

**IN THE HIGH COURT FOR THE STATE OF TELANGANA**

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**CIVIL REVISION PETITION No.562 of 2020**

**Between:**

1. Smt. Sughra Begum W/o Late Yusuf Khan  
and 4 others

... Petitioners

**And**

1. Md. Ismail Khan S/o Late Yusuf Khan and 9 others

... Respondents

Date of Judgment pronounced on : 09.04.2021

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

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 The Lordship wishes to see the fair copy  
Of the Judgment? : Yes / No

**CHALLA KODANDA RAM, J**

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM****CIVIL REVISION PETITION No.562 of 2020**

% 09.04.2021

# Smt.Sughra Begum W/o Late Yusuf Khan  
and 4 others

... Petitioners

Versus

1. 1. Md. Ismail Khan S/o Late Yusuf Khan and 9 others

... Respondents

< **GIST:**

> **HEAD NOTE:**

! Counsel for the Petitioners : Mohd. Veqar Hussain

^ Counsel for the Respondent No.8 : G.P. for Arbitration

Counsel for respondents 1 to 7, 9, 10 : Sri Janardhan Reddy Kotha

? **Cases referred:**

1. (2008) 8 SCC 671
2. 2011 SCC OnLine Mad 990
3. 2011 SCC OnLine AP 218
4. 2006 SCC OnLine AP 319
5. 2005 SCC OnLine AP 456

**THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION No.562 of 2020**

**ORDER:**

The order dated 17.02.2020 passed by the learned II Additional District and Sessions Judge, Ranga Reddy District, at L.B.Nagar, in I.A.No.182 of 2020 in O.S.No.389 of 2012, is challenged before this Court. By the impugned order, the trial Court dismissed the application filed by the petitioners/plaintiffs seeking appointment of Advocate Commissioner for noting down the physical features and topography of the suit schedule property.

2. Heard the learned counsel for the petitioners, and the learned counsel for the respondents.

3. The suit was filed by the petitioners/plaintiffs for partition, separate possession and cancellation of Sale Deed and rectification of Pahani Nakles, against the respondents/defendants. The petitioners filed I.A.No.182 of 2020 seeking appointment of advocate commissioner for noting down the physical features and topography of the suit schedule property. In the affidavit filed in support of the I.A.No.182 of 2020, the petitioners stated in paragraphs 2, 3 and 4 as under:

**“2. It is submitted that, we have filed the above suit for partition, separate possession and cancellation of Sale Deed and rectification of Pahani Nakles, against the Respondents/Defendants. The evidence of either side is closed and the matter is at arguments stage and at this stage as the earlier counsel on record for the plaintiff was not co-operating with the plaintiffs and was acting against the interest of the plaintiffs as such the petitioners/plaintiffs were constrained to file a petition in I.A.No.949/2019 in O.S.No.389 of 2012 to revoke the Vakalat of Mr. Maaturi Kishan Rao, permitting the petitioners/plaintiffs to engage another advocate for continuing further proceedings in the main suit which was allowed by this**

Hon' ble Court. However the earlier counsel despite of repeated request of the plaintiff, failed to handover the office bundle of the above case as such the petitioners/plaintiffs were constrained to file C.A. for certified copies of the documetns.

3. It is submitted that, on verification it is revealed to our present counsel on record that the Respondent/Defendant No.4 in his cross examination denied that the crimination of our father and forefathers are kept in the suit schedule property, particularly when their graves are existing in the suit schedule property.

4. It is further submitted that the Respondent/Defendant No.4 also disputed the boundaries of the suit schedule properties as such in view of the above submissions it is just and necessary that the boundaries of the suit schedule property and the correct topography of the suit schedule property has to come before this Hon' ble Court for proper adjudication of the above suit.”

4. The respondents/defendants filed counter affidavit in I.A.No.182 of 2019 denying the allegations of the petitioners. It is stated in paragraphs 4 and 5 of the counter affidavit as under:

4. In reply to Para 2 of the affidavit in support of the petition filed under Section 151 CPC, it is submitted that the entire allegations leveled in para under reply are false, baseless and incorrect. It is submitted that the petitioners/plaintiffs have filed a false and speculative suit for partition and separate possession in respect of the suit schedule 'A', 'B' & 'C' properties situated at Sanghiguda Village, Shamshabad Mandal, RR District against me and other respondents/defendants, wherein, I have filed my detailed written statement denying the allegations leveled in the plaint, in the suit, the petitioner/plaintiff No.1 has been examined as PW-1 and petitioner/plaintiff No.3 has been examined as PW-2 and I have been examined as DW1, the case is coming up for arguments, at this stage, the petitioners/plaintiffs have filed this petition to reopen the case for appointing an Advocate Commissioner to note down the physical features and topography of the suit schedule properties. It is pertinent to mention here that the suit is for partition and separate possession, it is a primary duty of the petitioner/plaintiffs to prove that they are having share in the suit schedule properties and they are in possession of the suit schedule property, as such, question of reopen the case for appointing an Advocate commissioner to note down the physical features and

topography of the suit schedule properties does not arise and moreover, PW-1 categorically admitted that “my husband dead body was cremated at Sanghiguda Graveyard place. It is true that there was no cremation of our ancestors in suit schedule properties”, this admission itself is sufficient to prove that there was no graveyard in the suit schedule properties and in a suit for partition and separate possession, the physical features and topography of the suit schedule properties is not at all relevant for adjudication of the case, the petition is without any merits, the same is liable to be dismissed.

5. In reply to Paras 3 & 4 of the affidavit in support of the petition filed under Section 151 CPC, it is submitted that the entire allegations leveled in paras under reply are false, baseless and incorrect. It is submitted that it is a duty of the petitioners/plaintiffs to prove that the suit schedule properties are belongs to ancestral properties and they are entitled share in the suit schedule properties, instead of proving their share, the petitioners/plaintiffs filed this petition to reopen the case for appointing an Advocate Commissioner to note down the physical features and topography of the suit schedule properties is not maintainable and more over it is a duty of the petitioners/plaintiffs to prove the boundaries of the suit schedule property. The petitioners/plaintiffs instead of arguing the case, filed this application only to drag on the matter, as such the petition is without any merits, the same is liable to be dismissed.”

5. The trial Court dismissed the I.A.No.182 of 2020 on two grounds; (1) there are photographs evidencing existence of tombs, and (2) the correctness of boundaries is not relevant for the purpose of deciding a partition suit. The trial Court, in paragraphs 06 and 07 of the impugned order observed as under:

“06. The perusal of the record goes to show that photos of the suit schedule property are marked as Ex.A18, and by observing the same one can found existence of tombs. In such circumstances I am of the view that there is no necessity to appoint an advocate commissioner in order to note down the existence of tombs.

07. As rightly argued by the defendants counsel the plaintiffs have to prove their right to claim a share over the suit property. Existence of tombs is a secondary aspect. It is for the plaintiffs

to prove the correctness of the boundaries and they cannot collect evidence with the help of advocate commissioner. Even if advocate commissioner records the owners of the boundaries to the suit property still it will be in dispute. Taking all these aspects into consideration I am of the view that the petitions are liable for dismissal.”

6. Mr. Muhammad Veqar Hussain, learned counsel for the petitioners, assailed the impugned order as unsustainable by relying on the following judgments:

- (i) **Haryana Waqf Board v. Shanti Sarup**<sup>1</sup>
- (ii) **M. Nachiappan v. A. Nachiappan**<sup>2</sup>
- (iii) **Shaik Zareena Kasam v. Patan Sadab Khan**<sup>3</sup>
- (iv) **Dammalapari Satyanarayana v. Datla Venkata Ramabhadra Raju @DVR Raju**<sup>4</sup>
- (iv) **Koduru Sesha Reddy v. Gottigundala Venkata Rami Reddy**<sup>5</sup>

7. Learned counsel for the respondents submits that the trial Court had rightly dismissed the I.A.No.182 of 2020 and the same does not call for interference by this Court.

8. In **Haryana Waqf Board (1 supra)**, the Punjab Waqf Board was the plaintiff, filed suit for injunction and declaration of title. The High Court, on the ground of concurrent findings of fact arrived at by both the Courts below, summarily dismissed the second appeal. When the matter was taken to the Supreme Court, the apex Court observed that the respondents have never taken any specific denial with respect to unauthorized possession in respect of suit land by them as per paragraph 3 of the plaint, and therefore the High Court ought to have granted the plea of appointment of Local Commissioner for demarcation of suit land.

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<sup>1</sup> (2008) 8 SCC 671

<sup>2</sup> 2011 SCC OnLine Mad 990

<sup>3</sup> 2011 SCC OnLine AP 218

<sup>4</sup> 2006 SCC OnLine AP 319

<sup>5</sup> 2005 SCC OnLine AP 456

9. In **Nachiappan (2 supra)**, the grievance of the revision petitioners therein was that the earlier application I.A.No.83 of 2009 filed seeking appointment of advocate commissioner for proving the plaintiffs possession was dismissed; however, a second application I.A.No.447 of 2009 for appointment of advocate commissioner was allowed. When challenged before the High Court, the High Court while dismissing the revision petition, confirmed the order in I.A.No.447 of 2009 observing that no prejudice would be caused to the interest of revision petitioners.

10. In **Shaik Zareena Kasam (3 supra)**, the trial Court dismissed the application filed for appointment of advocate commissioner to verify the existence of rice mill in the suit schedule property, on the ground of delay. This Court allowed the civil revision petition by observing that if there are laches on the part of one party in filing an application belatedly, reasonable costs could be imposed and it is not desirable to dismiss the application merely on the ground of delay.

11. In **Dammalapari Satyanarayana (4 supra)**, the trial Court allowed the application I.A.No.201 of 2005 filed by the respondents/defendants seeking appointment of advocate commissioner for localizing the suit schedule property on the ground that initially the petitioners purchased the property in Survey Nos.339/5 and 6, and later the sale deeds were rectified by mentioning the Survey numbers as 339/9 and 10 and therefore to resolve the uncertainty the respondents filed the application. When the same was challenged before this Court, this Court set aside the order under revision thereby dismissed the I.A.No.201 of 2005 by observing that the admissibility or otherwise of the so-called sale deeds would be at the stage of recording evidence and therefore localizing or demarcation of suit schedule property by calling for a

report from an advocate commissioner by basing on title deeds even before the recording of evidence may lead to a stage where the whole trial would revolve around such report.

12. In **Koduru Sessa Reddy (5 supra)**, the application I.A.No.146 of 2001 filed by the plaintiffs in O.S.No.23 of 2001 seeking appointment of advocate commissioner for noting down the physical features was ordered *ex parte*. The defendants filed I.A.No.396 of 2004 seeking appointment of another advocate commissioner on the ground that appointment of earlier advocate commissioner was through an *ex parte* order and the plaintiffs misled the advocate commissioner at the time of noting down of physical features.

13. A perusal of the above judgments relied upon by the learned counsel for the petitioners would show that the factual matrix of those cases are different from the present case on hand, and the orders passed in the said cases are based on the peculiar facts of the respective cases, and the same are not applicable to the facts of the present case.

14. In the present case on hand, the petitioners/plaintiffs filed the application I.A.No.182 of 2019 seeking appointment of advocate commissioner by taking a plea in his affidavit at paragraph No.3 extracted above stating that defendant No.4 has denied the cremation of their father and forefathers in the suit schedule property, more particularly when the graves are existing in the suit schedule property. It is also averred that defendant No.4 has disputed the boundaries of the suit schedule property.

15. The trial Court had considered the plea taken by the plaintiffs and in paragraph Nos.06 and 07 of the impugned order, observed that when the photographs reveal the existence of tombs, there is no need for appointing an advocate commissioner to note down the existence

of tombs; and that the existence of tombs is a secondary aspect and that it is for the plaintiffs to prove their case with respect to correctness of boundaries and the plaintiffs cannot collect evidence with the help of advocate commissioner.

16. At the outset, on a perusal of the plaint, it may be noted that the suit was filed seeking partition of an agricultural land over a total extent of about Ac.24-32 guntas, comprising of Ac.13-30 guntas under Schedule-A; and Ac.8-00 guntas under Schedule-B; and Ac.3-02 guntas under Schedule-C. All the suit schedule properties are agricultural lands in various survey numbers located in Sangiguda Village, Shamshabad Mandal, Ranga Reddy District. Even assuming that the suit is ultimately allowed, the division of property would be required to be worked out by metes and bounds at the time of passing of final decree and not at the stage of suit being considered to answer the question as to whether the partition is to be granted and, if so, what are the shares that are to be allocated to the respective parties, and if there are any exclusions to be made with respect to the property which are alleged to have been acquired by the third parties through one or the other stakeholders.

17. Having considered the respective submissions, this Court does not find any merit in the civil revision petition.

18. Accordingly, the civil revision petition is dismissed. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

**09<sup>th</sup> April, 2021**

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**CHALLA KODANDA RAM, J**

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**THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION No.562 of 2020**

**09<sup>th</sup> April, 2021**

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