

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.4631 OF 2017

ORDER:

The present Civil Revision Petition is filed assailing the order dated 22.08.2017 passed by the Principal Junior Civil Judge, Puttur, in I.A.No.850 of 2017 in O.S.No.151 of 2011, wherein the request of the petitioner for reopening I.A.No.820 of 2011 to record the objections of the petitioner-defendant No.5 on the report of the Advocate Commissioner, was rejected.

The facts, in issue, are as under:

The respondents/plaintiffs filed the suit in the year 2011 for permanent injunction. Pending the suit, they filed I.A.No.820 of 2011 seeking appointment of an Advocate Commissioner to note down the physical features of the schedule properties. The Court below allowed the said I.A., and directed the Advocate Commissioner to issue notices to both parties, before execution of Commissioner Warrant. The Advocate Commissioner inspected the locality on 02.11.2011 and filed his report on 16.12.2011, but he failed to issue notices to the defendants. As the petitioner/defendant No.5 was set *ex parte* in I.A.Nos.860 of 2011 and 861 of 2011, he filed I.A.Nos.265 of 2011 and 266 of 2012 to set aside the *ex parte* orders. The said applications were allowed on 13.03.2012. It is averred that he has no knowledge about the visit of the Advocate Commissioner and hence, could not file his objections to his report. Subsequently, I.A.No.820 of 2011 was closed on 09.04.2012.

Therefore, he filed I.A.No.905 of 2016 to appoint the very same Advocate Commissioner to revisit the suit schedule property with the assistance of the Mandal Surveyor, which came to be dismissed on 21.11.2016. Challenging the same, C.R.P.No.6264 of 2016 came to be filed before this Court and the same was dismissed on 15.03.2016. Being unsuccessful in the earlier round, the petitioner herein filed the present I.A. to reopen I.A.No.820 of 2011 to record his objections to the report of the Advocate Commissioner. After considering the arguments, the Court below dismissed the said I.A on 22.08.2017. Challenging the same, the present Civil Revision Petition is filed.

Questioning the report said to have been filed in the year 2011 and also the procedure which was adopted by the Advocate Commissioner in submitting his report, the learned counsel for the petitioner submits that the impugned order is illegal.

It is to be noted that the Advocate Commissioner, who was appointed in I.A.No.820 of 2011, submitted his report on 16.12.2011. The petitioner filed I.A.No.905 of 2016 for appointment of the very same Advocate Commissioner to revisit the suit schedule property and the same was dismissed by the Court below on 21.11.2016. Challenging the same, C.R.P.No.6264 of 2016 came to be filed before this Court and the same was dismissed on 15.03.2016 with the following observations:

“In view of the judgment of this Court in Kushal Rao case (3 supra), it is clear the appointment of a second advocate-commissioner cannot be ordered automatically

and it can be done only when the report of the first commissioner is either questioned or when the said report is *set aside*. Further, in the instant case the present application came to be filed four years after acceptance of the first commissioner's report. Hence, I am of the view that the order under challenge warrants no interference."

The plea of the petitioner that no notice was given to him before filing the report cannot be accepted. In fact, as stated above, earlier the petitioner moved this Court questioning the report of the Advocate Commissioner and the same was dismissed. Therefore, this Court is of the view that the request of the petitioner, which is sought to be made six years after the filing of the report by the Advocate Commissioner, cannot be accepted. The manner in which the Advocate Commissioner conducted proceedings cannot be questioned after so many years more so when he has not raised the said plea earlier. Having regard to the same, the Court below rightly dismissed the I.A filed by the petitioner to reopen I.A.No.820 of 2011 for recording the objections to the report of the Advocate Commissioner.

The Civil Revision Petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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JUSTICE C. PRAVEEN KUMAR

Date: 08.09.2017

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