

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No. 5550 OF 2015

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ORDER :

This Civil Revision Petition is filed challenging the order dated 05.08.2015 in I.A.No.2625 of 2012 in O.S.No.44 of 2011, wherein the application filed by the respondents/plaintiffs for passing of final decree was allowed and also appointed Advocate Commissioner to get the properties partitioned by metes and bounds and to allot 2/3rd share of the petitioners.

2. Learned counsel for the petitioner submits that the respondents/plaintiffs have filed I.A.No.2626 of 2012 in O.S.No.44 of 2011 to appoint Advocate Commissioner to ascertain the mesne profits over the petition schedule properties during pendency of the suit and allot 2/3rd share of the petitioners and the same was allowed on 05.08.2015. He would further contend that unless the Advocate Commissioner submits his report ascertaining mesne profits and other issues, the I.A.No.2625 of 2015 cannot be allowed. He would further contend that even before such exercise is done, straight away I.A.No.2625 of 2012 was allowed for passing of final decree by granting similar relief in I.A.No.2626 of 2012, which is erroneous.

3. Though notice is issued on the respondents, there is no representation on their behalf opposing this petition.

4. The prayer in I.A.No.2625 of 2012 in O.S.No.44 of 2011 reads as follows:

"Therefore the petitioners pray the Honourable Court be pleased to allow the petition and

- a) To pass final decree in terms of the preliminary decree by appointing a commissioner to get the properties partitioned by metes and bounds and make the preliminary decree final.
- b) To pass decree for mesne profits over the petition schedule properties by appointing a commissioner for the

purpose of ascertaining mesne profits.

- c) To award costs of this suit.
- d) To grant such other reliefs as this Honourable court deems fit and proper in the circumstances of the case.”

5. The respondents/plaintiffs filed IA No.2626 of 2012 in O.S.No.44 of 2011 seeking appointment of Advocate Commissioner to ascertain the mesne profits over the petition schedule properties during pendency of the suit and allot 2/3rd share of the petitioners. There can be no doubt that unless an Advocate Commissioner submits his report, the petition for passing of final decree cannot be allowed. The court below has allowed the petition for granting of appointment of Advocate Commissioner to ascertain the mesne profits over the petition schedule properties during pendency of the suit in I.A.No.2626 of 2012, which is redundant. Since Advocate Commissioner was appointed by virtue of orders in I.A.No.2626 of 2012, there is no need to appoint Advocate Commissioner again in I.A.No.2625 of 2012. As such, the impugned order of the Court below is set aside and the matter is remanded back to the Court below for fresh consideration. It is needless to say that I.A.No.2625 of 2012 will be taken up for consideration after Advocate Commissioner submits his report in I.A.No.2626 of 2012 in O.S.No.44 of 2011.

Accordingly, the Civil Revision Petition is allowed to the extent indicated above. No costs. As a sequel thereto, miscellaneous petitions, if any, pending in this CRP shall stand closed.

A.RAJASHEKER REDDY, J

22.01.2016

kvs

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