

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.5283 OF 2012

ORDER:

This civil revision petition is filed questioning the order dated 13.06.2012 passed by the Principal Junior Civil Judge, Kandukur in I.A.No.2108 of 2010 in O.S.No.72 of 2005, wherein and whereby the application filed by the petitioner-plaintiff under Section 151 of CPC seeking to re-entrust the Commissioner's Warrant to the same Advocate Commissioner for execution, was dismissed.

It is the case of the petitioner/plaintiff that she had filed a suit in O.S.No.72 of 2005 on the file of the Principal Junior Civil Judge, Kandukur seeking for declaration and recovery of the possession and also filed an application in I.A.No.292 of 2005 seeking for appointment of the Advocate Commissioner and after considering the contentions raised by both the parties, the Court below allowed the application in I.A.No.292 of 2005 by appointing Sri D. Rama Krishna, Advocate as an Advocate Commissioner to note down the physical features of the suit schedule property and the constructions existing thereon i.e., B.C.E.F of the plaint plan and to measure the entire vacant plan shown in the plaint plan i.e., A.B.C.D. The Commissioner was also further directed to execute the warrant after service of notices and work memos if any on both sides. The Advocate Commissioner executed the warrant entrusted to him and filed his report on 6.9.2005 before the Court below. In the report, the Advocate Commissioner in paras 4 and 5

had stated that he was shown the extent of Ac.0.12 ½ cents of land leading from A D line to its East as A B C D in the plan, but he could not say the measurements of the B C E F marked portion without the aid and help of Mandal Revenue Surveyor. The Commissioner had also stated that he cannot give the measurements of A B C D portion of the plaint plan without the aid and help of the Mandal Revenue Surveyor.

The trial of the suit was proceeded and certain witness were also examined and thereafter after lapse of five years, the petitioner/plaintiff had filed the impugned I.A No.2108 of 2010 praying the Court below to re-entrust the warrant to the same Advocate Commissioner to measure the suit schedule property with the assistance of the Mandal Surveyor and file his report and plan.

The respondent-defendant filed her objections stating that the impugned I.A has been filed after a lapse of five years and that the petitioner/plaintiff did not file any objections to the Advocate Commissioner's report. It was further asserted that the impugned I.A has been filed to delay the suit proceedings.

The Court below after considering the respective arguments dismissed the impugned I.A and questioning the same, the present civil revision petition is filed.

The respondent was served with the notice and evidencing the service of notice a memo dated 26.11.2012 along with the acknowledgment card is filed before this Court. However, there is no appearance on behalf of the respondent. In those

circumstances, the matter is being disposed of on the material available on record.

The fact that there was a direction in the earlier order dated 25.04.2005, passed by the Court below in I.A No.292 of 2005 in O.S.No.72 of 2005 to note down the physical features of the suit schedule property and constructions existing thereon and to measure the entire vacant plot shown in the plaint schedule i.e., ABCD is not in dispute. A perusal of the Advocate Commissioner's report discloses that the Advocate Commissioner did not fulfill his job on the ground he could not execute the warrant without the aid and help of the Mandal Revenue Surveyor. Thereafter, the Court below dismissed the impugned I.A on the ground that the same had filed belatedly and further asserted that the plaintiff has to succeed her case on the merits of the case.

As it is evident from the pleadings that there is an allegation of encroachment by the respondent-defendant and the stand taken by the defendant is that there is no site actually available physically and notwithstanding the fact that the documents shows otherwise. This aspect of the matter as to whether there is a site available and if so what is the exact extent of the property within ABCD and also within BCEF can only be known by actually measuring the same by an Advocate Commissioner. Learned counsel for the petitioner placed reliance on the judgment of this Court reported in **Majula Koteswar Rao vs. Ravulapalli**

Masthan Rao¹ to support his contention and the same would squarely cover the situation of the nature of the present case. However, on account of lapse of time, it is not necessary for this Court to direct the entrustment of the job to the same Advocate Commissioner.

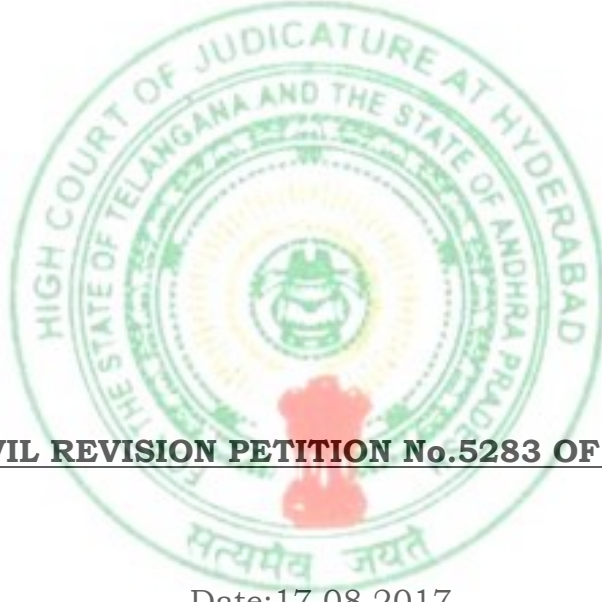
In those circumstances, the civil revision petition is allowed remanding the matter back to the Court below so as to enable the Court below to entrust the job of executing the warrant to any of the Advocates on appropriate terms of payment of commissioner's fee and also the expenses relating to conducting of the survey with the help of the authorized surveyor either of the Mandal Revenue Officer or of the Survey Department. Miscellaneous petitions, if any shall also stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date:17.08.2017.
Gk.

¹ 2015(6) ALD 483

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