

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 5775

DATED 31st December, 2015

BETWEEN

Md. Idris and anr

...Petitioners

And

Smt. Ameena Bhai and ors

...Respondents.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 5775 of 2015

ORDER:

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The petitioners herein are Defendants 2 and 5 in O.S.No.5 of 2001 on the file of the learned VII Additional District Judge, Mahabubnagar. Respondents 1 to 4 herein filed the aforesaid suit for partition of plaint 'A' and 'B' schedule properties. A preliminary decree was passed in respect of 'B' schedule property on 8.1.2007. An Advocate Commissioner was appointed in I.A.No.53 of 2009 for measurement of 'B' schedule property and allotment of individual shares by order dated 30.12.2010. In respect of 'A' schedule property, A.S.No.227 of 2007 was filed before this Court and the same is pending adjudication. The Advocate Commissioner so appointed on 30.12.2010 filed his report dated 14.10.2012 expressing his inability to demarcate and allot individual shares as per decree. Pursuant to the same, the respondents 1 to 4/plaintiffs filed

Memo dated 29.4.2015 before the Court below to redirect the Advocate Commissioner to execute the warrant by giving necessary directions or alternatively appoint another Advocate Commissioner to execute the warrant. In those circumstances, the Executing Court passed the order under revision dated 14.10.2015 appointing another Advocate Commissioner to execute the warrant. Challenging the same, the present Civil Revision Petition is filed.

The learned Counsel for the petitioners submits that the Court below erred in appointing another Advocate Commissioner without setting aside the report submitted by the earlier Advocate Commissioner.

The relevant portion of order passed by the Court below reads as follows:

“ Admittedly petitioners filed application for final decree application in terms of the preliminary decree passed in their favour in respect of ‘B’ schedule properties. They also preferred appeal against the preliminary decree passed in their favour only in respect of ‘B’ schedule negating the relief in respect of ‘A’ schedule property and it is pending. Respondents herein have not filed any cross appeal questioning the preliminary decree passed in favour of petitioners in respect of ‘B’ schedule property. Final decree proceedings are not stayed by the appellate Court. In the circumstances as admittedly the Commissioner appointed for division of the properties in terms of preliminary decree returned the warrant expressing his inability to execute the warrant for the reason that the extents are more than the extents shown in schedules and there are some existing structures not shown in the schedules final decree proceedings are stalled. This application is filed in the year 2009 for final decree. Though six years have been elapsed petitioners/plaintiffs having obtained preliminary decree could not get any

relief. Objection raised by the respondents that only one final decree is to be passed and petitioners are barred to obtain number of final decrees is not tenable. Question of another final decree arises only in the event of their success in the appeal preferred by them in respect of 'A' schedule properties. Till such time no such possibility of passing number of final decrees. In the above circumstances instead of keeping the final decree proceedings filed in cold storage without any progress it is a fit case to appoint a Senior Advocate Commissioner to make division of the properties in terms of the preliminary decrees with the assistance of licenced surveyor or the Government Surveyor instead of re-directing the same Advocate Commissioner who expressed his inability to execute the warrant though there is no ambiguity and no dispute with regard to the identity of the properties."

The Court below noticed that the earlier Advocate Commissioner expressed his inability to execute the warrant for the reason that the extents are more than the extents shown in schedules and that there are existing structures not shown in the schedule. When another Advocate Commissioner is appointed for executing the warrant, it supersedes the warrant issued appointing earlier Advocate Commissioner. In this view of the matter, there is no need for the petitioner to feel apprehension that the report of the earlier Advocate Commissioner is not set aside. I do not see any valid and substantial reason to interfere with the order under revision.

The Civil Revision Petition is dismissed. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 31.12.2015

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