

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1997 OF 2015

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order, dated 19-01-2015 in I.A.No.144 of 2014 in I.A.No.53 of 2013 in O.S.No.33 of 2013 on the file of the Judge, Family Court-cum-Additional District Judge, Anantapuramu.

2. Petitioner-plaintiff filed the above application under Order XXVI Rule 9 CPC to re-entrust the warrant to the Advocate Commissioner and direct him to measure the petition schedule property as per the measurements mentioned in the plan and the said application was dismissed vide impugned order. Hence, this revision.

3. As seen from the record, earlier an Advocate Commissioner was appointed for a specific purpose of taking measurements with reference to the documents etc., The grievance of the petitioner is that the Advocate Commissioner did not take the measurements as directed by the Court and it is their contention that the Commissioner took measurements of land in Sy.No.138 of Anantapuramu Rural, and the said survey number from south to north on eastern side is '563' links, but the commissioner measured it as '503' links. Similarly from further southern side of the petition schedule property, the measurement is '896' links as per the plan submitted in I.A.No.393 of 1948 in O.S.No.125 of 1948 on the file of the District Munsif, Anantapuramu. But the Advocate Commissioner measured it as '996' links instead of '896' links. Thus, the commissioner did not execute the warrant based on the documents produced by both parties. When the Commissioner filed his report after execution, the petitioner will have an opportunity to file

objections on the Commissioner's report and it appears from the record that the petitioner did not file objections on the Commissioner's report. He filed an application under Order XXVI Rule 9 CPC seeking re-entrustment of warrant. As long as Commissioner's report is on record, question of re-entrustment of warrant to the Commissioner without deciding the objections, if any filed by both parties before the trial Court does not arise.

4. The settled law is that if the first Commissioner's report is not as directed, the Court can appoint a second Commissioner. Here, no request is made by the petitioner to appoint a second Commissioner, but filed the application to re-entrust the warrant. If the re-entrustment of warrant is for execution in view of defects pointed out, the Court has to consider the Commissioner's report and objections filed thereto by both parties to the suit. In the present case, no objections were filed on the Commissioner's report and the counsel for the petitioner is not in a position to inform this Court as to whether any objections were filed to the Commissioner's report or not. In such circumstances, question of re-entrustment does not arise. However, if the objections are filed on the Commissioner's report as to the measurements taken by the Commissioner or on any other aspect, the trial Court is directed to decide the objections on the Commissioner's report and if the Court finds that it is necessary to re-entrust the warrant, the Court may pass appropriate orders after considering the objections if any, filed by both parties on the Commissioner's report. At this stage, question of re-entrustment does not arise. Therefore, the order passed by the trial Court does not call for interference of this Court while exercising powers under Article 227 of the Constitution of India.

5. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending, in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

DATED: 27-07-2017.

Hsd

