

(1998) 02 AP CK 0041
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3807 of 1997

Vadde Rajeswaramma

APPELLANT

Vs

Dr. V.L. Narasimha Charyulu and Others

RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10, Order 26 Rule 10(2), Order 26 Rule 9

Citation : (1998) 2 ALD 402 : (1998) 2 ALT 243 : (1998) 1 APLJ 292 : (1998) 3 CivCC 272 : (1998) 2 RCR(Civil) 617

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Judgement

1. A very short but an important controversy needs to be decided in this revision. It appears that in a suit pending before the Trial Court a Commissioner was appointed who submitted his report to the Court-Objections were filed against the report. One of me parties who are the petitioners at present filed an application before the learned Trial Court after the report was filed by the Commissioner, seeking permission to cross examine the Commissioner. This application has been rejected and a revision has been filed in this Court

2. I have heard the learned Counsel for the parties at length. The question that needs to be decided by this Court is, whether a party to the suit has a right to get a Commissioner examined with regard to his report, or not. Order-XXVI Rule-9 & 10 are relevant for the purpose of this controversy.

Rule-9 lays down;-

"9. 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:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.""

Rule-10 lays down:-

" 10.(1) The Commissioner, after such local inspection as he deems the necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

Report and depositions to be evidence in suit-

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

Commissioner may be examined in person-

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.""

According to sub-rule (2) to Rule 10 of Order-XXVI, the report of the Commissioner and the evidence taken by him during the inspection shall be evidence in the suit and shall form part of the record. Therefore, there is no controversy with regard to admissibility of the report as evidence during the trial and making the report of the Commissioner part of record. However, before the report is made part of the record and taken as piece of evidence. It is open for the Court to examine the Commissioner on matters referred to him in his report or as to the manner in which he had made the investigation. It is open for the parties also to examine the Commissioner on matters referred to him in his report or on the manner in which he had conducted the investigation. This is the only interpretation which can be placed upon sub-rule (2) of Rule-10. There is no other interpretation possible of this sub-rule. It is a different matter if neither the Court nor any of the parties takes any objection to the report. In such a situation the report becomes final and becomes part of the record and also can be taken as piece of evidence. But, once a party objects to it and specifically wants that the Commissioner be examined, the Court has no option but to examine the Commissioner. Unless that is done, the Commissioner's report can neither form part of the record nor it can become a piece of evidence which could be relied upon at the stage of disposal of the suit.

3. I am fortified in my view by the judgment of Calcutta High Court in Gourhari Das and Another Vs. Jaharlal Seal and Another, . The learned Counsel for respondents has relied on Maddu Tatha v. Ultaravilli Nagamani 1995 (1)ALD 484 :1995(1) ALT 750. In this case nobody had objected to the report of the Commissioner and no party had requested for examination of the Commissioner, whereas in the present case the report has been objected to and an application

has been made requesting for the examination of the Commissioner. In a judgment of this Court in Vemusetti Appayamma Vs. Lakshman Sahu, the same principle was laid down and it was said by the Court that, "..... but if the Commissioner is not examined, the report submitted by him does not cease to form part of the record."

4. Therefore, I am of the view that if an application is made for examination of Commissioner, the Court has no other option but to examine the Commissioner and in case such a request is not made by any of the parties then only the report of the Commissioner can be part of the record and be piece of evidence. However, if a request is made for the examination of the Commissioner, the report can become part of evidence only after the Commissioner is examined.

5. With these observations, the order passed by the Trial Court is set aside and the revision petition is allowed. The Trial Court is directed to summon the Commissioner for a date to be fixed by it so that he is examined in the light of his report by the concerned parties.