



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3327]

**WEDNESDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY

CIVIL REVISION PETITION NO: 130/2025

Between:

1. POLAMREDDY VENKATESWARA REDDY, S/O BHAGAWAN DAS REDDY, AGE 46 YEARS, OCC- BUSINESS, R/O. D.NO. 28-2-1156, 1ST STREET, SRINIVASA NAGAR, MYPADU ROAD, NELLORE CITY, ANDHRA PRADESH.
2. TUMMAGUNTA SESHIAH, S/O LATE NARAYANA SWAMY, AGE 56 YEARS, OCC- BUSINESS, R/O. D.NO. 1-2-43, MYPADU ROAD, NELLORE CITY, ANDHRA PRADESH.

...PETITIONER(S)

A N D

1. GUNTURU PADMAVATHI, W/o Late G.V.S. Subramanyam, Age 77 years, Occ- House Wife, R/o. D.No. 16, 3/193, Madhavapathivan Street, Nellore city, Andhra Pradesh.

...RESPONDENT

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to present this Civil Revision Petition aggrieved by the Order dated 29-07-2024 Passed in IA No. 25 of 2024 in I.A.No. 419 of 2023 in O.S. No. 64 of 2023 by the Hon'ble I Additional Senior Civil Judge Nellore.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in O.S. No. 64 of 2023 pending on the file of Hon'ble I Additional Senior Judge Nellore, and pass

Counsel for the Petitioner(S):

1.V NITESH

Counsel for the Respondent:

1.P S P SURESH KUMAR

The Court made the following:

**IN THE HIGH COURT OF ANDHRA PRADESH
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PRESENT

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY

CIVIL REVISION PETITION NO: 130 of 2025

O R D E R:

The petitioners/defendant Nos.1 and 2 filed the present Revision Petition, challenging the Order, dated 29.07.2024 passed in I.A.No.25 of 2024 in I.A.No.419 of 2023 in O.S.No.64 of 2023 by the learned I Additional Civil Judge (Senior Division), Nellore, (hereinafter referred to, as 'the Trial Court'), whereby and whereunder, the Trial Court dismissed I.A.No.25 of 2024 filed by the petitioners/defendants under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for brevity 'CPC') seeking for re-entrustment of warrant to the same Advocate-Commissioner to revisit the schedule property for measurement of properties with the assistance of Surveyor.

2. Revision Petitioners herein are petitioners/defendant Nos.1 and 2, and respondent herein is respondent/plaintiff, in I.A.No.25 of 2024 in O.S.No.64 of 2023. Parties in the present Revision Petition are hereinafter referred to, as they were arrayed before the trial Court.

3. Plaintiff filed O.S.No.64 of 2023 on the file of the learned I Additional Senior Civil Judge, Nellore against the defendant Nos.1 to 3 seeking the reliefs of (i) Declaration and Recovery of Possession, (ii) Mandatory Injunction for removal of shed raised by defendant Nos.1 and 2, (iii) Recovery of damages/ mesne profits, (iv) Mandatory Injunction for removal of poles erected and zinc sheets and flexies placed on the ground to the East of item Nos.2 and 3 of schedule property, (v) Permanent Injunction restraining the defendant Nos.1 and 2 and their men and agents from interfering with the peaceful possession and enjoyment of the plaintiff over the plaint schedule item-3 property in any manner from making any illegal constructions obstructing free passage of the plaintiff from Mypaud Road to the plaint schedule item-3 property, and (vi) Permanent Injunction restraining 3rd defendant/The Commissioner, Nellore Municipal Corporation from granting any approval for making any construction by defendant Nos.1 and 2. The defendants filed written statement and the suit is at the stage of trial.

4. During the pendency of suit proceedings before the Trial Court, plaintiff filed I.A.No.419 of 2023 in O.S.No.64 of 2023 under Order XXVI Rule 9 and Section 151 of CPC praying the Court to appoint an Advocate-Commissioner to note down the

physical features of the plaint schedule property and to take photographs of the plaint schedule property after issuing notices to both parties and to file report.

5. The Trial Court, *vide* Docket Order, dated 10.05.2023 allowed I.A.No.419 of 2023 in O.S.No.64 of 2023, appointing one Sri P.Vivek, Advocate, Nellore, as Advocate-Commissioner, directing him to measure the plaint schedule properties and also to note down its physical features. Learned Advocate-Commissioner was further directed to return the warrant along with report, photographs and rough sketch.

6. Accordingly, the learned Advocate-Commissioner executed the warrant on 20.05.2023 by issuing notices to both parties. The Advocate-Commissioner filed Report on 27.09.2023 before the Trial Court, stating that on 20.05.2023 he executed the warrant and on the said date, at about 9.40 a.m. the defendant Nos.1 and 2 submitted a letter to him, requesting him to measure the plaint schedule properties with the assistance of Surveyor and collect the plan from the Surveyor on scale to get correct measurement of the properties. Learned Advocate-Commissioner in his Report, dated 27.09.2023 further submitted that as per the Warrant issued by the Trial Court, there is no direction to take the

assistance of Surveyor for measuring the plaint schedule property. Learned Advocate-Commissioner further submitted that on the date of execution of warrant, the defendants did not cooperate with him for measuring the plaint schedule properties, consequently, he could not measure the same, thereby, he noticed only the physical features of the plaint schedule properties and prepared rough sketch/plan and got filed the same along with Report and photographs (42 in number) and other connected material documents. Learned Advocate-Commissioner also answered to the questions raised by the learned counsel for the plaintiff in his work memo.

7. Aggrieved by the Report filed by the learned Advocate-Commissioner, besides filing Objections, defendant Nos.1 and 2 also filed I.A.No.25 of 2024 under Order XXVI Rule 9 of CPC praying the Trial Court to re-entrust the Warrant to the same Advocate-Commissioner to revisit the plaint schedule property for measurement of said properties with the assistance of Surveyor, on the ground that the Commissioner's Report was not giving true picture in respect of plaint schedule properties and measurement of properties are not done by the Advocate-Commissioner.

8. Respondent/plaintiff filed counter contending that the defendants filed Objections to the Report of the Advocate-Commissioner and unless and until that report is set-aside, 2nd Advocate-Commissioner cannot be appointed. It is further contended that when once an Advocate-Commissioner inspected the plaint schedule properties on an application filed by the plaintiff, there is no question of re-entrustment of warrant at the instance of defendants. It is the plaintiff, who filed the suit and it is for the plaintiff to prove her case and the defendants are no way concerned with the appointment of Advocate-Commissioner and get it measured to their convenience. Hence, it is prayed to dismiss the petition.

9. The Trial Court, having perused the entire material on record, *vide* Order, dated 29.07.2024, dismissed I.A.No.25 of 2024 in O.S.No.64 of 2023 on the ground that when the defendants filed objections basing on the report filed by Advocate-Commissioner, again re-entrustment of warrant to the Commissioner is not at all permissible, as defendants are at liberty, at the time of trial, to summon the Advocate-Commissioner and cross-examine him basing on the report filed by the Advocate-Commissioner. Challenging the said *impugned* Order, the defendant Nos.1 and 2 preferred the present Revision Petition.

10. Learned counsel for the petitioners/defendant Nos.1 and 2 would contend that the Advocate-Commissioner in its Report, dated 27.09.2023 stated that the defendants did not cooperate with him in executing the warrant and in respect of the Report filed by the Advocate-Commissioner, the defendants filed objections. As such, re-entrustment of warrant to the Advocate-Commissioner to revisit the plaint schedule properties is necessary to measure the same with the assistance of Surveyor.

11. Learned counsel for the respondent/plaintiff would contend that it is the plaintiff, who filed the suit, and it is for the plaintiff to prove her case and the defendants have nothing to do with the re-entrustment of warrant to the Advocate-Commissioner. Hence, it is prayed to dismiss the petition.

12. Heard the learned counsel for the Revision Petitioners/defendant Nos.1 and 2 and learned counsel for the respondent/plaintiff. Perused the entire material on record coupled with the Report of the learned Advocate-Commissioner and other connected material.

13. The point that arises for determination in this Civil Revision Petition is *"Whether the impugned Order, dated 29.07.2024 in I.A.No.25 of 2024 in I.A.No.419 of 2023 in*

O.S.No.64 of 2023 passed by the learned I Additional Civil Judge (Senior Division), Nellore suffers any perversity, illegality, irregularity or impropriety of law requiring any interference of this Court?

14. A perusal of the material on record goes to show that the Trial Court *vide* Docket Order, dated 10.05.2023 allowed I.A.No.419 of 2023 in O.S.No.64 of 2023 filed by the plaintiff under Order XXVI Rule 9 of CPC by appointing an Advocate-Commissioner directing him to measure the plaint schedule properties and also to note down its physical features. Learned Advocate-Commissioner was further directed to receive work memos and to answer the same as far as practicable. Accordingly, Warrant was issued to the learned Advocate-Commissioner.

15. Pursuant to the same, learned Advocate-Commissioner executed Warrant on 20.05.2023 and filed Report on 27.09.2023. A perusal of the Report, dated 27.09.2023 filed by the learned Advocate-Commissioner goes to show that he fixed the date on 20.05.2023 at 10.00 a.m. to execute the warrant and informed the same to both side counsels by issuing notices. However, the report would also disclose that on the date of

execution of warrant at about 9.40 a.m. the defendants were said to have submitted a Letter to the learned Advocate-Commissioner, requesting him to measure the plaint schedule properties with the assistance of Surveyor and collect the plan from the Surveyor on scale to get correct measurement of the properties. Apparently, there is no direction in the Warrant issued by the Trial Court to the learned Advocate-Commissioner to take the assistance of Surveyor. As the defendants were not cooperating with the learned Advocate-Commissioner for measuring the plaint schedule properties, he could not measure the same and thereby, he only noticed the physical features of the plaint schedule properties and prepared rough sketch/plan and filed the same along with photographs in the Trial Court. Learned Advocate-Commissioner answered to the work memo filed by the learned counsel for the plaintiff. However, the defendants filed objections to the Report filed by the learned Advocate-Commissioner.

16. It is the contention of learned counsel for the defendants that it is not possible for the Commissioner to measure the said extent without the assistance of Surveyor, but the learned Advocate-Commissioner made a remark against the defendants that they did not cooperate with him in executing the warrant,

which is not at all correct. It is further contended that the cooperation of defendants is not even required, as the Commissioner is at liberty to measure the property in accordance with the warrant issued by the Trial Court.

17. Learned counsel for the defendants would further contend that if a portion of the commission work was not fulfilled by the Commissioner for any reason, it is permissible to direct the very same Commissioner to complete the work with further material and the co-operation of the parties and their advocates. He placed reliance on the proposition of law laid down by the High Court of Judicature, Andhra Pradesh at Hyderabad in **Kushal Rao v. Shyam Rao and another**¹. The relevant paragraph Nos.5 and 6 read thus:

“5. The order of the learned Subordinate Judge suffers from so many illegalities and infirmities in addition to exercise of the jurisdiction in excess of what is contemplated under Order XXVI Rule 10 of the Code of Civil Procedure (for short, the ‘Code’). By virtue of sub-clause (sic. Sub-rule) (2) of Order XXVI of Rule 10, when the Commissioner submits the report in writing and signed by him along with the evidence taken up by him, it shall be the evidence in the suit and shall form part of the record and the Court or a party, with the permission of the Court, may examine the Commissioner touching any of the matters referred to him or mentioned in the report. If the Court,

¹ 1997 (1) ALT 93.

for any reason, is dissatisfied with the proceedings of the Commissioner, it may direct such further enquiry to be made as it thinks fit, according to the said sub-clause (sic. Sub-rule). There is no provision under Order XXVI of the Code for appointing more than one Commissioner or to reject the report of the Commissioner and the evidence without any justification. The law in regard to the appointment of more than one Commissioner by virtue of Order XXVI Rule 10 of the Code is no longer *res integra* and has been settled by precedents, including the precedents of this Court. As a normal rule, there is no doubt that two separate commissions should not be issued to deal with one and the same subject and to treat the report of both the Commissioners as evidence in the case. (vide **Samudrala Sitaramacharyulu vs. Samudrala Ranganayakamma**²; **K.S.Ramachar vs. K.S.Krishnachar**³; **Kunhikutti Ali v. Muhammad Hazi**⁴ and **Chhotu Mauju vs. Gurbhajan Singh**⁵). It is only when the report of the first Commissioner is unsatisfactory and the Court is dissatisfied with his proceedings, that a second Commissioner could be appointed under the provisions of Order XXVI Rule 10 sub-clause (sic. Sub-rule) (3). If a second Commissioner is appointed either by rejecting the report of the first Commissioner or without that, the legal effects is that the report of the first Commissioner may be wipe out in law. But, in view of the implications of Order XXVI Rule 10 sub-clause (sic. Sub-rule) (2) of the Code, such a report and the evidence recorded by the Commissioner would be evidence in that case, which has to be taken into consideration while deciding the matter in issue by the Court and, therefore, as a routine, if a second commissioner is appointed, it has got serious consequences wrought (sic. Fraught) with danger to the ultimate justice. Thus such a procedure of appointing second commissioner or more than one

² AIR 1958 A.P.304.

³ AIR 1949 Madras 612.

⁴ AIR 1931 Madras 73.

⁵ AIR 1972 P & H 265.

commissioner for the same purpose is said to be improper and illegal, (See page 1880 of 'Mulla on C.P.C.', Volume 3 of the Fourth Edition and also page 574 of A.I.R. Commentaries on C.P.C., Volume 4 of 9th Edition).

6. *The reasons given by the learned Subordinate Judge to appoint second commissioner are not convincing. The learned Subordinate Judge opined that the Commissioner who was appointed already is a junior and that his report can be improved by appointing a senior advocate of the Bar, but the same is inconsistent with the appointment of the first commissioner who has already done a part of the work, which is not found to be defective nor rejected. Secondly, if a portion of the commission work was not fulfilled by the commissioner for any reason, it is possible to direct the very same Commissioner to complete the work with further materials and the cooperation of the parties and their advocates. Even assuming that the report of the first commissioner is not complete, the Court could still consider whether the evidence on record through the report of the Commissioner was adequate or inadequate to decide the controversies between the parties in regard to the assessment of mesne profits. Patently, the report of the Commissioner covered the assessment of mesne profits for at least two years. Without examining these implications, the learned Subordinate Judge has landed in error in appointing the second commissioner, which this Court disapproves as inconsistent with the law and in exercise of jurisdiction beyond the scope of law therein. Thus, the order cannot be sustained."*

A plain reading of the above decision goes to show that second Commissioner could be appointed under the provisions of Order XXVI Rule 10 sub-clause (sic. Sub-rule) (3) of

CPC, only when the report of the first Commissioner is unsatisfactory and the Court is dissatisfied with its proceedings.

18. In the case on hand, a perusal of the Report filed by the learned Advocate-Commissioner goes to show that he could not measure the plaint schedule properties, as the defendants had not cooperated with him for measuring the same and as such, the learned Advocate-Commissioner had only noticed the physical features of the plaint schedule properties and prepared rough sketch/plan. As per the Report of the learned Advocate-Commissioner, it is his contention that the defendants made a letter on the date of execution of warrant requesting him to measure the plaint schedule properties with the assistance of the Surveyor and collect the plan from the Surveyor on scale to get correct measurement of the properties.

19. Indisputably, no such direction was issued by the Trial Court to the learned Advocate-Commissioner in the Warrant issued as per the Order, dated 10.05.2023 in I.A.No.419 of 2023 in O.S.No.64 of 2023. As per the contention of learned counsel for the defendants, learned Advocate-Commissioner could not measure the plaint schedule properties, as directed by the Trial Court in its Warrant, dated 10.05.2023. Apparently, the Trial Court

was not unsatisfied with the report of the learned Advocate-Commissioner. The only grievance of the petitioners is that the very object of appointment of Advocate-Commissioner was to measure the plaint schedule properties, which was not done so. As such, the petitioners approached the Court seeking to re-entrust the warrant to the same Advocate-Commissioner to revisit the plaint schedule properties for measuring the same with the assistance of Surveyor.

20. Admittedly, the Trial Court did not conduct any inquiry as to why the learned Advocate-Commissioner did not execute the warrant as per the terms stipulated in the warrant and without there being any adjudication in that aspect, the Trial Court dismissed I.A.No.25 of 2024, which was filed for re-entrustment of warrant to the same Advocate-Commissioner. Therefore, having regard to the facts and circumstances of the case, and having regard to the finding arrived by this Court in the above decision, this Court deems it appropriate to set-aside the *impugned* Order and remand the matter to the trial Court, with a direction, to conduct inquiry as to why the learned Advocate-Commissioner did not execute the warrant as per the terms stipulated in the warrant.

21. Accordingly, the Civil Revision Petition is disposed of, setting-aside the *impugned* Order, dated 29.07.2024 passed in I.A.No.25 of 2024 in I.A.No.419 of 2023 in O.S.No.64 of 2024 by the learned I Additional Civil Judge (Senior Division), Nellore, with a direction, to conduct inquiry as to why the learned Advocate-Commissioner did not execute the warrant as per the terms stipulated in the warrant by affording opportunity to all the stakeholders. In the light of the inquiry to be conducted, the Trial Court has to decide whether the warrant has to be re-entrusted to the learned Advocate-Commissioner or not. The Trial Court is directed to complete the inquiry as expeditiously as possible not later than four (04) weeks from the date of communication of a copy of this Order.

There shall be no order as to costs.

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

JUSTICE K.SREENIVASA REDDY

3rd September, 2025

DNB