

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITIONS No. 1908, 1962 & 1963 OF 2017

COMMON ORDER:

All these Civil Revision Petitions arise out of the common order dated 24.03.2017 in C.F. Nos. 1242, 1241 and 1260 of 2017 in O.S.No. 49 of 2005 on the file of the Senior Civil Judge's Court at Gudur.

O.S.No. 49 of 2005 was filed by the respondent seeking eviction of the petitioner. The suit came to be decreed. A.S. No. 49 of 2012 preferred thereagainst also came to be allowed confirming the judgment and decree in the suit. However, in the order dated 13.04.2015 in C.M.A.Nos. 856 and 915 of 2012, while confirming the judgment rendered by the lower Appellate Court, this Court directed the trial Court to decide the suit on the specific issue as to 'whether the land shown as suit schedule property forms part of the land covered by Ex.A1 and/or Ex.A4'. In other words, the matter has been remitted to the Court below to deal with a specific issue. At that stage, the respondent – plaintiff filed I.A. No. 1112 of 2016 to appoint an Advocate-Commissioner to measure the disputed suit property and the property covered under Exs.A1 and A4 with the help of the Mandal Surveyor, Venkatagiri. The said Application was allowed by the order dated 03.01.2017. In terms of the said order, the Advocate-Commissioner executed the warrant and filed the report along with the sketch prepared identifying the properties and the sketch prepared by the Mandal Surveyor. There was no objection taken to the Advocate-Commissioner's report and the I.A. was closed by the docket order dated 08.03.2017.

Thereafter, the plaintiff's side evidence was closed. On 15.03.2017, the defendant's side evidence was also closed. At that stage, the petitioner – defendant filed C.F.Nos.1242, 1241 and 1260 of 2017 to reopen the matter permitting him to file the Petition to order summons to the Advocate-Commissioner and the Mandal Surveyor for giving their evidence, to summon the Advocate-Commissioner and the Mandal Surveyor for giving their evidence and to recall the order dated 08.03.2017 closing of filing objections to the Commissioner report and permit him to receive the objections on commissioner's report. All these three Applications were rejected through the order under revision. Hence, these Revisions.

Learned counsel for the petitioner – defendant contends that the Advocate-Commissioner had submitted his report on 06.03.2017 and I.A.No. 1112 of 2017 was closed on 08.03.2017, as there were no objections filed by the petitioner. However, immediately realizing that the Advocate-Commissioner has failed to execute the warrant in terms of the order made by the Court and as he failed to consider the work memo, the petitioner sought to file the objections by reopening the matter. Placing reliance on the judgment of this Court in **Vadde Rajeswaramma vs Dr. V.L. Narasimha Charyulu**¹, the learned counsel would submit that the Advocate-Commissioner's report would become part of the record so as to be treated as evidence, hence, in the absence of the objections being raised by the petitioner, the same would cause great prejudice and in those circumstances, he prays for setting

¹ 1998(2) ALT 243

aside of the order under revision, with a further direction to the Court to receive the objections and allow the petitioner to cross-examine the Advocate-Commissioner and the Mandal Surveyor, who conducted the survey.

Learned counsel for the respondent – plaintiff places reliance upon the judgment of this Court in ***M. Gupta, Hyderabad v. Smt. Sharada Bai, Hyderabad***².

Having considered the respective submissions, the question that falls for consideration before this Court is *‘whether the order of the Court below in refusing the Applications filed to reopen the evidence to enable the petitioner to examine the Advocate-Commissioner and the Mandal Surveyor for giving their evidence, is illegal’?*

As stated supra, the limited purpose for which the matter was remanded is : ‘Identification of the property in view of the stand taken by the petitioner - defendant that the suit schedule property and the property that is being claimed by the petitioner is not one and the same’. In that context, I.A. No. 1112 of 2016 came to be filed by the plaintiff and at that point of time, with respect to the prayer which the plaintiff - respondent sought, there was no objection raised by the petitioner. In other words, the petitioner was agreeable with respect to the scope of work that is to be executed by the Advocate-Commissioner. In the order in I.A.No. 1112 of 2016, it has been specified that ‘the Advocate-Commissioner to measure the plaint schedule property with the

² 2017 (1) HLT 333

help of the Mandal Surveyor, Venkatagiri and R&B Surveyor / official and to file his report with sketch’.

Though the learned counsel for the petitioner submits that the Advocate-Commissioner, as a matter of fact, did not carry on the work, as directed by the Court, this Court has no hesitation to reject such contention, as, normally, the Advocate-Commissioner not being a technical person, the said job would be carried out by the surveyor concerned / official. It is not in dispute that the respondent’s counsel is present and as a matter of fact, the counsel on behalf of the petitioner had also given a work memo, which came to be rejected by the Advocate-Commissioner as it is beyond the scope of warrant. As can be seen from the order of the Court in I.A.No. 1112 of 2016, the scope of work is very limited to the extent of measuring the plaint schedule property with the help of a Mandal Surveyor. There is no dispute that the Advocate-Commissioner had identified the property with the help of the Mandal Surveyor and demarcated the same. In those circumstances, it cannot be said that the Advocate-Commissioner has not carried out the warrant. If at all there are any objections, the petitioner ought to have exercised his right to file the objections before closure of I.A. No. 1112 of 2016. In this context, Order XVIII of the Code of Civil Procedure may be noticed. It prescribes a particular procedure as regards leading of evidence. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant, the plaintiff is not

entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

In the present case, the petitioner filed the present Application after the learned counsel for the plaintiff put a question in the cross-examination that there were no objections raised with respect to the Commissioner's report. If the petitioner had objections with respect to the Commissioner's report, his right to exercise such right to file the objections would have to be before closure of I.A.No. 1112 of 2016 and before the Commissioner's report is made part of the record. It may be noticed that both in the judgments relied by the petitioner as well as the respondent, it was held that the Advocate-Commissioner's report would form part of the record and would have the evidentiary value. In those circumstances, respective parties are required to be vigilant and have to exercise their right within the time and in the sequence in which the evidence has to be lead, as, otherwise, there would be no end in the process of examination, chief-examination and re-examination. Hence, this Court is of the view that there is no merit in the Civil Revision Petitions and they are accordingly, dismissed. No costs.

Before parting with this order, yet another submission made by the learned counsel for the petitioner is that the Court may be directed to receive the objections filed by the petitioner. It is vehemently opposed by the learned counsel for the respondent. Inasmuch as the very Application filed by the petitioner is seeking permission of the Court to file objections which has been negated by the Court below and the said order has been confirmed by this

Court, allowing the petitioner to place on record such objections would be a contradiction, as such, the same cannot be acceded to. However, it is always open to the petitioner to urge the legal points at the time of arguments.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

23rd June 2017

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