

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.5315 OF 2016

ORDER:

Having become unsuccessful in getting an Advocate Commissioner appointed to observe the physical features, to measure the extent and to localise the suit schedule land admeasuring Ac.0-06 ½ guntas in Survey No.90 situated at Theegalpahad Shivar, Mancherial Mandal, in I.A.No.1076 of 2014 in O.S.No.219 of 2013 on the file of Principal Senior Civil Judge at Mancherial, then Adilabad District, the plaintiffs in the said Suit preferred the present revision petition.

2. The petitioners filed the above Original Suit seeking declaration of title and consequential, perpetual injunction over the aforesaid extent. Of course, copy of the plaint filed in the material papers does not contain the schedule describing the subject land. In the said Suit, they filed I.A.No.1076 of 2014 for appointment of an Advocate Commissioner for the purpose mentioned above and to execute the warrant with the assistance of Assistant Director of Survey and Land Records, Adilabad, showing the boundaries, within which, according to them, the subject land is situated. It was resisted by the respondents by filing a counter. In the counter, the respondents referred to the Suit they filed in O.S.No.513 of 2005 on the file of Principal Junior Civil Judge, Mancherial. Pending the said Suit, the present petitioners filed I.A.No.557 of 2010 seeking the very same

relief, as the one sought for herein, and succeeded in it in getting an Advocate Commissioner appointed, who executed the commission and filed his report, for which, admittedly, the revision petitioners have filed objections. Subsequently, in a different Interlocutory Application proceedings, the matter reached the Honourable Supreme Court in Civil Appeal No.6863 of 2015 in S.L.P.(C).No.33803 of 2014 and the Honourable Supreme Court directed to dispose of both the Suits taking up joint trial, as the subject matter is one and the same in both the Suits and the parties are also one and the same, except to the extent that the plaintiffs are defendants and defendants are plaintiffs in the said Suits.

3. The Court below, referring to these events and more particularly, the petitioners making an application in I.A.No.107 of 2011 in O.S.No.513 of 2005 for appointment of Advocate Commissioner for the very same purpose, which was dismissed by the Principal Junior Civil Judge, Mancherial, and placing reliance on the ruling of this Court in **P. Upendra Laxmana Rao v. Commissioner of Survey, Settlement and Land Records**¹, wherein it is held that unless the Court rejects the report of first Advocate Commissioner, the second Advocate Commissioner cannot be appointed, dismissed I.A.No.1076 of 2014, which led to preferring the present revision petition.

¹ 2010 (2) ALT 646

4. Heard Sri N. Indrasena Reddy, learned counsel for the revision petitioners, and Sri P.V. Narayana Rao, learned counsel for the respondents, and with their agreement, the present revision petition is disposed of at the admission stage.

5. Learned counsel for the revision petitioners would submit that since the objections filed to the Commissioner's Report were not adjudicated upon, the petitioners were compelled to file the present I.A. seeking the very same request, which order passed therein is under challenge in the revision herein. That has been the only ground basing on which the revision petition is sought to be allowed.

6. Learned counsel for the respondents would submit that when the respondents herein filed I.A.No.55 of 2011 to amend the plaint in O.S.No.513 of 2005, the same was dismissed and they carried the matter to this Court in C.R.P.No.3704 of 2011, whereas against the dismissal of I.A.No.107 of 2011 filed by the revision petitioners herein, who are defendants in O.S.No.513 of 2005, the revision petitioners carried the matter to this Court in C.R.P.No.4390 of 2011 and both the revision petitions were disposed of by a common order, dated 13.02.2012, by which, this Court while allowing C.R.P.No.3704 of 2011 and dismissing C.R.P.No.4390 of 2011, made certain observations and despite the same, the petitioners herein once again made an attempt by filing the present I.A.No.1076 of 2014 and

preferred the present revision petition challenging the dismissal order passed there against.

7. Perused the order under challenge and the material placed on record by the revision petitioners and the counter filed along with the copy of the order passed by a learned Single Judge of this Court in C.R.P.Nos.3704 and 4390 of 2011.

8. When objections are filed to the report of the Advocate Commissioner, the said objections would be considered by hearing the parties at the time of disposal of the Suit. In fact, when objections are filed to the report of the Advocate Commissioner, the Advocate Commissioner would be summoned for examination by the party, who filed the objections to the report and cross-examines the Advocate Commissioner on the objections he has raised. The evidence of the Commissioner will be examined in the light of the objections raised and the answers elicited in the cross-examination, and would be adjudicated upon along with the Suit. Mere fact that the objections raised to the report of the Commissioner were not adjudicated upon is no ground to make yet another application seeking the very same relief. As could be seen from the sequence of events narrated hereinbefore, the revision petitioners herein having succeeded in the first application in I.A.No.557 of 2010 on the file of Principal Junior Civil Judge, Mancheri, cannot move yet another application in I.A.No.107 of 2011, which was referred to in the above and ended in

dismissal, and even the revision petition preferred being dismissed, and make a third attempt by filing the present I.A. for the very same relief. Certainly, they cannot again and again file applications, so as to see that the report of the Commissioner, if appointed, would suit their stand, which they have taken in the Suits. It is nothing but abuse of process of Court, if at all to be termed, when looked at the attempts they made. Hence, there is no merit in the revision petition.

9. Accordingly, the revision petition is dismissed. Miscellaneous Petitions, if any, pending in this revision petition, shall stand closed. There shall be no order as to costs.

November 11, 2016.
MD

A. SHANKAR NARAYANA, J

