

**HIGH COURT OF ANDHRA PRADESH :: AMARAVATHI**

**MAIN CASE NO: CRP No. 797 of 2023**

**PROCEEDING SHEET**

| <b>Sl. No.</b> | <b>DATE</b> | <b>ORDER</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>OFFICE NOTE</b> |
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| 01             | 27-03-2023  | <p><b><u>RC, J:</u></b></p> <p style="text-align: center;"><b><u>CRP No.797 of 2023</u></b></p> <p>Notice before admission.</p> <p>The learned counsel for the petitioner is permitted to take out personal notice on the respondents by registered post with acknowledgment due and file proof of service in the Registry.</p> <p>Post on 10.04.2023.</p> <p style="text-align: right;">_____<br/><b>RC, J</b></p> <p style="text-align: center;"><b><u>I.A.No.1 of 2023</u></b></p> <p>The learned counsel for the petitioner would submit that in the suit filed by the petitioner for permanent injunction, he filed a petition vide I.A.No.837 of 2022 to appoint an Advocate commissioner to note down the physical features and also to measure the sites of the plaintiff and defendants to fix boundaries with the help of the Mandal Surveyor. The Court below has dismissed the said application erroneously, disregard to the principle of law that evidence regarding encroachment would only be available on spot and no amount of oral evidence would</p> |                    |

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|  |  | <p>establish the fact and that when localization, demarcation is involved, it is a fit case for appointment of Advocate Commissioner even in a suit filed for injunction and also in utter ignorance of the fact that the report of the commissioner would come in aid of the Court for effective adjudication of the lis. The learned counsel would further submit that the petitioner has fair and better chances of succeeding in this Civil Revision Petition. In the event the suit is decided pending this revision, the right of the petitioner to effectively prosecute her case would be jeopardized and the very purpose of this Civil Revision Petition would be defeated. In support of his contention, the learned counsel for the petitioner relied on <b><i>Bandi Samuel and others vs. Medida Nageswara Rao</i></b> (2016 SCC OnLine Hyd 369) and has drawn attention of this Court to para-20 of the said judgment.</p> <p>Perused the material available on record and the orders impugned in this Civil Revision Petition. Para-20 of the decision relied on by the learned counsel for the petitioner reads as follows:</p> <p><b>"20.</b> In <i>Bandaru Mutyalu</i> supra referring to the Division Bench expression of this Court in <i>C. Veeranna</i> supra, that was placed reliance by another Single Judge Bench expression of <i>Savitramma</i> supra that in turn placed reliance to the conclusion in saying there is no principle of</p> |  |
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|  |  | <p>law or rule or provision that in a suit for bare injunction, no commissioner can be appointed to measure and demarcate the property so also even at the initial stage before commencement of trial, leave about even an ex parte advocate commissioner can be appointed as held by the Division Bench (supra) with no notice even required for such appointment, but for referring to Order XXVI Rule 18, requirement of notice only for execution of the warrant by the commissioner appointed even ex parte and thereby, all depends upon the discretion of the Court from the factual matrix of each case of any necessity to consider either on the request of plaintiff or on the request of the defendant or defendants as the case may be. In <i>Jammi Venkatakrishna Rao v. J.V.H. Ravindranath</i>, commissioner was held to be appointed to note down existing physical features which is not fishing of information. In <i>Jajala Mariadas v. Bodhala Aroghyam</i>, it was observed referring to the facts therein of the suit claim relating to perpetual injunction and recovery of possession by declaration of title by removal of the so called encroachment of 91 square feet out of that B schedule property and injunction restraining interference for delivery in saying plaintiff and defendant are neighbours and defendant said to have encroached that portion of the land belonging to the plaintiff. Evidence in this regard of encroachment would only be available on the spot and no amount of oral evidence would establish the fact and for that conclusion referred the earlier expressions in relation to the nature of lis and requirement of localization of the disputed property under encroachment or otherwise, where demarcation of the disputed property is involved it is a fit case for appointment of Advocate Commissioner, as held by the Apex Court in <i>Haryana Waqf Board supra</i>, and same was followed in <i>Smt. Donadulu Uma Devi supra</i> and there is no time limit for appointment of Advocate Commissioner as even an ex parte Advocate Commissioner for localization and noting of physical features can be appointed at the time of filing suit and delay in filing is otherwise not a ground to negate. It was ultimately in saying evidence to prove allegation of encroachment is of a peculiar nature which is available on the spot and if Advocate Commissioner is not appointed grave prejudice would be caused and allowed that application."</p> |  |
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|  |  | <p>The above observations would indicate that there is no principle of law or rule or provision that in a suit for bare injunction, no commissioner can be appointed to measure and demarcate the property so also even at the initial stage before commencement of trial.</p> <p>The submissions made by the learned counsel for the petitioner, the grounds raised in the Civil Revision Petition and the observations made in the decision relied on by the learned counsel makes out a <i>prima facie</i> point for determination in this Civil Revision Petition. In the meantime, the suit is proceeded and decided, the purpose of filing this Civil Revision Petition would be defeated. Hence, this Court is inclined to pass the following order:</p> <p>"there shall be interim stay of all further proceedings in O.S.No.174 of 2014 on the file of the Court of the learned Principal Junior Civil Judge, Tiruvuru, for a period of four (04) weeks.</p> <div style="text-align: right;"> <hr/> <b>RC, J</b> </div> <p>RR</p> |  |
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