

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.575 of 2015

Between:

Sanjapuri Nagaraja

.....Petitioner

and

Siddala Kanthamma and others

.....Respondent

Date of Judgment pronounced : 04-08-2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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

C.R.P.No.575 of 2015

ORDER:

Heard Sri K.V.Subrahmanya Narusu, learned counsel

for the petitioner and Sri V.Jagapathi, learned counsel for respondents.

2. This Revision Petition is filed challenging the Order dt.28-01-2015 in I.A.No.705 of 2012 in O.S.No.340 of 2012 of the I Additional Junior Civil Judge, Tirupati.

3. Petitioner herein is the 7th defendant in the suit. The respondent Nos.1 to 4 filed the above suit for a perpetual injunction restraining respondent Nos.5 to 10 and the petitioner from interfering with their possession and enjoyment of the plaint schedule properties. Pending suit, an advocate commissioner was appointed in I.A.No.705 of 2012 to note down the physical features of the A & B schedule properties and other physical features with the assistance of the Mandal Surveyor, Renigunta Mandal. Pursuant to the said orders, he noted down the physical features and filed a report. The respondent Nos.1 to 4 reported no objections to the said report on 02-07-2014. Thereafter, the application was closed.

4. On 11-08-2014, the respondent Nos.1 to 4 again filed an application I.A.No.520 of 2014 to reopen I.A.No.705 of 2012 and permit them to file objections to the advocate commissioner's report contending that they could not file objections to the report within the time stipulated since the Commissioner's report was not obtained by them in time.

5. This was opposed by respondent Nos.5 to 10 and the petitioner who contended that the respondent Nos.1 to 4 had earlier reported “no objections” to the report of the advocate commissioner; that affidavit in lieu of chief examination as P.W.1 was also filed by the respondent Nos.1 to 4; therefore they cannot be now permitted to question the same as an after thought after admitting the contents of the advocate commissioner’s report.

6. By order dt.28-01-2015, the Court below allowed I.A.No.520 of 2014. Although the Court below noted that the respondent Nos.1 to 4 had earlier reported “no objection” to the advocate commissioner’s report, still in the interest of justice, the Court would give an opportunity to them to file objections. It held that mere filing of the objections would not defeat the case of the petitioner and it would be helpful to the court to decide real controversy between the parties and also avoid multiplicity of proceedings.

7. Challenging the same, this Revision Petition is filed.

8. Learned counsel for the petitioner contended that the Court below ought not to have granted permission to the respondent Nos.1 to 4 to file objections to the Commissioner’s report since they had earlier

reported “no objections” to the said report and had waived their right to file objections. He contended that if the respondent Nos.1 to 4 are now allowed to file objections, it would cause serious prejudice to the petitioner and the respondent Nos.5 to 10.

9. Learned counsel for the respondent Nos.1 to 4 however refuted the above contentions and supported the order passed by the Court below.

10. Learned counsel for the petitioner has placed before me Order dt.02-07-2014 in I.A.No.705 of 2012 in O.S.No.340 of 2012 which is as under:

“Reported no objections on petitioner side and at request for objection on R-1 to R-7 call on 07-07-2014 as a last chance, otherwise next step will follow.”

11. Thus, it is clear that respondent Nos.1 to 4 had stated before the Court that they had no objections to the advocate commissioner’s report on 02-07-2014. Having therefore waived their right to file objections to his report, it is not open to them from now seeking to file objections to the report. Their plea that they did not obtain advocate commissioner’s report earlier cannot be accepted as the report of the advocate commissioner would have been served on the learned counsel for the respondent Nos.1 to 4. If really this was true, they would not have stated to the Court that they are reporting ‘no objections’ to the report.

12. In this view of the matter, I am of the opinion that the Court below erred in allowing I.A.No.520 of 2014 by the impugned order. Accordingly the Civil Revision petition is allowed and the said order is set aside and I.A.No.520 of 2014 is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-08-2015

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