

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 619 of 2017

ORDER:

1) The present Civil Revision Petition is filed quashing the docket order dated 04.11.2016, passed in I.A.No.370 of 2014 in O.S.No.72 of 1991 on the file of the Junior Civil Judge, Kuppam, wherein the Court appointed the advocate-Commissioner to partition the petition schedule property into four equal shares, taking good and bad into consideration, with the assistance of the surveyor, if necessary, and to allot one such share to respondent No.1 herein.

2) Heard learned counsel for the petitioner and learned counsel for the respondents.

3) As seen from the impugned docket order, the trial Court appointed the Court-commissioner to partition the petition schedule properties into four equal shares taking good and bad into consideration with the assistance of the surveyor, if necessary, and for allotment of one such share to the petitioner. The commissioner was also directed to issue notice to both parties for execution and to file report on or before 29.12.2016. It is urged that after expiry of the time granted by the trial Court, the advocate-commissioner issued notice on 05.01.2017 without seeking extension of time for filing report. Challenging the same, the present revision is filed.

4) By an order, dated 03.02.2017 this Court granted interim stay.

5) Admittedly, the advocate-commissioner has to file his report on or before 29.12.2016, but report was not filed within the time prescribed. The Commissioner issued notice with regard to execution of the warrant after expiry of the time granted by the trial Court. Therefore, the action of the advocate-commissioner in executing the warrant after expiry of the time, without seeking extension of time from the Court, is illegal and arbitrary. It is also commented by the learned counsel for the petitioner that the advocate-commissioner could not have taken the role of allotment of shares which is the duty of the Court.

6) Having regard to the circumstances stated above, the order under challenge is *set aside*. However, it is always open to the respondents herein to make an application for appointment of advocate-commissioner afresh, in which event the same shall be dealt with in accordance with law.

7) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

8) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

07.04.2017
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