

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.4783 and 5248 of 2015

COMMON ORDER:

C.R.P.No.4783 of 2015 is filed, aggrieved by the order dated 27.07.2015 passed in I.A.No.207 of 2015 in O.S.No.145 of 2012 on the file of the Senior Civil Judge, Sircilla, wherein an application made under Order XXVI Rule 9 of C.P.C. for rejection of the report of the Advocate-Commissioner dated 03.12.2014 and to appoint another Advocate-Commissioner to locate the survey numbers of the suit land with the help of the Assistant Director of Survey and Land Records, was dismissed. C.R.P.No.5248 of 2015 is filed aggrieved by an order dated 01.04.2015 passed in I.A.No.129 of 2013 in O.S.No.145 of 2012, wherein an application made under Order 18, R.17 of C.P.C. for appointment of an advocate-commissioner was closed.

Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are being disposed of by this common order.

The facts in issue are as under:

The petitioner/plaintiff filed O.S.No.145 of 2012

seeking declaration of title and recovery of possession of the suit schedule property. Pending the suit, the petitioner filed I.A.No.129 of 2013 seeking for appointment of an advocate-commissioner. The trial Court appointed an advocate-commissioner to locate the suit lands and to note down the physical features of the suit lands comprised in Sy.Nos.1489 and 1491 with the assistance of an official Surveyor. On 03.12.2014 the Advocate-Commissioner submitted a report. Subsequently, by an order dated 01.04.2015 the trial Court closed the said petition stating as under:

“Objections are filed by the plaintiff. No objections are filed by the defendants. It is deemed that they do not have any objections to the report of the advocate-commissioner. Petition is closed.”

Aggrieved by the same, the petitioner filed C.R.P.No.5248 of 2015.

After passing the order in I.A.No.129 of 2013, the petitioner herein filed I.A.No.207 of 2015 under Order XXVI Rule 9 of C.P.C. seeking rejection of the report of the Advocate-Commissioner and to appoint another advocate-commissioner.

Respondent No.2 herein filed counter in I.A.No.207 of 2015 opposing the petition stating that when the Mandal Surveyor himself surveyed the suit land and

when the Advocate-commissioner reported that there is no possibility of identifying and measuring the suit land in view of existence of houses, the appointment of another advocate-commissioner would be a futile exercise.

After considering the arguments advanced, the trial Court dismissed the petition on 27.07.2015. Aggrieved by the same, the petitioner filed C.R.P.No.4783 of 2015.

Learned counsel for the petitioner submits that when the advocate-commissioner visited the suit land, the petitioner has shown him the suit land, but in spite of that the commissioner has not noted physical features of the suit land in the report filed by him. According to him, the surveyor has not made any efforts to locate the suit survey numbers in spite of the availability of modern equipments. It is further stated that no notice was given to the petitioner to be present at the site and by chance he was present at the site. It is also stated that unless the survey numbers in dispute are demarcated, rights of the parties to the suit cannot be determined.

In spite of service of notice on the respondents on 21.12.2015, there is no representation on their behalf.

Insofar as C.R.P.No.5248 of 2015 is concerned, it is to be noted that the petitioner filed objections to the report of the advocate-commissioner, but strangely the Court closed the said petition without considering the

objections raised by the petitioner. It appears that the trial Court took into consideration the non-filing of objections by the defendants and closed the petition without referring to the objections raised by the petitioner. Hence, the order dated 01.04.2015 passed in I.A.No.129 of 2013 is liable to be set aside directing the Senior Civil Judge, Siricilla, to take into consideration the objections raised by the petitioner/plaintiff and pass orders on merits. Hence, the C.R.P.No.5248 of 2015 is allowed.

Insofar as C.R.P.No.4783 of 2015 is concerned, it is to be noted that the second advocate-commissioner cannot be appointed without setting aside the order of appointment of the previous advocate-commissioner. No material has been placed before the Court, at this stage, warranting appointment of a second advocate-commissioner, moreso in view of the orders in C.R.P.No.5248 of 2015. However, if the court after considering the objections raised by the petitioner to the report of the advocate-commissioner comes to a conclusion that the same warrants interference and if the trial Court deems fit for re-appointment of advocate-commissioner, it can pass appropriate orders in accordance with law. For the aforesaid reasons, I see no ground to interfere with the impugned order in C.R.P.No.4783 of 2015 and the same is disposed of with

the above direction.

Accordingly, C.R.P.No.5248 of 2015 is allowed and C.R.P.No.4783 of 2015 is disposed of. No order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C.PRAVEEN

KUMAR

07.01.2016

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