

G. Sarojini and Others Vs K. Sri Ramamurthy and Another

Court: Andhra Pradesh High Court

Date of Decision: Aug. 6, 1997

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 26 Rule 10, Order 26 Rule 9

Citation: (1997) 5 ALT 477 : (1998) 3 CivCC 309

Hon'ble Judges: V. Bhaskara Rao, J

Bench: Single Bench

Advocate: A. Ramalingeswara Rao, for the Appellant; Y.V. Ravi Prasad, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Bhaskara Rao, J.

The order in I.A. No. 1589/1996 in O.S. No. 315/1996 on the file of I Additional District Munsif, Eluru, dt.27-11-

1996 re-directing the Advocate Commissioner who was earlier appointed to make local inspection of the suit schedule property, to identify the

same with the aid of title deeds by R.4 and other respondents, is assailed in this Revision Petition.

2. The facts in brief are that D.1 to D.3 in O.S. No. 315/1996 are the revision petitioners herein. R.1 is plaintiff and R.2 is D.4 and original owner

of the plaint schedule property which is 10 Sq. yards in extent and bears D. No. 220-2-10 situated in Power pet, Eluru. The case of R.1-plaintiff is

that he took the said land on lease from the owner through a lease letter dt.15-6-1970 executed by her husband, Sanka Subrahmanya Raja and he

has been in possession and enjoyment of the same by erecting two sheds thereon. The revision petitioner No. 1 purchased 249 Sq. yards out of

the total extent of 570 Sq. yards under three different sale deeds, executed subsequent to the lease letter dt.15-6-1970. Another extent of 200 Sq.

yards therein was also sold to a third party even prior to those three sale deeds. When the revision petitioners started interfering with the

possession and enjoyment of R.1, he filed suit O.S. No. 315/1996 for perpetual injunction. He also filed I.A. No. 1517/1996 under Order XXVI

Rule 9 C.P.C. for appointment of an Advocate Commissioner for noting down physical features and thereupon, Kum. Swarna Rajyalakshmi,

Advocate, is appointed as Commissioner. She visited the plaint schedule site on 6-7-1996 after giving notice to both the parties, but the revision

petitioners allegedly brought down the shed high-handedly by the time the Commissioner visited the spot and hence she could not execute the

warrant. R.1 filed I.A. No. 1589/1996 seeking a direction to the said Commissioner to identify the site let out to him with the half (sic. help) of the

boundaries mentioned in the lease letter dt.15-6-1970 and also to report about the demolition of the said shed. The revision petitioners resisted the

petition by filing a counter. It is stated that they have purchased an extent of 249.2 sq. yards of the site and they are making constructions in their

own site after obtaining necessary permission from the municipality and that R.1 plaintiff has absolutely no manner of right or interest in the property

purchased by them. The allegation that the revision petitioners high-handedly dismantled the zinc sheeted shed and made it impossible to the

Commissioner to identify the plaint schedule site is denied. It is asserted that R.1 is not in possession of any property adjacent to their site and that

the plaint schedule is vague as to the identity of 10 Sq. yards site and hence there are no valid or tenable grounds to give any direction to the

Commissioner to identify the site.

3. The learned Munsif on a consideration of the above contentions, held that it is difficult to identify the property of 10 Sq. yards unless the site is

measured and that it is for the original owner who gave that property on lease, under lease letter dt.15-6-1970 to demarcate the same and hence

the owner (R.2 herein) and the revision petitioners are directed to produce the title deeds before the Commissioner for the purpose of identification

of the plaint schedule property and the Commissioner in her turn to identify the same. The warrant has been re-entrusted to the same

Commissioner for the above purpose.

4. Aggrieved by the above order, the Revision Petition is filed by D-1 to D-3 in the main suit.

5. Sri A. Ramalingeswara Rao, learned Counsel for the revision petitioners contended that it is for the plaintiff to specify the identity of the plaint

schedule property but it is strange that he is seeking the services of a Commissioner to identify the same. He argued that the learned Munsif has

delegated his judicial functions to an Advocate Commissioner to enquire into the identity of the plaint schedule property and it is hence not

permissible. Thus, he contended that the impugned order may be set aside. On the other hand, Sri Y.V. Ravi Prasad, learned Counsel for R.1

vehemently argued that the lease letter dt.15-6-1970 contains well-defined boundaries on three directions namely a compound wall on the east,

municipal Road on the north and a compound wall on the south and that there are zinc sheeted sheds over the site but the revision petitioners have

high-handedly demolished the same and commenced their construction even before the Advocate Commissioner reached the spot and that the

identity of the site is lost on account of the subsequent events and hence it is necessary to direct the Commissioner to note down the above

physical features and also to identify the suit site with reference to the lease letter dt.15-6-1970 and also the title deeds of all the parties. He

strenuously argued that the learned Munsif passed a well considered order keeping the interests of Justice in view and the same is sustainable. He

filed three photographs in support of his above contentions.

6. Having perused the affidavit in I.A. No. 1589/1996 and counter-affidavit and also the photographs filed by Sri Ravi Prasad, I am able to

visualise that two sheds were in existence in the suit site at one point of time and subsequently one shed appears to have been demolished and

pillars are coming up at that place. The case of R. 1 is that the sheds were in existence on the date of suit and subsequently, the revision petitioners

high-handedly demolished one shed and commenced their construction activity. These contentions are yet to be gone into by the trial Court. It can

also be seen that the suit site which was in one shape, namely having sheds thereon appears to be out of its shape but in any event it is a small site

and hence it may not be difficult to localise the same by the Advocate Commissioner. It is noteworthy that the lease letter dt.15-6-1970 which is

strongly relied upon by R.1 is said to contain the boundaries and the revision petitioners have purchased their site under registered sale deeds. It is

in these circumstances and because of the events that led to the change in the shape of the suit site the lower Court appears to have directed the

Advocate Commissioner to localise the suit site. The order is assailed by the revision petitioners on the ground that the plaintiff can succeed on his

own strength but he cannot seek the services of a Commissioner to identify the suit site and the impugned order amounts to delegation of the

judicial function of the Court. The question is whether an Advocate Commissioner can be entrusted with a job of this nature in the circumstances of

the case.

7. In N. Savitramma v. B. Changa Reddy, 1988 (1) ALT 353 this Court considered the scope of Order XXVI Rules 9 and 18 C.P.C.

exhaustively and held,

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 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".

8. A reading of the above Judgment shows that the learned Judge illustrated several situations in which a Commissioner could be appointed. The

relevant portion from Para 9 is extracted below.

Take the case where a plaintiff alleges that a particular bund had been removed or a new wall has been constructed, a channel has been closed

suddenly or a new window has been opened or a new fencing has been put up. If the trial in such cases were to take place years after the filing of

the suit, it would be difficult to get at the nature of the physical features obtaining on the date of the suit. It has, therefore, been held in several cases

that either party to the suit could have a Commissioner appointed even before the trial. It has even been held that a plaintiff could have a

Commissioner appointed for local investigation even ex parte on the date of the suit.

In Para 12 it is further held,

The plaintiff could, in my view, 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 the 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

the filing of the suit or at the end of the trial or during the 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.

It is in fact, the duty of the Courts to see that false evidence is not adduced and it is also its duty to unravel falsehood. 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. Thus, all the objections raised by Sri Ramalingeswara Rao against the appointment of Commissioner are answered by the above judgment.

10. The contention of Sri Ramalingeswara Rao that it is for the plaintiff to plead and prove the identity of the suit property is no doubt correct but it

is to be borne in mind that the change of physical features is also to be brought on record and the best way of noting down the changes in the

physical features is only by appointing a Commissioner who is an officer of Court empowered to make local inspection and note down the physical

features and report the same to the Court. Under Order XXVI Rule 10 C.P.C. it becomes a piece of evidence in the suit. Viewing from all angles

and on the authority of Supra (1), I am satisfied that this is a fit case where an Advocate Commissioner has to be appointed and the alleged changes

in physical features have to be brought on record. Hence, the learned Munsif did not commit any illegality in passing the impugned order.

11. The Revision Petition therefore fails and it is accordingly dismissed but without costs.