

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2968 OF 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed assailing order dated 13-04-2016 in F.D.I.A.No. 17 of 2009 in O.S.No. 56 of 2000 on the file of the Court of Senior Civil Judge, Razole (for short, 'the Court below'), whereby the Court below scrapped the report filed by commissioner.

F.D.I.A.No. 17 of 2009 was filed for partition of house property into four equal shares and to allot one such share to the plaintiff considering exchange deed Ex.B2. The commissioner, instead of dividing the house property into four equal shares, divided the same into two equal shares as it cannot be enjoyed conveniently based on their possession. However, the Court below, instead of issuing necessary directions to the commissioner, directly scrapped/expunged the report considering objections. If commissioner committed any error in allotting shares, still it is the duty of Court to allot shares to parties as per preliminary decree. The Court below ought to have redirected the commissioner to execute warrant strictly adhering to the preliminary decree but scrapping or expunging the entire report is *ex facie* illegal. The Court below is therefore directed to issue necessary directions to the commissioner to divide the property strictly adhering to the preliminary decree.

With the above direction, the civil revision petition is disposed of. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 13-07-2017.

JSK