

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4423 of 2016

ORDER:

1) The present Civil Revision Petition is filed by the petitioner/plaintiff under Article 227 of the Constitution of India, aggrieved by the order, dated 21.03.2016 passed in I.A.No.255 of 2016 in O.S.No.14 of 2013 on the file of the I Additional Junior Civil Judge, Tirupati, wherein and whereunder an application filed under Order XXVI Rule 9 of C.P.C. seeking appointment of an advocate-commissioner to inspect the plaint schedule locality and to note down the existing physical features and measurements of the same, was dismissed.

2) The facts in issue are as under:

The petitioner/ plaintiff filed O.S.No.14 of 2013 seeking permanent injunction. In the said suit the defendants filed I.A.No.227 of 2013 seeking appointment of an advocate-commissioner to note down the physical features and also the encroachments in the petition schedule property with the assistance of the surveyor. The said petition was allowed and an advocate-commissioner was appointed. The averments in the affidavit would show that during the visit of Court Commissioner, the petitioner gave work memo to measure

and to note down the physical features of the plaint schedule property, but it was informed to her that it is beyond the warrant. Hence, she filed the present petition to appoint another advocate-commissioner.

3) A counter came to be filed by the respondents/ defendants stating that the Court Commissioner visited the plaint schedule property, executed the warrant with the help of the Mandal Surveyor and also filed his report. Earlier the petitioner filed a petition to direct the commissioner to revisit the schedule property, which was dismissed. It is contended that the petitioner filed this petition only to drag on the proceedings, as the suit is posted for trial.

4) After considering the rival submissions made, the trial Court dismissed the application. Challenging the same, the present Civil Revision Petition is filed.

5) The learned counsel for the petitioner/plaintiff would submit that since the work memo given by the petitioner to the advocate-commissioner in I.A.No.227 of 2013 was not received by him and vide I.A.No.1191 of 2015 the trial Court refused to direct the Commissioner to measure the land, the petitioner filed the present petition seeking appointment of second advocate commissioner.

6) A perusal of the material on record would show that the petitioner filed the present petition to appoint an advocate-commissioner to inspect the plaint schedule locality and to note down the existing physical features and measurements of the same. The record discloses that earlier the defendants filed I.A.No.227 of 2013 seeking very same relief ie. to appoint an advocate-commissioner to note down the existing physical features and also the encroachments in the plaint schedule property with the assistance of the surveyor. The said petition was allowed and an advocate-commissioner was appointed. The Commissioner report which is placed on record would show that the Commissioner executed the warrant by giving notice to both the parties. He measured the land with the assistance of the Mandal Surveyor and in the presence of both the parties, noted down the physical features and also submitted his report. The petitioner also filed an application vide I.A.No.1191 of 2015 to direct the Commissioner to revisit the schedule property, which was dismissed. That order has become final since the same has not been challenged. In the year 2013 itself an advocate-commissioner was appointed and he filed his report noting down the physical features and measurements of the subject property with the assistance of Mandal Surveyor and in the presence of both the parties.

7) In *Durgam Mangamma v. P.Mohan and another*¹ a learned Single Judge of this Court held that “no second commissioner can be appointed for the same purpose unless and until the report of the first commissioner is expunged.”

8) When an order is already passed, entertaining a second application again for the relief which is already rejected in the year 2015 seeking re-visit of an advocate commissioner operates as constructive *res judicata*. Hence, the said application cannot be accepted. It has been held by this Court in *Y.B.Patil and others v. Y.L.Patil*² that principles of *res judicata* can be invoked not only in separate subsequent proceedings; they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceedings. Hence, the concept of constructive *res judicata* is applicable even in interlocutory applications.

9) In view of the judgments referred to above and having regard to the facts and circumstances of the case, I see no reasons to interfere with the impugned order and accordingly the Civil Revision Petition is dismissed. There shall be no

¹ 1991 (1) ALT 269

² AIR 1977 SC 392

order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

09.02.2017
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