

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

**CIVIL REVISION PETITION No.3149 of 2015**

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**ORDER:**

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This Civil Revision Petition is filed challenging the order

dt.31-12-2014 in I.A.No.246 of 2014 in I.A.No.172 of 2008 in O.S.No.96 of 2008 of the Principal Junior Civil Judge, Mahabubabad.

2. The petitioner herein is defendant in the said suit.

3. The respondent/plaintiff filed the said suit for declaration of title and for perpetual injunction against petitioner.

4. Along with the suit, the respondent filed I.A.No.172 of 2008 under Order XXXIX Rule 1 and 2 C.P.C. seeking an *ad interim* injunction against petitioner herein pending suit.

5. The petitioner then filed I.A.No.179 of 2008 under Order XXVI Rule 9 C.P.C. seeking appointment of Advocate-Commissioner to ascertain the correct survey numbers, extent and boundaries of the suit schedule land and to localize the suit schedule land as to whether it is located in Sy.No.287/77 of Gummudoor Village of

Mahabubabad Mandal or in Sy.Nos.115/1, 115/2 and 115/4 of the said village.

6. In I.A.No.172 of 2008, there was an interim injunction granted in favour of respondent.

7. The petitioner filed a counter in the said I.A. But the said I.A. was not disposed of by the Court below. It instead dismissed I.A.No.179 of 2008 by order dt.30-06-2008.

8. The petitioner questioned the same in C.R.P.No.3078 of 2008. This Court, by order dt.19-09-2008, dismissed the said Revision, but however left it open to petitioner to file a fresh I.A. after disposal of I.A.No.172 of 2008 (filed by respondent under Order XXXIX Rule 1 and 2 C.P.C.) seeking appointment of Advocate-Commissioner/ Surveyor giving details of boundaries of Ac.0-25 guntas of land in Sy.No.287/7 of Gummudoor Village and that if such application is filed, the Court below shall pass appropriate orders after hearing both sides.

9. Though this order was passed on 19-09-2008, the Court below did not decide I.A.No.172 of 2008. It kept it pending. It commenced trial on 06-11-2013. The evidence on the side of respondent was closed on 07-05-2014.

10. The petitioner then filed I.A.No.71 of 2014 for appointment of Advocate-Commissioner, but the Court below dismissed it on 30-06-2014 upholding the objection of respondent that the petitioner cannot file such an application till I.A.No.172 of 2008 was decided.

11. The petitioner challenged the said order in C.R.P.No.3070 of 2014 before this Court, but the said C.R.P. is pending and there was no stay granted therein.

12. With a view to expedite the disposal of I.A.No.172 of 2008, the petitioner filed I.A.No.246 of 2014 praying the Court below to dispose of the main I.A. for temporary injunction.

13. This application was opposed by respondent contending that the evidence on his side was closed long back and since the petitioner failed to adduce evidence on his behalf, the evidence of petitioner was also closed and the suit has been posted for arguments and there are no *bonafides* in the petition.

14. By order dt.31-12-2014, the Court below dismissed I.A.No.246 of 2014. It observed that the petitioner had not pressed for disposal of I.A.No.172 of 2008 and kept quiet and thereafter only started filing applications with an intention to drag on the proceedings. It observed that

since the evidence in the main suit itself has commenced, there is no justification to dispose of the temporary injunction petition at this stage to enable to the petitioner to prefer C.M.A., and that it amounts to dilatory tactics. It also noticed that it closed petitioner's evidence and that the matter is posted for arguments.

15. Challenging the same, this Revision is filed.

16. Learned counsel for petitioner Sri V.Ravi Kiran Rao contended that the Court below was not justified in refusing to decide I.A.No.172 of 2008 in spite of the fact that counter had been filed therein long back; that the Court below was not justified in even commencing trial without deciding the said I.A.; in spite of the order dt.19-09-2008 in C.R.P.No.3075 of 2008, the Court below had not taken steps to decide the said I.A.; and is instead incorrectly blaming the petitioner for not pressing for the disposal of the said I.A. He also pointed out that the respondent, who had obtained a temporary injunction in I.A.No.172 of 2008, was interested in seeing that the said I.A. is not decided, till the suit is decided, and that respondent intends to defeat the option given to petitioner in the order dt.19-09-2008 in C.R.P.No.3075 of 2008 to seek for appointment of an Advocate-Commissioner after I.A.No.172 of 2008 is decided by commencing the trial

and is keen to get the suit decided without I.A.No.172 of 2008 being decided. He contended that this attitude of respondent is evident from the stand taken by him in I.A.No.172 of 2008 and in the counter affidavit filed in the present I.A.No.246 of 2014.

17. Learned counsel for respondent Sri N.Rajeshwar Rao, on the other hand, supported the order passed by the Court below and blamed the petitioner for non-disposal of I.A.No.172 of 2008. He contended that since the evidence on the side of respondent is over, and since petitioner's evidence is closed and since the suit is posted for arguments, this Revision should be dismissed.

18. I have noted the submissions of both sides.

19. There is no dispute that temporary injunction has been granted *exparte* in favour of respondent against petitioner in I.A.No.172 of 2008 on 16-06-2008. The petitioner herein, who is defendant, had admittedly filed counter in the said I.A. It is the duty of the Court below under Order XXXIX Rule 3-A C.P.C., to decide the said I.A. within 30 days from 16-06-2008 and it cannot blame the petitioner for its non-disposal. The fact that the petitioner may challenge its order in C.M.A. is not a consideration to be kept in mind by the trial Court in refusing to dispose of I.A.No.172 of 2008. It is an

occupational hazard for every trial Court that its orders will be challenged in Superior Courts, if a party is aggrieved by them, and it is not expected of a trial Court to be sensitive to such a course of action being adopted by a party. Therefore, the reason given by the Court below that the petitioner did not press for disposal of I.A. and that if it is disposed of against petitioner, he would prefer C.M.A. is clearly perverse and such an attitude of the Court below is strongly deprecated. The Court below cannot deprive of a petitioner of an opportunity to seek appointment of Advocate-Commissioner after disposal of I.A.No.172 of 2008 by coercing him to argue the suit while keeping I.A.No.172 of 2008 pending. This Court also takes strong objection to the attitude of the respondent in stalling the disposal of I.A.No.172 of 2008 and in pressing the Court for disposal of suit while keeping the said I.A. pending.

20. Therefore, the impugned order cannot be sustained and it is accordingly set aside. I.A.No.246 of 2014 in O.S.No.96 of 2008 on the file of Principal Junior Civil Judge, Mahabubabad is allowed. The Court below is directed to decide I.A.No.172 of 2008 within four (04) weeks from the date of receipt of a copy of this order, and till the expiry of a period of ten (10) weeks after disposal of the said I.A., the Court below shall not hear the arguments or decide the suit. It shall also take into account, the order

that will be passed by this Court in C.R.P.No.3070 of 2014.

21. The Civil Revision Petition is allowed with the above directions with costs of Rs.2,000/- (Rupees Two Thousand only) to be paid by respondent to petitioner within four (04) weeks from the date of receipt of a copy of this order.

22. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

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**JUSTICE M.S. RAMACHANDRA RAO**

Date: 10-09-2015

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