

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.1990 of 2012

ORDER :

This revision is filed challenging order dated 28.12.2011 in I.A.No.172 of 2010 in O.S.No.700 of 2009 on the file of Principal Junior Civil Judge, Eluru, West Godavari District.

2. Revision petitioners are plaintiffs, who filed O.S.No.700 of 2009 for the relief of permanent injunction and in that suit defendants filed I.A.No.172 of 2010 for appointment of Advocate Commissioner to inspect the land along with Mandal Surveyor to note down the physical features, to measure the land, fix the boundaries and to arrange barbed wire fencing to the land in the interests of justice and trial Court appointed an Advocate Commissioner for the said purpose. Advocate Commissioner filed report stating that in pursuance of warrant entrusted him he visited plaint schedule property on 21.11.2010 in the presence of both advocates and Mandal Surveyor and that he instructed Mandal Surveyor to measure the schedule land as per F.M.B. and fix the boundaries, but the Mandal Surveyor informed him that he is not competent person to fix the boundaries and for fixing boundaries the surrounding survey numbers also to be measured and the maximum limit of survey to a Mandal Surveyor is only 10 acres, but the case on hand to fix the boundaries about 40 acres has to be measured and for that Divisional Surveyor is competent person and in that view the measurements and fixation of boundaries as directed could not be taken up. Thereafter, petitioners in I.A.No.172 of 2010 requested the trial Court for re-entrustment of order and the learned Junior Civil Judge passed order dated 28.12.2011 re-entrusting the warrant to the very same Commissioner to measure the land with the

assistance of Divisional Surveyor concerned instead of Mandal Surveyor as ordered earlier. Now the plaintiffs preferred the present revision questioning the said order.

3. Heard arguments.

4. Advocate for revision petitioners submitted that the impugned order is passed without giving any opportunity to revision petitioners herein to file any counter and that order of the trial Court re-entrusting the warrant to the very same Commissioner is illegal and not in accordance with law.

5. On the other hand, advocate for respondents submitted that trial Court passed the impugned order in the very same application and no separate application is filed for re-entrustment of warrant and except directing the Commissioner to take the assistance of Divisional Surveyor instead of Mandal Surveyor, no fresh directions are given, therefore, the objection of revision petitioners is not at all tenable.

6. I have perused the material including the impugned order dated 28.12.2011. As seen from the record, the Court below has passed the impugned order in the very same application which was filed earlier for appointment of advocate Commissioner, there is no separate application filed by respondents herein, therefore, the contention of revision petitioners that no opportunity was given to file counter is not at all tenable. Further, as seen from the record, impugned order is passed only after hearing both sides. Admittedly, Advocate Commissioner was appointed in I.A.No.172 of 2010 and advocate Commissioner visited the suit property but he could not comply with the directions of the Commission Warrant with regard to measurement of land as the Mandal Surveyor raised objection as to the competency and on that trial Court re-entrusted the warrant directing Advocate Commissioner to take the assistance of Divisional Surveyor concerned in the place of Mandal Surveyor. Therefore, as rightly pointed out by advocate for respondents, there is no fresh direction it is only re-entrustment of warrant to complete left over work

by taking the assistance of Divisional Surveyor instead of Mandal Surveyor in the view of the technical objection raised by the Mandal Surveyor. On a scrutiny of the record, I am of the view that there is neither jurisdictional error nor any illegality in the order to interfere by this Court in revision. For these reasons, I am of the view that revision is devoid of merits and liable to be dismissed.

7. Accordingly, revision petition is dismissed.

8. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

11th February 2016.

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