

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.617 of 2016

ORDER:

Heard Sri M.Chalapathi Rao, Learned Counsel for the petitioners, and Sri K.S.Mallikarjuna Rao, Learned Counsel for the 1st respondent.

This revision is preferred against the order passed by the IV Additional District Judge, Visakhapatnam in E.A.No.11 of 2013 in E.A.No.20 of 2011 in E.P.No.26 of 2008 in O.S.No.326 of 2007 dated 07.01.2016.

E.A.No.11 of 2013 was filed, under Order 26 Rule 9 CPC, to appoint an advocate-commissioner for the purpose of localizing and demarcating the properties covered by the sale deed dated 23.12.2006 in favour of respondents 1 and 2, by taking into consideration the link documents, with the help of Municipal Surveyor and Urban Mandal Revenue Surveyor, and with the aid of the F.M.B. sketch and adangals. The Court below had earlier, by its order in the very same E.A.No.11 of 2013 dated 30.04.2014, appointed Smt.L.Kanya Kumari, advocate as a commissioner to localize, demarcate and identify the claim petition schedule with that of the sale deed of the claim-petitioner in Survey No.59 (New Survey No.59/5P and 9/C) with the sale deed dated 23.12.2006 in favour of respondents 1 and 2 along with the link documents. The advocate-commissioner was directed to take the help of the Mandal Surveyor, the FMB sketch, adangal and the revenue records, and to file a report by 13.06.2014. The advocate-commissioner was directed, before executing the warrant, to give prior notice to both the counsel on record, and also answer the work memos, if any.

Sri K.S.Mallikarjuna Rao, Learned Counsel for the 1st respondent, would submit that, since Smt.L.Kanya Kumari, Advocate, had expressed her disinclination to execute the warrant, the Court below had substituted her with Sri J.Suresh, Advocate and a senior member of the Bar, as the advocate-commissioner; and, in the absence of the earlier order dated 30.04.2014 being subjected to challenge, the petitioners were not entitled to question the subsequent order dated 07.01.2016 as all that was done by the Court below was to substitute Smt.L.Kanya Kumari with Sri J. Suresh,

Advocate as the advocate-commissioner.

Sri M.Chalapathi Rao, Learned Counsel for the petitioners, while fairly stating that the earlier order dated 30.04.2014 was not subjected to challenge, would, however, express ignorance as to what transpired thereafter. He would also state that the order dated 30.04.2014 records respondents 1 and 2 as having been set ex-parte though they continued to remain on record. He would also point out that the claim petition, filed by the respondents herein, does not contain any schedule and it would, therefore, not be possible for the advocate-commissioner to execute the warrant.

It would be wholly inappropriate for this Court to examine these aspects as what appears to have been done by the Court below, by the order under revision, is only to substitute Smt. L. Kanya Kumari, Advocate, who was earlier appointed as the advocate-Commissioner pursuant to the order dated 30.04.2014, with Sri J. Suresh, Advocate. As the advocate-commissioner was appointed by the earlier order dated 30.04.2014, any grievance which the petitioners may have regarding appointment of an advocate-commissioner could only have been examined on the said order being subjected to challenge, and not the subsequent order dated 07.01.2016. I see no reason, therefore, to interfere with the order under revision.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:07.04.2016.

Note:

Issue C.C. by 11.04.2016.

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