

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.918 of 2016

ORDER:

Heard Sri M.L.Ali, Counsel for the Revision Petitioners and Sri Pratap Narayan Sanghi, Counsel for the respondent

2. Petitioners have questioned the order dt.22.12.2005 in F.D.I.A.No.79 of 2015 in O.S.No.197 of 1991 of the Principal Senior Civil Judge, West Godavari, Eluru.

3. Petitioners herein are the Judgment Debtors in the above suit filed for partition, in which a preliminary decree was passed on 19.09.1991.

4. The respondent/Decree Holder filed I.A.No.79 of 2015 under Order XXXIV Rule 11 CPC to pass final decree in terms of the preliminary decree by appointing an Advocate-Commissioner, so that his half share in A and B Schedule properties could be delivered to him, alleging that the petitioners/Judgment Debtors have not cooperated by coming forward to partition the properties.

5. Though no counter was filed by the petitioners, it was contended before the Court below that there is no such property with such boundaries and with such nature on the ground and that the boundaries given by the respondents are imaginary. It was also contended that the properties in question are not divisible even with the help of an Advocate-Commissioner and that the Advocate-Commissioner is not entitled to take assistance of the Mandal Surveyor.

6. By order dt.22.12.2015 the Court below rejected these contentions and appointed an Advocate-Commissioner to divide

the schedule properties with the help of Mandal Surveyor. It observed that the application ought to have been filed under Order XXVI Rule 13 CPC but merely because a wrong provision of law is quoted, application filed by the respondent/Decree Holder for appointment of an Advocate-Commissioner cannot be rejected. It held that since a preliminary decree was already passed, the contentions of the petitioners cannot be accepted and the question whether the properties are divisible or not is to be decided only after the Advocate-Commissioner files his report, after taking the assistance of a Mandal Surveyor.

7. Assailing the same, this Revision is filed.

8. In view of the fact that no stay order was granted to the petitioners till date, the counsel for respondent states that, the Advocate-Commissioner had already executed the warrant of commission and filed report on 11.02.2016.

9. Since the order passed by the Court below has worked out and no apparent infirmity with the said order is pointed out in this Revision, the Revision deserves to be dismissed. It is not even the case of the petitioners that there is any period of limitation prescribed for applying for final decree in the suit for partition and therefore the feeble plea raised by the counsel for petitioners that the application for passing final decree is delayed, is rejected for the aforesaid reason.

10. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

11. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

01st July, 2016.
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