

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.2440 OF 2015

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ORDER :

Heard learned counsel for the petitioners and the respondents.

The impugned order dated 04.05.2015, passed in I.A.No.1015 of 2015 in O.S.No.69 of 2013 by the IV Additional Junior Civil Judge, Kadapa reads as follows:

“In the result, this petition is allowed by re-appointing Sri T.Rama Lingeswara Raju, Advocate, Kadapa as Court Commissioner for identifying, taking measurements of encroachment as per the FMB, for demarcating and fixing the boundaries of properties of both parties as per their documents including the petition schedule property with the assistance of Mandal Surveyor, Chennur Mandal. The remuneration of the Commissioner is fixed at Rs.3,000/- directly payable by the petitioners to the Court Commissioner. The Court Commissioner shall issue notice to both parties before he proceeded to execute the warrant. The Court Commissioner shall receive work memos, if any, and shall comply the same as far as practicable. The Court Commissioner shall follow the procedure as contemplated under Order 26 C.P.C. scrupulously. The warrant shall be returnable along with rough sketch and report on or before 04.06.2015.

The grounds of revision are that the learned Magistrate ought to have dismissed the application for appointment of surveyor, as the survey was already

conducted earlier and noted down the measurements including the boundaries and prepared two sketch reports and thereby there is no purpose of re-entrustment and the application could not have been allowed. Whereas, it is the contention of the learned counsel for the respondents herein that the said application is allowed as it is the claim of the petitioners that the surveyor has not taken measurements with reference to the title deeds of the petitioners more particularly eastern side.

In fact, the application for re-entrustment of the commissioner warrant covered by the impugned order of the lower Court speaks that the advocate commissioner with Mandal Surveyor's assistance submitted report having executed and filed rough sketch with plan of the areas in possession of the petitioners/plaintiffs as well as the respondents/defendants by noting the area of encroachment by the 2nd defendant that of the plaintiffs. However, at the time of survey, even work memo was given to measure the schedule land as per the documents of title deeds and boundaries shown therein, but the surveyor failed to do so and failed to note down the boundaries and has shown the encroachment without touching the southern boundary and the area of measurement shown on eastern side is wrongly computed to measurements in FMB and they filed objections to that effect, thereby an application to re-entrustment of the commissioner warrant to re-visit the

commissioner.

Counter filed by the respondent/defendant No.1 in opposing the re-entrustment of the commissioner warrant sought for, particularly at para 3 while denying the affidavit averments specifically in para 2, that the petitioners/plaintiffs with advocate present, not raised any objection in the course of measurement and noting of physical features and that too when the lands were measured and boundary stones were fixed and sketches filed by the surveyor showing as per the alleged measurements of the petitioners/plaintiffs' sale deeds and in the remaining land showing the possession of the defendants, there is no need to re-entrustment. In fact, in the impugned order of the lower Court, it was not adverted as to two sketches prepared, one is with reference to boundaries of the documents and another as per FMB.

Having regard to the above, the order of the lower Court for re-entrusting the commissioner warrant is set aside by giving opportunity to the lower Court, if necessary with reference to the objections to the report filed, if any, and within the scope of the warrant with reference to any work memos already given to the Commissioner for execution of warrant, also if necessary by re-examining the commissioner advocate to re-entrust for any further clarification assigning reasons to entrust.

Accordingly, the civil revision petition is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

Dr.B.SIVA SANKARA RAO,J

22.12.2015

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HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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DATE: 22.12.2015

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