land or non-agricultural land and prayed the Court to grant assistance of Mandal Surveyor to the advocate commissioner. Defendant No.1 in the suit filed his counter contending that the prayer made in the petition cannot be maintained and that the nature of the property as to whether it is agricultural land or non-agricultural land is to be proved by necessary documents such as revenue records. The petition cannot be allowed since it intended to collect evidence to prove the disputed possession claimed in the plaint. That, it is not a case where any encroachment is alleged, or any damage is done to the property so as to necessitate appointment of an advocate commissioner. The essential dispute is about title over the property and therefore, the petition for an advocate commissioner's appointment does not merit for consideration.

5. The learned trial Court after considering the pleadings in the suit and the petition and the counter filed in the interlocutory application and after considering the rival submissions and the rulings cited before it allowed the petition stating that in order to elucidate the matter in controversy it felt that it was appropriate to appoint an advocate commissioner. It passed the order in the following terms:

"In the result, this petition is allowed by appointing Sri K.Bhuvana Ekadasi Reddy, Advocate, Kadapa as Court Commissioner to note down the physical features of the petition schedule property. His remuneration is fixed at Rs.4,000/- directly payable by the petitioner to the Court Commissioner. The Commissioner shall give notice to the parties before he proceeded to execute warrant and shall receive work memos and shall comply the same as far as practicable. The Commissioner is directed to follow the procedure contemplated under Order 26 of C.P.C scrupulously. The warrant shall be returnable with rough sketch and report on or before 13-8-2019 on payment of process. For report, call on 13-8-2019."

6. Aggrieved by it, defendant No.1 preferred this revision.

7. Learned counsel for the petitioner contended that the suit being one for declaration of title the same must be decided only based on the evidence produced before the Court by the parties and there was no legal need to appoint an advocate commissioner to note down the physical features of the property.

Under the guise of noting down the physical features, the plaintiff intended to collect evidence which is impermissible under law. In this regard, the learned counsel for revision petitioner cited the following rulings:

Thalla Sulochana v. Thalla Isaac 2012 (3) ALD 384 (AP). That was a suit for declaration of title and permanent injunction. An application for appointment of an advocate commissioner to note down the physical features of the property in dispute was filed. After recording its reasons, the trial Court dismissed it. In view of the facts available in that litigation, this Court recorded that the essence of the dispute revolved around execution of a gift deed and acting upon the gift and that there was no dispute about the identity or boundaries of the property. It was in such circumstances this Court observed that dismissal of petition for appointment of advocate commissioner was rightly done by the Court below.

Chandrasekaran v. V.Doss Naidu 2005 LawSuit(Mad) 756. There the question of possession of immovable property was in dispute. In an earlier litigation certain facts were recorded, and certain rights were decided. Considering those aspects a learned Judge of the Madras High Court took the view that in such fact situation appointment of an advocate commissioner to note down the physical features could not be maintained.

Santha Satheesh v. H J Walter 2012 LawSuit(Mad) 2244. Considering the facts available in that suit, a learned Judge of the Madras High Court took the view that the application for appointment of an advocate commissioner was to collect evidence which could not be countenanced and dismissed the prayer.

8. As against it, the learned counsel for respondent No.1/plaintiff submits that the impugned order is in accordance with law and facts and requires no interference. Learned counsel cited N.Savitramma v. B.Changa Reddy 1988 (1) A.L.T. 353 (AP). That was a suit for declaration of title and for permanent injunction. An application for appointment of an advocate commissioner was filed before settlement of issues. In the light of facts and circumstances a learned Judge of this Court held as follows:

"It cannot be said that no Commissioner could be appointed before the issues are framed or the evidence is led. Whenever such physical features on the land or other property are required to be noted, it becomes necessary for the Court to appoint a Commissioner to note these features. The plaintiff can certainly take the assistance of the Court to have the physical features of the property noted by an Officer of the Court, namely, an Advocate Commissioner, before the said features are obliterated either by the opposite party or by the vagaries of nature. If the physical features of the land as on the date of the suit are allowed to be obliterated and a Commissioner is to be appointed several years after filing of the suit or at the end of trial or during trial, the very object of getting the best evidence before the Court would be frustrated. That would enable the defendants in the suit to take advantage of their might and alter the physical features of the land and also protract the trial till such time that those features were obliterated

by lapse of time or by the defendant's action. The evidence of a Commissioner appointed at the earlier stages of the suit to note the physical features would certainly go a long way in helping the Court to arrive at the truth."

9. Learned counsel for respondent No.1 also cited K.Dayanand v. P.Sampath Kumar 2015 (2) ALD 319 (AP). After a detailed analysis of the precedent, a learned Judge of this Court dealing with a petition for appointment of an advocate commissioner to note down the physical features in a suit for permanent injunction held that the dispute refers to the nature of the user of the disputed property and appointment of an advocate commissioner in such circumstances does not amount to collecting evidence and that it is always advisable to allow a party to make use of various provisions of law for appropriate adjudication of the real dispute between the parties.

10. The point that falls for consideration in this revision is:

"Whether the impugned order is erroneous in the given facts and circumstances of the case?"

POINT:

11. It is in those cases where the trial Courts exercised jurisdiction that was not vested in them by law or when they failed to exercise a jurisdiction so vested in them or when they acted in exercise of jurisdiction illegally or with material irregularity, this Court exercises its revisional jurisdiction. Order XXVI Rule 9 C.P.C. confers discretion on the trial Court to appoint or not to appoint a commissioner to make local investigation. They could exercise such discretion only after they find a prima facie case and when it holds the opinion that a local investigation could be required or could be said to be proper for the purpose of elucidating any matter in dispute. The suit before the Court below has been for adjudication of title that was in dispute and the possession that was in dispute. Both the aspects are required to be decided based on the evidence placed by both parties before the Court below.

12. The rival pleadings indicated about the nature of the things available on the disputed property. One suggested that there has been a structure on it and the premises have been used for keeping manure. The other has suggested that there are only crops on the land. When the rival evidence is placed before the trial Court, it has to appreciate the evidence. While doing so when the trial Court felt that an accurate description of the physical features of the property would enable it to appreciate the evidence on record then the same cannot be said amounting to collection of any evidence. While the petition for advocate commissioner filed required assistance of a Mandal Surveyor and writing of report about the nature of the land as to whether it is agricultural land or non-agricultural land, the trial Court did not grant those parts of the relief.

13. As could be seen from the operative portion of the order of the Court below which is extracted above, it merely directed for recording of physical features

and nothing more. Thus, the trial Court was very circumspect and was alive to the fact that the process of the Court should never be used for collection of evidence. This Court finds no erroneous exercise of discretion by the Court below. There is no merit in this revision. The point is answered against the revision petitioner.

14. In the result, this Civil Revision Petition is dismissed. The order dated 26.07.2019 of the learned III Additional Junior Civil Judge, Kadapa in I.A.No.1458 of 2018 in O.S.No.752 of 2017 is confirmed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.