

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

CIVIL REVISION PETITION No.253 of 2015

ORDER:

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This Civil Revision Petition is filed challenging the order

dt.28-11-2014 in I.A.No.369 of 2014 in O.S.No.194 of 2003 of the

I Additional Junior Civil Judge, Madanapalle.

2. The petitioner herein is 2nd defendant in the above suit.

3. The plaint and the written statement/counter claim filed by respondent and the petitioner herein in the said suit indicate that both parties are claiming the same ABCD site marked in their respective plans and are seeking permanent injunction and a mandatory injunction against each other.

4. An Advocate-Commissioner by name Sri G.Bayya Reddy had been appointed on 09-04-2003 to visit the suit schedule property and for filing a report along with a sketch. Ex.C-1 is the report filed by him. Ex.C-2 is the rough plan. Later when the trial commenced, he was examined as C.W.1. In the course of the cross-

examination done on 21-04-2010, he admitted that he filed Ex.C-2 rough sketch indicating only the rough measurements and not the final measurements. He also admitted that he committed a mistake in the report by mentioning a “sandu” on the western side of the petitioner’s building and that in the rough sketch filed by him, he showed it correctly on the eastern side of the petitioner’s building. He also admitted that he did not take the assistance of Municipal Surveyor on the ground that Ex.C-3 layout plan had been furnished to him by the respondent.

5. Having regard to this evidence, the petitioner herein filed I.A.No.369 of 2014 to re-entrust the warrant of commission to the same Commissioner to note down the physical features, structures etc. by mentioning the measurements of the written statement schedule property and also plaint schedule property and to draw a sketch and plan and to answer the other points raised at the time of his inspection. It was also contended that the Advocate-Commissioner had not answered the work-memos submitted at the time when he executed the warrant granted to him in I.A.No.298 of 2003 and had not properly measured the property as per the documents furnished by petitioner along with a memo and had filed

his report.

6. This application was opposed by respondent stating that it is not maintainable. He contended that the Advocate-Commissioner was already examined as C.W.1 and certain Exhibits had been marked through him and if the request of petitioner is acceded to, then the evidence of Advocate-Commissioner already recorded would become obsolete. It was also averred that this application ought to have been filed before the Advocate-Commissioner was examined and the application is not a *bonafide*. It is also contended that the second report cannot be called for when the first report is already marked as Exhibit in the evidence of C.W.1.

7. By order dt.28-11-2014, the Court below dismissed I.A.No.369 of 2014. It referred to decisions in **Seepally Thirupathi and others Vs. Repelli Mallikarjun and another^[1]** and **P.Upendra Laxman Rao, rep. by its General Secretary, Netaji Plot Owners Association, Kukatpally, Hyderabad Vs. Commissioner of Survey, Settlement and Land Records, Hyderabad and others^[2]**, wherein it was held that the Court has got power to re-entrust the warrant to the same Advocate-Commissioner if any clarification is required for local

inspection. But it declined to exercise such power on the ground that the Advocate-Commissioner had answered the work memos submitted by the learned counsel for petitioner as far as practicable and cross-examination of the Advocate-Commissioner shows for what reason he did not take the assistance of Municipal Surveyor.

8. Challenging the same, this Revision is filed.

9. The learned counsel for petitioner pointed out that both the petitioner as well as respondent are claiming the same parcel of land and each is contending that the other party has no right therein; the Advocate-Commissioner's report ought to give correct measurements and not rough measurements and the Advocate-Commissioner also has to take the help of Municipal Surveyor while executing the Warrant. He contended that since the Advocate-Commissioner had admitted that his rough sketch Ex.C-2 contains only rough measurements and not final measurements, and Municipal Surveyor's assistance was also not taken and since the Advocate-Commissioner had admitted in his cross-examination done on 21-04-2014 that he committed a mistake in his report by showing a "sandu" on the western side of the petitioner's building instead of showing it on the eastern side, and since the Advocate-Commissioner has not answered the work

memos submitted by petitioner's counsel at the time of execution of the warrant initially, the report of the said Advocate-Commissioner would not be of any assistance. He contended that unless the Advocate-Commissioner is re-entrusted with the warrant to make a fresh inspection to note down the physical features, structures etc. by giving the measurements correctly and is also instructed to draw a sketch/plan and answer the points raised at the time of his inspection, grave prejudice will be caused to petitioner.

10. Although notice in this Revision has been served on respondent, none appears for respondent. Therefore, the matter is heard *ex parte*.

11. I find considerable force in the contention of the learned counsel for petitioner. There is no dispute that the Advocate-Commissioner's sketch Ex.C-2 does not give the correct measurements and only gives rough measurements, and he admitted to have committed a mistake in his report Ex.C-1 by showing a "sandu", which is actually on the eastern side of the petitioner's building, on the western side of the petitioner's building and he has not taken the assistance of Municipal Surveyor. When both parties are seeking the same bit of land, unless the correct measurements are taken, it would be difficult for the Court to decide the matter. Therefore, I am of the

opinion that the Court below erred in refusing to allow I.A.No.369 of 2014.

12. Therefore, the Civil Revision Petition is allowed and the order dt.28-11-2014 in I.A.No.369 of 2014 in O.S.No.194 of 2003 of the

I Additional Junior Civil Judge, Madanapalle is set aside and the said I.A. is allowed. No costs.

13. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 19-08-2015

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[\[1\]](#) 2006(4) ALT 23

[\[2\]](#) 2010(2) ALT 646