

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.5073 of 2011

ORDER:

Heard Sri K. Vinaya Kumar, learned counsel for the petitioners and Sri K. Balakrishna, learned counsel for the respondent.

A partition suit was decreed by the trial Court on 11.06.2007. Aggrieved thereby, the defendants filed CCCA No.204 of 2007 before this Court. In CCCA M.P.No.522 of 2007 in CCCA No.204 of 2007, this Court, by order dated 06.12.2007, directed that "there shall be interim stay of passing of final decree alone and all other proceedings including the ascertainment of mesne profits, if any, shall go on". Thereafter, the plaintiff filed I.A.No.169 of 2008 before the trial Court under Order 20 Rule 18 read with Order 26 Rule 13 CPC, for appointment of advocate commissioner and to pass final decree. On consideration of rival claims, the trial Court, by Order dated 25.08.2011, allowed the application appointing advocate commissioner only for the purpose of division of suit schedule property in terms of preliminary decree. Aggrieved thereby, the present Civil Revision Petition is filed by the petitioners/defendants.

Learned counsel for the petitioners/defendants submits that since the appeal is pending before this Court and interim order is passed by this Court, it is not permissible for the trial Court to appoint advocate commissioner for division of the suit schedule

property in terms of preliminary decree and the trial Court erred in granting such relief to the plaintiff.

Learned Counsel for the respondent/plaintiff submits that as this Court clearly stated that except passing final decree, all other proceedings can go on, there was no illegality committed by the trial Court in appointing advocate commissioner.

At this stage, learned counsel for the petitioners submits that the order, against which this revision is filed, would indicate authorizing the advocate commissioner to divide the suit schedule property into two shares, in terms of the preliminary decree and objects to such direction.

Learned counsel for the respondent/plaintiff fairly submitted that no such direction can be issued and the order passed by the trial Court cannot be implied as if the advocate commissioner was authorized to divide the suit schedule property physically.

Thus, while upholding the order of trial Court, only to clear the mist as apprehended by the petitioners, I deem it appropriate to clarify that the Order of the trial Court, against which this petition is filed, is only to the extent of the advocate commissioner undertaking exercise to divide the suit schedule property into two shares in terms of the preliminary decree and to submit a report to the trial Court and that he is not authorized to divide the suit schedule property physically.

Since Order against which this revision is filed was passed on 25.08.2011, it is not known whether the same Advocate is willing

to undertake the assignment given to him. Thus, the plaintiff is granted liberty to file an application for appointment of fresh advocate commissioner and on filing such application, the trial Court is directed to pass appropriate orders on merits.

Accordingly, this Civil Revision Petition is disposed of.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 09.11.2017

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P. NAVEEN RAO , J



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