

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
FRIDAY, THE SEVENTEENTH DAY OF JULY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

CIVIL REVISION PETITION No.2390 of 2015

BETWEEN

T. G. Jayachandra Naidu.

... PETITIONER

AND

P. Santhamma and others.

...RESPONDENTS

Counsel for the Petitioner: MR. A. CHANDRAIAH NAIDU

Counsel for the Respondents: --NONE APPEARED--

The Court made the following:

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ORDER:

Petitioner is stated to be sole defendant in O.S.No.442 of 2014 on the file of the I Additional Junior Civil Judge, Tirupathi.

2. It appears that the Court below appointed an Advocate Commissioner vide order in I.A.No.841 of 2014 and after the said Advocate Commissioner

submitted report before the Court below, as per the warrant, petitioner filed I.A.No.110 of 2015 seeking to scrap the report of the Commissioner. The said application has been dismissed by the Court below under the impugned order dated 07.04.2015 and the same is questioned in this revision.

3. Learned counsel for the petitioner states that the manner in which the warrant is executed clearly shows that the same was done in ignorance of the memo filed on behalf of the petitioner on the date of execution of warrant at 4.45 PM on 06.04.2015 bringing to the notice of the Court below the manner in which the warrant is being executed and seeking appropriate direction to the Commissioner. Learned counsel for the petitioner submits that in spite of the endorsement and without intimation to the petitioner, the Commissioner proceeded with the commission with the assistance of 50 persons by taking photographs and filed one sided report before the Court on account of which the interim injunction application got decided by the trial Court erroneously. Learned counsel submits that the very conduct of the Commissioner being contrary to law, the petitioner was justified in seeking scrapping of the Commissioner's report and according to the learned counsel, the said report is causing irreparable injury to the petitioner and the Court below had already pass adverse order of injunction against the petitioner, which is now subject matter of CMA filed by the petitioner.

4. I am unable to see any justification or basis for the petitioner to file such an application to scrap the report of the Commissioner and such application has no sanction of law. On the contrary, Order 26 Rule 10 of the Code of Civil Procedure and particularly, sub-clause (2) thereof provides specific method in the event of party disputing the execution of warrant and the report of the Commissioner.

Recourse other than that is, therefore, clearly impermissible.

The report of the Commissioner cannot, therefore, be scrapped at the interlocutory stage and in the manner in which the petitioner is seeking scrapping of the impugned order. I, therefore, see no reason to interfere.

The civil revision petition is dismissed. However, this will not preclude the petitioner from taking appropriate steps in accordance with law. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

July 17, 2015
DSK