

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.3524 of 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents.

2. The present Civil Revision Petition is filed challenging the order dated 13.07.2015 in I.A.No.4475 of 2015 in O.S.No.67 of 2003 on the file of the Court of I Additional Chief Judge, City Civil Court at Secunderabad (for short, trial Court).

3. The petitioner herein is respondent No.6 in I.A.No.4475 of 2014 in O.S.No.67 of 2013. Originally the suit O.S.No.67 of 2003 was filed by respondents 1 and 2 herein for partition. After passing a preliminary decree on 30.10.2006, the first defendant filed an appeal i.e., CCCA.No.71 of 2007 before this Court and this Court, by judgment and decree dated 13.06.2013, dismissed the same. After passing the preliminary decree, I.A.No.2856 of 2007 was filed for appointment of an Advocate Commissioner in order to pass final decree and the Advocate Commissioner was appointed. During the pendency of the appeal, the first defendant died and his legal representatives were brought on record. During the pendency of appeal, this Court directed the trial Court to proceed with other proceedings, but stayed the final decree proceedings. Though the Advocate Commissioner, who was appointed in I.A.No.2856 of 2007, submitted a report on 26.11.2007, but in view of the pendency of the appeal, no final decree was passed. After disposal of the appeal on 13.06.2013, respondent No.9 in I.A.No.4475 of 2014 filed an application for appointment of an Advocate Commissioner to measure the extent of property presently available and the property sold by the first defendant before passing the final decree. The petitioner herein as well as other defendants, filed a memo for allowing the said application and the trial Court passed an order on 13.07.2015, appointing the

Advocate Commissioner, challenging which, the present Civil Revision Petition is filed by respondent No.6 in I.A.No.4475 of 2014.

4. The trial Court passed the following order:

“ Heard. The advocates for Respondents 4 to 8 opposed that there is sanctioned layout of property.

The second plaintiff filed petition for allotting schedule of property. Respondent No.9 filed petitioner U/Order 26, R-9 CPC for appointment of Advocate Commissioner to visit the property and file report with plan.

In the above circumstances to avoid scope of controversy regarding features, physically available measurements of property covered by preliminary decree, it is just and necessary to appoint Advocate Commissioner to visit the suit schedule property and file his report by verifying all the documents filed by both sides.

Sri P.M.Ugandhar, Advocate, Secunderabad is appointed to visit the Decree Schedule property, note down the physical features and present descriptive particulars and the boundaries of the Suit Schedule Property, details of persons who are in possession of specific portions by considering documents produced by each party, prepare a sketch bearing with actual measurements of such dimension of the same with the assistance of surveyor and to file his report.

His fee is fixed at Rs.5,000/- and the petitioner herein shall bear the expenses of Advocate Commissioner including fee of the surveyor.

For his report, call on 14-8-2015.”

5. A perusal of the above order shows that the trial Court has not taken into consideration the earlier report filed by the Advocate Commissioner in I.A.No.2856 of 2007. If any party to the proceedings has any objection to the report of the Advocate Commissioner, he/she should have filed objections to the said report and the trial Court should have considered those objections. Instead, it appointed another Advocate Commissioner for the purpose

mentioned above without setting aside the report of the earlier Advocate Commissioner.

6. In the circumstances, the impugned order of the trial Court dated 13.07.2015 is set aside and the Civil Revision Petition is allowed. The parties are given liberty to file their objections to the report submitted by the Advocate Commissioner in I.A.No.2856 of 2007 dated 26.11.2007 and the trial Court is directed to consider those objections and pass appropriate orders, after hearing counsel for the parties. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 25.11.2015

TJMR