

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.5095 of 2014

ORDER:

This revision is filed against order dated 10.11.2014 in I.A.No.1160 of 2014 in I.A.No.553 of 2011 in O.S.No.215 of 2011.

2. Revision petitioner herein is D-1 and first respondent herein is plaintiff, who filed the above referred O.S.No.215 of 2011 for permanent injunction and also not to raise any construction in the alleged 30 feet road. In the said suit, plaintiff filed I.A.No.553 of 2011 seeking interim relief of the same relief that was claimed in the suit and the trial Court after conducting enquiry, dismissed the interim application, aggrieved by which, plaintiff preferred C.M.A.No.24 of 2011 before Principal District Judge, Vizianagaram, who dismissed appeal confirming orders of the trial Court in I.A.No.553 of 2011. Plaintiff preferred C.R.P.No.1382 of 2012 against the orders in C.M.A.No.24 of 2011 and this Court remanded the matter to the trial Court directing plaintiff to take steps for appointment of an advocate commissioner for localizing the schedule property and fix the boundaries with the help of qualified surveyor and directed the trial Court to dispose of the interim injunction application within one month from the date of receipt of the order. In pursuance of the orders of

this Court, plaintiff filed I.A.No.1160 of 2014 for appointment of commissioner and an advocate commissioner was appointed and after execution of the warrant, he filed a report before the trial Court, for which, both parties filed objections. At that stage, revision petitioner herein/1st defendant filed I.A.No.1160 of 2014 to permit him to cross-examine the advocate commissioner in the interim injunction application enquiring and the trial judge dismissed the said application, and aggrieved by the same, present revision is preferred.

3. Heard both sides.

4. Advocate for revision petitioner submitted that the trial Court has not given opportunity to revision petitioner herein to cross-examine the advocate commissioner with reference to the objections that are filed for the commission report and it would not be appropriate for the Court below to rely on the advocate commissioner report without giving opportunity to the parties to put forth their objections, as to the observations made by the advocate commissioner during the visit of disputed property. He submitted that the trial Court ought to have decided the objections of both parties in the commission application before taking up enquiry in I.A.No.553 of 2011, and thereby, the trial Court committed error in not permitting the revision petitioner to cross-examine the advocate commissioner.

5. On the other hand, advocate for plaintiff submitted that revision petitioner/1st defendant violated the interim orders of this Court and a petition is filed for contempt and the trial Court rightly dismissed the application holding that the objections of both parties will be considered in the enquiry of interim application in I.A. No.553 of 2011 and that there are no grounds to interfere with the orders of the trial Court.

6. Now the point that would arise for my consideration is :

“Whether the order of trial Court is legal, correct and proper?”

POINT:

7. Admittedly, advocate commissioner is appointed only on the direction of this Court while remanding the matter as per orders in C.R.P.No.1382 of 2012. As seen from the impugned order, learned trial judge observed that cross-examination of advocate commissioner would not arise at this stage, since it is only enquiry in interim application and the objections with regard to report of the advocate commissioner will be considered by the Court while deciding the interim application. Normally, enquiry in the interim applications will be on the basis of affidavits filed on behalf of both parties and other party can request the Court to permit them to cross-examine the deponent, who gave the affidavit, but here, it is only report of the

advocate commissioner, who is Court Officer and there is no affidavit of the advocate commissioner to permit the petitioner herein to cross-examine. When the objections are already on record and the trial Court has not given any finding either accepting the advocate commissioner's report or discarding advocate commissioner's report, the question of examining the commissioner at that stage would not arise.

8. Further the contention of revision petitioner that he was not given any opportunity, cannot be accepted, because no finding is given by the trial Court with regard to the report of the commissioner and only in the interim application i.e., I.A.No.553 of 2011, the correctness of the commissioner report has to be dealt with. As rightly pointed out by advocate for plaintiff learned trial judge was right in dismissing the application and in fact the trial judge observed in his order that opportunity to address arguments with regard to the objections and the commissioner report are available to petitioner herein in the enquiry in I.A.No.553 of 2011, therefore, considering the facts of the case and the earlier order of this Court, I am of the view that trial Court has not committed any error and he is perfectly justified in dismissing application and therefore, there are no merits in this revision.

9. For these reasons, this Civil Revision Petition is dismissed with a direction to trial Court to dispose of

I.A.No.553 of 2011 within one (01) month from the date of receipt of this order and shall decide the same on merits without being influenced by any of the observations made in this order. No costs.

Miscellaneous petitions, if any pending, in this revision petition shall stand closed.

S. RAVI KUMAR, J

Date: 20-01-2015.

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CIVIL REVISION PETITION No.4119 of 2007

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Date: 19-01-2015

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