

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

APPEAL SUIT No.687 OF 2017

JUDGMENT:

1 This appeal, under Section 96 CPC, is filed challenging the order dated 15.02.2017 passed in I.A.No.246 of 2015 in O.S.No.176 of 1970 on the file of the Court of the Senior Civil Judge, Parchur.

2 Heard Sri Srinu Babu Naidu, learned counsel for the appellant and Sri B. Venkateswarlu counsel representing Sri M.V.Durga Prasad, learned counsel for the respondent.

3 A perusal of the record reveals that one Karri Narayana filed O.S.No.176 of 1970 on the file of the court of the Subordinate Judge, Chirala for partition of plaint A and B schedule properties against the respondent Nos.3 and 4 herein and one Karri Krishnaiah and the said suit was dismissed on 11.07.1980. Challenging the judgment and decree passed in O.S.No.176 of 1970, the plaintiff preferred A.S.No.817 of 1981 on the file of this Court. A learned single Judge dismissed the appeal on 15.4.1998, confirming the judgment and decree passed by the trial court. Aggrieved thereby, the plaintiff preferred LPA No.181 of 1999 and the same was allowed by this Court on 02.12.2013. Thereafter, the plaintiff filed I.A.No.246 of 2015 in O.S.No.176 of 1970 on the file of the Court of the Senior Civil Judge, Parchur, for passing of Final Decree. On 15.02.2017, the learned Senior Civil Judge, Parchur passed the Final Decree with the following observations:

“In the result, a final decree is passed in terms of preliminary decree as per the judgment in Letters Patent Appeal No.181/1999 on the file of the Hon’ble High Court of A.P. Further Sri CSR is appointed as Advocate Commissioner to divide the suit schedule property into two equal shares and allot one such share to the 2nd petitioner by metes and bounds taking good and bad qualities....”

4 A perusal of the above order reveals that the learned Senior Civil Judge, Parchur passed Final Decree without awaiting the report of the Advocate Commissioner. Normally, the court has to pass the Final Decree after verifying the report of the advocate commissioner. Passing of Final Decree in the absence of advocate commissioner’s report is not legally sustainable.

5 It is needless to say that the Court has to appoint an advocate commissioner in the Final Decree proceedings for division of the suit schedule property. In normal course, the advocate commissioner will visit the suit schedule property and submit report indicating the feasibility of the division of the property by metes and bounds with good and bad qualities. In the instant case without there being the report of the advocate commissioner and without hearing the objections, if any, from the parties, the trial Court passed the Final Decree. Viewed from any angle, the order passed by the learned Senior Civil Judge, Parchur is not maintainable. Both counsel, in all fairness, submitted that if this type of orders are allowed to stand, certainly, it would amount to miscarriage of justice.

6 Taking into consideration the facts and circumstances of the case, the order dated 15.02.2017 passed in I.A.No.246 of 2015 in O.S.No.176 of 1970 on the file of the Court of the Senior Civil Judge, Parchur is hereby set aside to the extent of passing of Final Decree, however, confirming the order of the trial court to the extent of appointing the advocate commissioner. The advocate commissioner is hereby directed to submit his report as expeditiously possible. The trial court is hereby directed to dispose of the final decree petition as expeditiously as possible and in accordance with law, as the matter is pending since 1970.

7 Accordingly the appeal is allowed. No order as to costs. Consequently miscellaneous petitions, if any, pending in this Appeal Suit shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 21.12.2017
Kvsn