

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.4370 OF 2014

ORDER :

Aggrieved by an order dated 27.10.2014 passed in I.A. No.77 of 2014 in A.S. No.62 of 2011 on the file of the I Additional District Judge, Kurnool, the present Revision is filed under Article 227 of the Constitution of India.

The facts in issue are as under :

The petitioners herein filed an application under Section 26 Rule 9 C.P.C. for appointment of an Advocate Commissioner to inspect the petition schedule property with the assistance of Surveyors of Kurnool Mandal and Kallur Mandal and file the report. The said application was filed vide I.A. No.77 of 2014 in A.S. No.62 of 2011 on the file of I Additional District Judge, Kurnool. In the said I.A. it is stated that the agricultural land to an extent of Ac.12.60 in Survey No.781/A2/2A 1B of Kallur panchayat, which is now within Kurnool limits and adjacent to land survey No.67/2 of Joharapuram village, is being trespassed by the defendant who has no title, right or possession over the said property. It is stated that they filed I.A. No.861 of 2003 seeking appointment of Commissioner to measure the land and to note down the physical features. The Advocate-Commissioner inspected the land but unfortunately the Advocate who was representing the petitioner was not present at the time of inspection. Hence, he could not submit any work memo. It is stated that the Advocate Commissioner though noted the features but expressed his inability to measure the land without the assistance of an expert or any surveyor as both the parties were not cooperating to measure the land. As the petitioner was lay man he could not assist the Advocate-Commissioner in the absence of his Advocate. He filed I.A. No. 975 of 2003 praying the court to direct the Advocate Commissioner to inspect the suit property with the assistance of surveyor. The said application was dismissed. Subsequently, he filed I.A. No.527 of

2008 praying the Court to appoint an Advocate Commissioner to inspect the suit site with the assistance of Mandal Surveyor of Kallur and Kurnool, which was also dismissed. It is now stated that a perusal of the written statement, the deposition of defendant and title deed clearly show that they categorically admit not having any land in Sy.No.781/A2/2A1B of Kallur village and that their land is only in Sy.No.67/1, 67/2 and 67/5 of Joharapuram village only. The petitioner do not claim any land in Sy.No.67/1 or 67/2 of Joharapuram village. The plaint plan clearly reveals that the location of land of the petitioner is adjacent to the land in 67/1, 67/2 and Venkayapalle village which partly runs in Sy.No.67/5 of Joharapuram village and not in Kallur village. Therefore, demarcation of dividing land between the land in Sy.No.781/A2/2A1B of Kallur village and Sy.No.67/1, 67/2 and 67/5 of Joharapuram village would go a long way in elucidating the disputes between the parties and to come to a just conclusion. Thus, the petitioner prays for demarcation of said dividing land between the land of two villages which is possible only if it is done by the concerned Mandal Surveyor or Advocate Commissioner assisted by the said Surveyor.

The first respondent filed counter denying the same. The second respondent adopted the counter filed by the first respondent. The contents of the counter filed by the respondent are as under :

The petitioner who got appointed the Advocate-Commissioner before the lower court personally appeared at the time of inspection and he knows pretty well that he sold away his land upto Venkayapalli road on the South and did not cooperate with the Commissioner in measuring the petition schedule property at the time of inspection. As per the report of the Commissioner, the petitioner who did not cooperate with the Advocate Commissioner in measuring the land and his subsequent requests for reappointment of Advocate Commissioner, was rejected by the lower court which was also confirmed by Hon'ble High Court. The petitioner's request for appointment of another Advocate Commissioner was also rejected by

the lower court, which has become final. Hence, petitioner cannot ask for appointment of another Advocate Commissioner for the said purpose suppressing the factum of rejection of his request by Hon'ble High Court of A.P. The petitioner who was physically present at the time of inspection by Commissioner did not submit any work memo to the Advocate Commissioner requesting him to measure the land at the time of his inspection.

As seen from the record, the petitioners herein filed I.A. No.975 of 2003 in O.S. No.792 of 2003 seeking redirection of appointment of an Advocate Commissioner for re-inspection of the suit locality and measure the land with the assistance of Mandal Surveyor and to draw a neat plan of the suit locality was rejected by the lower court by its order dated 20.01.2005. The said order was challenged before the High Court by way of filing C.R.P. No.1952 of 2005. The said application was dismissed by the High Court on merits. The contents of the order as under :

“A perusal of the report would show that both the petitioner and the respondents were not present when the Advocate-Commissioner had executed the commission. While the petitioner had not even submitted a work memo, respondents had submitted their work memo and in answer thereto, the advocate commissioner had fixed the boundaries of the petitioner's land as well as the respondents' land. The Advocate-Commissioner noted that the petitioner had claimed the ploughed portion parallel from the western side other than red marked portion covered with the standing crop. The Advocate Commissioner held that, without assistance of the surveyor, it was very difficult to measure the land. It is clear from the Commissioner's report that neither was the petitioner's counsel present nor petitioner had assisted the Advocate Commissioner to carry out inspection or to mark boundaries of the land in question.

The order of the Court below does not suffer from any illegality warranting interference of this Court under Article 227 of the Constitution of India. Needless to state that it is always open to the petitioner to file such objections to the commissioner's report as he is entitled in law and the court below shall consider such objections and pass orders in accordance with law.

The Revision Petition is accordingly dismissed.”

Therefore, the petitioner, whose request for appointment of Advocate

Commissioner to measure the land with the help of Surveyor of Kallur and Kurnool, was already considered and rejected by the High Court pending suit. Thereafter, the trial in the said suit went on and ultimately it was dismissed. Challenging the judgment in O.S.792 of 2003, the petitioner herein filed A.S. No.62 of 2011. Pending appeal, the petitioner again filed an application seeking appointment of Advocate-Commissioner for the same purpose. In view of the orders passed by the High Court, rejecting the request, on merits the question of this Court again reconsidering the said aspect pending appeal, does not arise.

The record further discloses that the petitioner herein who summoned the Advocate-Commissioner in I.A. No.975 of 2003 in OS. No.792 of 2003, examined him as a witness on his behalf, admitted the report filed by the Advocate-Commissioner, cannot now go back and seek for reappointment of another Commissioner. It is well established proposition of law that second Advocate Commissioner cannot be appointed for the same purpose when the report of the first Commissioner has become final. Unless the report of the first Commissioner is set-aside, the question of appointing the second Commissioner for the very same purpose at any stage of the proceedings would not arise.

Accordingly, the Civil Revision Petition is dismissed. No costs.

As a sequel to it, miscellaneous petitions, pending if any in this C.R.P. shall stand closed.

C.PRAVEEN KUMAR,J

Dt: 03.02.2015
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