

HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.4884 of 2014

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Date: March 25, 2015

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Between:

Karra Kishan Reddy ... Petitioner

And

Goli Ganga Reddy. ... Respondent

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HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.4884 of 2014

ORDER:

Defendant in O.S.No.97 of 2011 on the file of the Court of Junior Civil Judge, Vemulawada, Karimnagar District, is the petitioner in the present revision filed under Article 227 of the Constitution of India. The present revision assails the order dated 10.11.2014 passed by the said Court in I.A.No.264 of 2012 in O.S.No.97 of 2011.

2. Heard Sri G. Bhaskar, learned counsel for the petitioner and Sri V.V. Ramana Rao, learned counsel for the respondent apart from perusing the material available before this Court.

3. The respondent herein instituted O.S.No.97 of 2011 against the petitioner herein for perpetual injunction in respect of the land, admeasuring Ac.0.04 guntas in Survey No.510/ of Vатtemula Village of Vemulawada Mandal, Karimnagar District. The respondent/plaintiff in the said suit filed an application under the provisions of Order XXVI Rule 9 of the Code of Civil Procedure (CPC), seeking appointment of an Advocate-Commissioner to note down the physical features of the schedule property. The said application was allowed by the Court below, appointing Advocate-Commissioner. The Advocate-Commissioner returned the warrant without executing the same. Thereafter, an application was filed by the plaintiff, seeking re-entrustment of warrant and the Court below dismissed the said application. Assailing the said order, the plaintiff/petitioner filed C.R.P.No.4068 of 2013 and this Court by way of order dated 13.12.2013 allowed the said revision and re-directed the Advocate-Commissioner to execute the warrant after taking necessary assistance from the Revenue officials, Mandal Surveyor or any other persons connected to the disputed property and to submit a report. Subsequently, on 16.06.2014 the learned Advocate-Commissioner submitted his report for which the plaintiff/respondent herein filed objections on 02.07.2014. Thereafter, the learned Junior Civil Judge, Vemulawada, passed an order on 10.11.2014, allowing the objections filed by the plaintiff and consequently rejecting the commissioner's report dated 16.06.2014 while re-directing the Advocate-Commissioner to execute the warrant strictly as per the directions of this Court. The said order passed by the learned

Junior Civil Judge, Vemulawada, is under challenge in the present revision.

4. It is contended by the learned counsel for the petitioner that the Court below grossly erred in passing the impugned order without assigning any proper and convincing reasons. It is further submitted that the order passed by the Court below is opposed to the very spirit and object of the provisions of Order XXVI CPC. It is further submitted that the learned Junior Civil Judge, Vemulawada, is not justified in passing the impugned order without assigning any valid reason.

5. On the contrary, it is contended by the learned counsel for the respondent that the order passed by the Court below is in accordance with law and there is no infirmity nor any jurisdictional error in the order passed by the Court below. It is further submitted that the Court below by duly taking into consideration the objections submitted by the respondent herein, passed the impugned order, as such the order passed by the Court below is not amenable for interference of this Court under Article 227 of the Constitution of India.

6. The information available before this Court manifestly discloses that the learned Advocate-Commissioner submitted his report on 16.06.2014 and the plaintiff/respondent herein filed objections on 02.07.2014 and the said objections raised by the plaintiff/respondent herein read as under:

“On behalf of the petitioner/plaintiff work memo has been filed. In accordance work memo the suit property was not properly measured, the places which are under ways have also been attached to the suit place have been measured along with the said measurements the report is submitted which is quite against to the

natural justice. On calculation of the measurements the land will become more area than the suit area, in which the respondent/defendant after filing of the suit by taking law into his hands against the orders of the Hon'ble Court passed in petition filed for grant of temporary injunction have made construction, disobeyed the orders of the Hon'ble Court.

The commissioner should not have included the place of ways is suit place. Moreover the commissioner failed to report the physical features of the suit place. Hence the objection.”

7. A perusal of the impugned order passed by the learned Junior Civil Judge, Vemulawada, shows that the reason for passing the impugned order is the failure on the part of the Advocate-Commissioner to comply with the directions of this Court in C.R.P.No.4068 of 2013. A copy of the order passed by this Court in C.R.P.No.4068 of 2013 is placed on record. By virtue of the said order, this Court while allowing the revision re-directed the Advocate-Commissioner to execute the warrant issued to him after taking necessary assistance from the Revenue officials, Mandal Surveyor or any other persons connected to the disputed property and to submit a report.

8. It is a matter of record that the plaintiff/respondent herein filed objections also to the report submitted by the Commissioner pursuant to the orders passed by this Court in the above revision. The learned Junior Civil Judge, except stating that the Advocate-Commissioner failed to comply with the directions of this Court in C.R.P.No.4068 of 2013, did not refer to the objections submitted by the plaintiff nor said anything as to what directions of this Court were not adhered to by the Advocate-Commissioner in his report. This, in the considered opinion of this Court, is not a proper consideration of the material on record. When specific objections are raised, it is the duty of the Court to consider the said objections and to record a finding as to whether the said objections are

sustainable or not. In the impugned order such exercise is conspicuously absent. For the above said reasons, the learned Judge ought to have referred to the objections and ought to have specifically referred to the failure on the part of the Commissioner, if any.

9. For the aforesaid reasons, the civil revision petition is allowed, setting aside the order dated 10.11.2014 passed by the Court of the Junior Civil Judge, Vemulawada, in I.A.No.264 of 2012 in O.S.No.97 of 2011 and the matter is remanded to the Court below for consideration of the entire material and to pass appropriate orders afresh after giving opportunity to all the stake holders.

10. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No order as to costs.

A.V.SESHA SAI, J

Date: March 25, 2015.

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HON'BLE SRI JUSTICE A.V. SESHA SAI

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