

**\* THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

**+ CIVIL REVISION PETITION NO: 1239/2025**

%11.07.2025

# Pamidipati Bhagya Lakshmi.

.....Petitioners

And:

\$ K.Kanaka Durga & 49 others

....Respondents

!Counsel for the petitioner

: Sri K.Chidambaram, learned senior  
counsel assisted by Sri V.Jagadish

^Counsel for the respondent

:

<Gist:

>Head Note:

? Cases referred:

1. 2024 SCC OnLine SC 3722
2. (2019) 20 SCC 143
3. 2025 SCC OnLine SC 985

**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**CIVIL REVISION PETITION NO: 1239/2025**

DATE OF JUDGMENT PRONOUNCED: **11.07.2025**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals     | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment?          | Yes/No |

**RAVI NATH TILHARI,J**

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

**CIVIL REVISION PETITION NO: 1239/2025**

**ORDER:**

Heard Sri K.Chidambaram, learned senior advocate assisted by Sri V.Jagadish, learned counsel appearing for the petitioner.

2. This Civil Revision Petition under Article 227 of Constitution of India has been filed by the petitioner in main LGOP.No.119 of 2012 in the Court of Principal District Judge, Machilipatnam, Krishna District, being aggrieved from the order dated 08.04.2025 passed in I.A.No.1597 of 2024 filed by the respondent Nos.1 to 10 herein (respondent Nos.1 to6, 17 to 20 in LGOP) for appointment of advocate commissioner by which the learned Court allowed I.A.No.1597 of 2024 and appointed the Advocate Commissioner.

3. The petitioner with respondent No.11 herein filed the LGOP.No.119 of 2012 against the respondent Nos.1 to 10 inter-alia on the ground that they had grabbed the petition schedule property and sought for the removal of the structure and also to punish those respondents under the provisions of the Land Grabbing (Prohibition) Act, 1982 (in short Act, 1982).

4. The Thasildar of Vijayawada Urban submitted a report dated 22.03.2012 that on field verification it was found that those respondents had encroached the petition schedule land and raised the dwelling structures.

5. The respondent Nos.1 to 10 in their counter in LGOP.No.119 of 2012 denied the grabbing of the land and some of them set up independent title

submitting to have purchased their respective site under the Registered sale deeds.

6. The trial commenced in LGOP. PW1 to 5 were examined. Some documents were also marked. After completion of the evidence of the petitioners, the LGOP was posted for further evidence of respondents and marking of documents and cross examination of R1. Since, respondent witness did not turn up to attend before the Court, the evidence on behalf of respondent Nos.1 to 4, 6, 17 to 20 was treated as nil and LGOP was posted for the evidence of the other respondents fixing 20.11.2024.

7. The respondent Nos.1 to 10 filed I.A.No.1561 of 2024 to reopen their evidence and also filed I.A.No.1597 of 2024 to appoint advocate commissioner to note down physical features of their respective properties and fix the boundaries of NTS.No.6 basing on Ex.A3 sale deed.

8. The respondent Nos.1 to 10's case (respondent Nos.1 to 6, 17 to 20 in LGOP) as set up in I.A.No.1597 of 2024 inter-alia is that their properties are not in NTS No.6 but are in NTS.Nos.3, 4 & 5 and they have valid registered sale deed(s) executed by their vendors. It was therefore just and necessary to appoint an advocate commissioner.

9. The said application was contested by the present petitioner by filing counter affidavit submitting inter-alia that the application for appointment of advocate commissioner was filed to drag on the proceedings of LGOP and

was without any basis. The application was filed to collect evidence whereas the Advocate Commissioner could not be appointed for collection of evidence.

10. The learned Trial Court allowed I.A.No.1561 of 2024.

11. The learned Trial Court also allowed I.A.No.1597 of 2024 vide Order dated 08.04.2025. It appointed the advocate commissioner to note down physical features of property and fix the boundaries of NTS.No.6 basing on Ex.A3 sale deed, with the help of Mandal Revenue Officer and Mandal Surveyor and Town Planning Officer, after observing that the respondent Nos.1 to 10 herein have made out a valid and sufficient ground to appoint advocate commissioner.

12. The petitioner has challenged only the order in I.A.No.1597 of 2024 and stating clearly in the affidavit that the petitioner has no objection to the order in I.A.No.1561 of 2024 to reopen the evidence.

13. Learned counsel for the petitioner submitted that there is no dispute with regard to the possession of the respondents and also the identity of the property and therefore the question of appointment of Commissioner did not arise. The application should have been rejected. The question of conducting survey through the advocate commissioner and record the physical features did not arise. If the petitioners in LGOP were able to prove that the respondents were in possession of petition schedule property they would be liable to be evicted, and the application could not be allowed for appointment of advocate commissioner to collect the evidence.

14. I have considered the aforesaid submission and perused the material on record.

15. The point for consideration and determination is as under:

Whether the learned Trial Court acted illegally in allowing the I.A.No.1597 of 2024 vide the order dated 08.04.2025?

16. The appointment of advocate commissioner is dealt with under Order XXVI Rules 9 & 10 of CPC.

17. Order 26 Rule 9 CPC reads as under:

**“9 . Commissions to make local investigations—** 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.”

18. Order 26 Rule 10 CPC provides for the Procedure of Commissioner reads as under:

**“10 . Procedure of Commissioner—** (1) The Commissioner, after such local inspection as he deems 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.

(2) Report and deposition to be evidence in suit - 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 suit may examine the Commissioner personally in open Court touching any part 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.

(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.”

19. Thus Order 26 Rule 9 CPC enables the Court to issue a Commission, in such cases, where, it 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 primary duty of the Court is to see that the truth is arrived at. The Commissioner’s report is only a piece of evidence. If any party has any grievance against the report, he can file an objection and may also lead evidence to show that the report is not correct. It is entirely for the Court to consider what weight is to be given to the facts of the report in the light of the other evidence on record.

20. Learned Trial Court in consideration of the pleadings and the material on record observed that, in order to decide whether the property in question, said to have been encroached by the respondent Nos.1 to 10, it is just and necessary to appoint an advocate commissioner to note the exact boundaries of the property as per Ex.A3. The appointment of advocate commissioner is a procedural mechanism that allows the Court to investigate matters in dispute, particularly in cases involving property disputes. It is nothing but for taking down the physical features and measurements of land.

21. The parties claim ownership of different NTS numbers. The respondents claim to be in possession of NTS Nos.3, 4 & 5 and not in NTS.No.6. The

petitioner claims the respondents to be in possession of NTS.No.6. IT cannot be said that the advocate commissioner's report with the assistance of Mandal Surveyor would be of no relevance at all or that for the purpose of illucidating the dispute it would not be proper or necessary.

22. The petitioner if aggrieved from the report will have the right to file objections or /and to lead evidence to revert the facts in the report. So, no prejudice is going to be caused to the petitioner by issuance of the commission.

23. Once the learned Trial Court is of a view that in a dispute about the boundaries, with reference to the documents, the local inspection by Advocate Commissioner with measurements as per the documents of title of both parties, with the help of surveyor is necessary, with such exercise of discretion aimed to advance substantial justice, this Court would refrain from interfering in the exercise of jurisdiction under Article 227 of the Constitution of India.

24. In ***Municipal Corporation of Greater Mumbai v. Vivek V.Gawde***<sup>1</sup>, the Hon'ble Apex Court reiterated the scope to the exercise of power under Article 227 of Constitution of India, as under:

“16. We now proceed to discuss, noticing that the petition of the respondents was also filed under Article 227, whether the High Court could have granted succour to the respondents by exercise of its powers under such article. It is well settled that the provision bestows the high courts with powers of administrative and judicial superintendence over subordinate courts. The test for exercise of such power was laid down in a 5-Judge Constitution Bench decision of this Court in ***Rajendra Diwan v. Pradeep Kumar Ranibala***<sup>2</sup> as follows:

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<sup>1</sup> 2024 SCC OnLine SC 3722

<sup>2</sup> (2019) 20 SCC 143

**“85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised ‘in the cloak of an appeal in disguise’.**

**86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyse the evidence and/or materials on record....The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law.”**

(emphasis supplied)

25. Recently, in *K.Valarmathi v. Kumaresan*<sup>3</sup>, the Hon’ble Apex Court reiterated that the power of High Court under Article 227 of Constitution of India is supervisory and is exercised to ensure that the courts and tribunals under its supervision, act within the limits of their jurisdiction conferred by law. This power is to be sparingly exercised in cases where errors are apparent on the face of record; occasioning grave injustice by the court or tribunal assuming jurisdiction which it does not have; failing to exercise jurisdiction which it does have; or exercising its jurisdiction in a perverse manner. The Hon’ble Apex Court further held that the essence of the power under Article 227 being supervisory, it cannot be invoked to usurp the original jurisdiction of the court which it seeks to supervise, nor can it be invoked to supplant a statutory legal remedy under the Civil Procedure Code, 1908.

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<sup>3</sup> 2025 SCC OnLine SC 985

26. The present is not a case of violation of principles of natural justice in issuing an order of commission nor of acting in disregard of any settled principles of law under Order 26 Rule 9 CPC, and can also not be covered under any other ground open for interference as laid down in ***K.Valarmathi*** (surpa).

27. Thus considered, I do not find it a case to interfere in the order impugned under Article 227 of Constitution of India.

28. The Civil Revision Petition lacks merit and it is dismissed.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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**RAVI NATH TILHARI, J**

Dated:11.07.2025  
Note: LR copy be marked  
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**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

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