

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.5906 of 2016

ORDER:

This Civil Revision Petition is filed challenging the order dt.08-11-2016 in E.P.No.18 of 2015 in O.S.No.41 of 1997 of the Principal Junior Civil Judge, Narsapur.

2. The petitioners in the Revision Petition are respondent Nos.3, 4 and 9 in E.P.No.18 of 2015 in O.S.No.41 of 1997. There arose a dispute between parties with regard to location of certain stake nets near Valakattu in Vasista river.

3. After going through the process of adjudication in the suit O.S.No.41 of 1997 before the Principal Junior Civil Judge, Narsapur and an appeal A.S.No.1 of 2004 and a Second Appeal No.1075 of 2006, the matter culminated in a settlement recorded in the Hon'ble Supreme Court in Civil Appeal No.291 of 2015 on 09-01-2015. The terms of the settlement are as under:

“The parties have agreed to settle the disputes between them which is subject matter before this Hon'ble Court, for ever on the following terms and conditions:-

1. At present 'B' marked Valakattu is 240 meters away from 'x' marked Valakattu. The representatives of both petitioners and respondents in the presence of their respective counsel have amicably agreed that the present 'B' marked Valakattu 25 (stake nets) of the petitioners herein will be shifted at a distance of minimum 800 meters away from 'x' marked Valakattu towards Narsapuram Valakattu. The distance of 800 meters from 'x' marked Valakattu will be

considered as on both sides of river Vasista. The ad-measurement must be from existing Valakattu poles marked as 'x' on the either side of the NTR foundation stone. Further the petitioners will have all fishing rights at 'AB' Valakattu which is being shifted to 800 meters away from 'x' marked Valakattu and further agreed that the respondents will never object or obstruct the fishing rights of the petitioners herein. Similarly petitioners will not object respondent's further right at 'x' Valakattu.

2. It is also agreed that parties will approach the Mandal surveyor, Narsapuram Taluk, District West Godavari to determine the distance of above said 800 meters. The existing Valakattu at AB shall be shifted within four weeks from the date of passing of the order by the Hon'ble Court.

3. The parties have further agreed to withdraw/dismiss/quash all pending civil and criminal cases against each other.

4. The present settlement is subject to existing statute regulations/G.O. passed under Indian Fisheries Act and/or any other Act.

5. The petitioners herein will compensate the respondents the cost of litigation throughout to the tune of Rs.1,00,000/- which amount will be handed over to the respondents by way of DD by the petitioners to the Advocate of the respondents at the time of passing final order by this Hon'ble Court.

6. The draft map of the spot agreed between the parties is annexed herewith as Annexure-I."

Annexure-1 attached with he said terms and conditions of the settlement agreement be treated as part of the aforesaid agreement."

4. While the matter was pending in the Supreme Court, it is not in dispute that a Contempt Case No.874 of 2015 had been filed in this Court by the respondents alleging that there was violation of a

direction given by this Court in its judgment dt.02-06-2014 in S.A.No.1075 of 2006.

5. On 10-04-2015, the said Contempt Case was closed in view of the settlement entered into between the parties in the Supreme Court. However, at the time when the Contempt Case was disposed of, a request was made by the respondents that they should be given liberty to approach the trial Court and file a petition for execution if there is any violation of terms of settlement or orders of the Supreme Court. Therefore, the Contempt Case was closed giving liberty to the respondents to approach the Court of Execution, if law permits, in the event of violation of the terms of the settlement or of the orders of the Supreme Court passed in Civil Appeal No.291 of 2015.

6. Alleging that the Mandal Surveyor, Narsapur, who was approached by the parties to conduct the survey as per clause 2 of the settlement entered into by the parties in the Supreme Court and to determine the distance of 800 meters between the 'X' marked Valakattu and 'AB' marked Valakattu as per clause 1 of the above settlement recorded by the Supreme Court, without informing them wrongly measured the distance of 800 meters without keeping up the distance between the 'x' marked stakenets and 'AB' marked stake nets and put peg marks illegally, E.P.No.18 of 2015 was filed by the respondents before the Court below.

7. It was alleged in the said application that the Mandal Surveyor without informing the respondents/D.Hrs. or their advocates in a one sided manner wrongly measured the 800 meters distance and acted illegally, and hence, an advocate commissioner be also appointed to re-do the exercise through a District Surveyor and implement the settlement between the parties.

8. Counter was filed by the petitioner Nos.3 and 4 opposing this application.

9. In the counter affidavit, it is alleged that the Mandal Surveyor, Narsapur Mandal measured and demarcated boundaries of disputed stake nets of both sides of river Godavari from the point of NTR foundation stone situated at 'X' marked valakattu in the presence of Narsapur Town Police, Officials of Fisheries Department of Narsapur, V.R.O., Vice Chairman of Narsapur Municipality, President of West Godavari Fishermen Society and others; that none of the parties including the respondents filed or submitted objections over the boundary demarcations to the report of the Mandal Surveyor; and that the matter was peacefully settled and measurements were made and boundaries were fixed by the Mandal Surveyor. It is contended that this exercise by the Mandal Surveyor became final as per clause-2 of the verdict of the Supreme Court and cannot be reopened in the present E.P. Similar plea was raised by the 3rd petitioner and other respondents in the E.P.

10. Before the trial Court, the petitioners examined the Mandal Surveyor, Narsapur Mandal as R.W.1 and marked Exs.R-1 to R-4 while the respondents did not adduce any evidence.

11. R.W.1, the Mandal Surveyor, Narsapur, in his evidence, stated that on 07-02-2015, himself, Fisheries Department Officer, VRO, Police, both parties and village elders proceeded to the measurement area and that he measured 'X' marked stake nets to fix the distance of 800 meters to 'AB' stake net and except marking measurements from stake nets, he did not prepare any survey report. He also admitted that no written notice was issued to both sides before taking any measurements and defended his action saying that the Supreme Court did not direct to measure the property as per the plan prepared by Advocate Commissioner A.Acharyulu and he did not verify the plan prepared by Sri M.S.S.V. Ramana. He stated that he measured 'X' marked stake nets to 800 meters with tape and he did not note the measurements in any book maintained by him during measurements. He also admitted that he did not take signatures of parties who attended on 07-02-2015 on any proceeding prepared by him in that regard.

12. In view of this evidence of R.W.1, the Court below doubted that the Mandal Surveyor did make the measurements of 800 meters from the 'X' marked stake nets to 'AB' marked stake nets. It also rejected Ex.R-4 relied on by the petitioners wherein the petitioners had claimed that two persons by name M.Sreeramulu and

T.Anjaneyulu, who belong to the respondents' group, gave a consent letter. It held that Ex.R-4 would not lead any conclusion that measurements were correctly taken by the Mandal Surveyor. It noted that though the petitioners as well as other Judgment Debtors stated that there was a survey report prepared by the Mandal Surveyor, R.W.1., R.W.1 himself admitted that no such report was prepared, on which any signatures of parties were obtained, and therefore there was no question of submission of any objections by the respondents. It also rejected the contention of the petitioners that Advocate Commissioner could not be appointed by the executing Court and held that Order 26 Rule 18-A CPC makes the provisions of Order 26 applicable to proceeding in execution of a decree or order. It held that the endeavour of Courts should not only be in the direction of granting remedy in deserving cases. but also in the direction of giving adequate and complete remedy and respite for the persons aggrieved; and this is a sacred responsibility cast on the Courts to see that the fruits of the decree are completely received by successful parties. It held that rights of the successful decree holders to enforce the decrees in their true letter and spirit should not be permitted to be destroyed on the ground of technicalities. It therefore appointed an Advocate as an Advocate Commissioner to visit and measure distance of 800 meters on either side of river Godavari between 'X' marked stake nets and 'AB' marked stake nets with reference to draft map which was enclosed with the order of the Hon'ble Supreme Court of India with the assistance of Mandal Surveyor, Narsapur. The Advocate

Commissioner was directed to give notices to both petitioners, respondents and their counsel before execution of warrant and receive work memos if any and to file his report along with plan by 21-12-2016.

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

14. Heard Sri P.Venugopal, learned Senior Counsel for the petitioners and Sri Anand Kumar Kapoor, learned counsel for respondent Nos.3, 5, 10, 12, 13, 15, 17, 19, 21, 22 and 23-caveators.

15. Learned counsel for the petitioners contended that no objections had been raised by the decree holders at the time of the survey or on 07-02-2015 subsequent thereto, or even during hearing of C.C.No.874 of 2015 and taking advantage of the observation in C.C.No.874 of 2015 that 'an execution petition may be filed if permitted by law', the present E.P.No.18 of 2015 was filed four months after the survey raising untenable objections. He further contended that the E.P. itself is not maintainable since the matter had been amicably settled in the Supreme Court and the survey had been conducted in the presence of both parties by the Mandal Surveyor, Narsapur Mandal, West Godavari District. He also relied on Ex.R-4, undertaking, allegedly given by some of the decree holders agreeing to abide by the decision of the elders after the measurements are taken.

16. Sri Anand Kumar Kapoor, learned counsel, appearing for the respondents, supported the order passed by the Court. He contended that the survey itself was not conducted in the presence of the D.Hrs., that no survey report was prepared, and if really the D.Hrs were also present at the time of alleged survey by the Mandal Surveyor, he ought to have taken their signatures on a panchanama or noted the measurements in a book and taken signatures of his clients. He also contended that Ex.R-4 is signed by only two of the D.Hrs and even a reading of Ex.R-4 suggests that as per direction of village elders, the parties would accept the demarcation which would be contrary to the order passed by Supreme Court which ought to be held to be binding on everybody. He also contended that the Court below had not committed any error of jurisdiction in appointing an Advocate Commissioner in order to ensure that the settlement arrived at in the Supreme Court is properly implemented and the D.Hr got to enjoy the fruits of the said settlement.

17. I have noted the submissions of both sides.

18. The settlement arrived at between the parties in the Supreme Court which is recorded by the Supreme Court in the order dt.09-01-2015 in Civil Appeal No.291 of 2015 is already set out above.

19. It envisages in clause 2 that parties would approach the Mandal Surveyor, Narsapur Mandal, West Godavari District to

determine the distance of 800 meters mentioned in clause 1 and that the existing valakattu at 'AB' point shall be shifted within four weeks from the date of passing of order by the Court. Clause 6 also refers the draft map of the spot agreed between the parties which is annexed as Annexure-I to the terms and conditions of the settlement of agreement and was directed to be treated as part of the agreement by the Supreme Court.

20. While the petitioners contend that the survey was done by the Mandal Surveyor in the presence of the D.Hrs. and that the Mandal Surveyor even prepared a survey report, the Mandal Surveyor himself, who was examined as RW1 accepted that he did not prepare any survey report. He admitted that had not given any written notice to either side before taking measurements and he did not note any measurements in any book maintained by him while he is taking measurements. He also did not state that he considered the draft map which was annexed as Annexure-I to the agreement recorded by the Supreme Court. No explanation was given by him as to why he did not take the signature of the parties present at the time of making measurements.

21. In this scenario, it cannot be said that the Court below has committed an error of jurisdiction in appointing an Advocate Commissioner invoking Order 26 Rule 18-A CPC to ensure that the settlement entered into by the parties in the Supreme Court is

executed in letter and spirit and the parties enjoy the fruits of the same.

22. The plea of the petitioners that no objection was raised either at the time of the survey or subsequent thereto by the D.Hrs. cannot be accepted, because there is no survey report and no record of measurements. Had there been a report, then the D.Hrs. would have an opportunity to file objection to the report.

23. It is thus doubtful that such a survey ever took place in the manner directed by the Supreme Court.

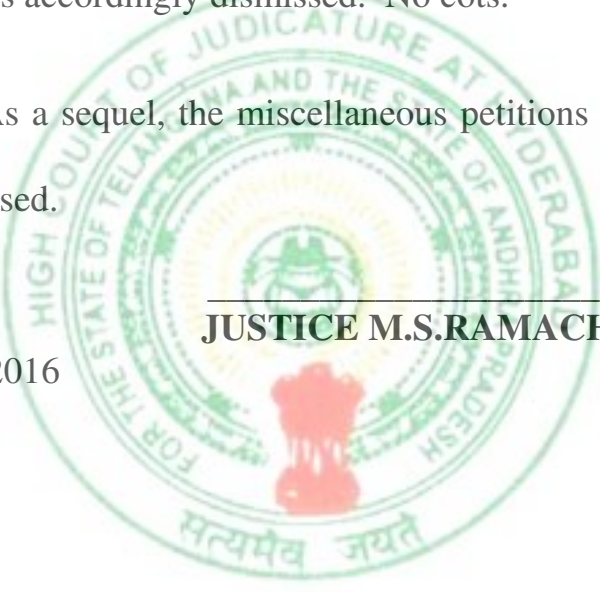
24. Therefore absence of objections by the D.Hrs. cannot be a ground to conclude that they accepted the measurements done allegedly by the Mandal Surveyor on 07-02-2015.

25. The reliance placed on Ex.R-4 by the petitioners is also misplaced inasmuch as the said document recites that two signatories to it would abide by the advice of the village elders even after the measurements are made. Firstly this document is signed by only two of the D.Hrs. and not the others. That apart, the settlement was arrived at in the Supreme Court between the parties and the same cannot be varied by two parties thereafter to the detriment of the other D.Hrs. Also, the decision of the Supreme Court would prevail over the decision of any village elders. Therefore, this contention of the learned counsel for the petitioners is also rejected.

26. In the facts and circumstances of the case and with a view to give quietus to the long pending dispute between the parties, I am of the opinion that Court below rightly exercised jurisdiction in appointing Advocate Commissioner and directing him to visit and measure the distance of 800 meters as per the directions of the Supreme Court with the assistance of the Mandal Surveyor, Narsapur again.

27. I therefore do not find any merit in this Revision Petition and the same is accordingly dismissed. No costs.

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



JUSTICE M.S.RAMACHANDRA RAO

Date: 07-12-2016
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