

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

CRP.No.3317 of 2014

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.25.08.2014 in I.A.No.392 of 2012 in OS.No.253 of 1991 of the Principal Junior Civil Judge, Chittoor, Chittoor District.

2. Petitioners herein are defendants 1 to 3 and 5 to 8 in the above suit. The said suit was filed for partition of the plaint schedule properties and for other reliefs.

3. The suit was initially dismissed by the trial Court on 19.12.1996. The plaintiffs then appealed in A.S.No.19 of 1997 to the VIII Additional District Judge, Chittoor. The said appeal was allowed on 19.08.2000 and a preliminary decree was passed directing division of plaint schedule properties into two equal shares.

4. Challenging the preliminary decree, the petitioners herein filed a Second Appeal SA.No.1125 of 2010 in this Court and in SA.MP.No.2476 of 2010 this Court granted status quo with regard to possession to be maintained existing as on 22.10.2010. There was no stay of passing of a final decree granted by this Court in the Second Appeal and the Second Appeal continues to be

pending before this Court.

5. Thereafter respondents 3 and 4 filed I.A.No.392 of 2010 to appoint an Advocate-Commissioner and direct him to visit the suit schedule property and divide it into two equal shares by metes and bounds. Although this application was filed under Order XXVI Rule 13 CPC, it is in fact an aid to the Court below in passing a final decree proceeding.

6. This application was opposed by the petitioners contending that the order of status quo passed in SA.MP.No.2476 of 2010 in SA.No.1125 of 2010 is a bar to appoint an Advocate-Commissioner to divide the suit schedule property in accordance with the preliminary decree.

7. By order dt.25.08.2014, the Court below rejected the said objection and appointed Advocate-Commissioner to divide the suit schedule properties as per the preliminary decree and to file his report for the purpose of passing a final decree. It held that the order passed by this Court in SAMP.No.2476 of 2010 is not a bar for appointment of an Advocate-Commissioner to measure the suit schedule properties with the help of Mandal Surveyor and divide the same in accordance with the preliminary decree, observing that it will not disturb the possession of the suit schedule properties.

8. Challenging the same this Revision is filed.

9. Heard Sri S.V.Muni Reddy, Counsel for the petitioners and Sri K.Ramamohan Mahadeva, Counsel for respondents 3, 4 and 5.

10. Counsel for the petitioners contended that in view of the status quo orders passed in SA.MP.No.2476 of 2010 in SA.No.1125 of 2010 directing the parties to maintain status quo with regard to possession of the suit schedule properties, the Court below is not correct in appointing an Advocate-Commissioner since the prayer of the respondents 3, 4 and 5 in the said I.A. was to divide the suit schedule properties. He contended that if the said division is allowed, it would amount to dispossession of the petitioners from the suit schedule properties and is impermissible in law.

11. Counsel for the respondents 3, 4 and 5 on the other hand refuted the above contentions. He contended that the suit being one for partition, and since only a preliminary decree has been passed and a final decree has not yet been passed, the question of dispossessing the petitioners would not arise at this stage and that the appointment of an Advocate-Commissioner under Order XXVI Rule 13 CPC was sought to enable the trial Court to pass a final decree in terms of the preliminary decree.

12. I find force in the contention of the counsel for respondents. The suit was filed for partition and other reliefs and a preliminary decree has been passed in AS.No.19 of 1997 on 19.08.2010. Although the petitioners had questioned the same in SA.No.1125 of 2010, this Court had not granted stay of passing a final decree therein and had only directed maintenance of status quo existing as on 22.10.2010 in SA.MP.No.2476 of 2010. Therefore, there is no impediment to the Court below to proceed to pass a final decree.

13. In this view of the matter, the respondents cannot be restrained from seeking appointment of an Advocate-Commissioner under Order XXVI Rule 13 CPC to submit a report as to the manner in which partition of the suit schedule properties is to be done in accordance with the preliminary decree. Therefore, the Court below is correct in stating that the status quo order passed by this Court in SA.MP.No.2476 of 2010 in SA.No.1125 of 2010 is not a bar to exercise power under Order XXVI Rule 13 CPC and it would not result in disturbance of possession of the petitioners over the suit schedule properties.

14. So I do not find any merits in this Civil Revision Petition and is accordingly dismissed. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

10th August, 2015

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