

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.1688 AND 1696 OF 2015

COMMON ORDER:

The Civil Revision Petition No.1688 of 2015 is filed challenging the final decree proceedings in I.A.No.344 of 2012 in O.S.No.86 of 2007 on the basis of the report of the Advocate Commissioner, dated 20.10.2014.

The Civil Revision Petition No.1696 of 2015 is filed challenging the order dated 18.03.2015 in I.A.No.344 of 2012 in O.S.No.86 of 2007 on the file of the Senior Civil Judge, Kothapeta, East Godavari District.

The petitioner in these two civil revision petitions is defendant No.2 in the suit, which was filed by the plaintiff/respondent herein for partition and the suit was decreed by the trial Court and the preliminary decree was passed on 27.06.2011 declaring that the plaintiff is entitled to 1/9th share in item Nos.2 to 4 of the plaint schedule property. Aggrieved by the dismissal of the suit in respect of item No.1, the plaintiff preferred an appeal in A.S.No.51 of 2011 on the file of the II Additional District Judge, Amalapuram and the same is pending for disposal. I.A.No.344 of 2012 in O.S.No.86 of 2007 is filed under Order XX Rule 18 of CPC for division of the property covered by item Nos.2 to 4 and to allot 1/9th share to the plaintiff/respondent herein and an Advocate Commissioner was appointed for the same purpose. After execution of the warrant, Advocate Commissioner filed his report before the trial Court. The petitioner/defendant No.2 filed his objections dated 26.11.2014 on the Commissioner's report.

The trial Court passed a final decree and allotted property to the plaintiff and defendants in terms of the Commissioner's report.

The contention before this Court is that the respondent/plaintiff is not entitled to claim final decree in view of pendency of A.S.No.51 of 2011 before II Additional District Judge, Amalapuram for partition of item No.1 of the schedule property. The second ground urged before this Court is that division of property including item No.1 without issuing notice to the petitioner is an irregularity and the third ground is non-consideration of objections.

During hearing, R.K.Suri, learned counsel for the petitioner reiterated the grounds urged in the petition. However, learned counsel for respondent No.1 supported the order.

The plaintiff/respondent No.1 filed suit for partition and preliminary decree was passed, declaring that the plaintiff is entitled to 1/9th share in item Nos.2 to 4 in the plaint schedule property and it attained finality but still the subject matter of item No.1 is pending on the file of II Additional District Judge, Amalapuram.

The first objection raised before the trial Court is that the Commissioner did not allot the shares as directed by the Court; the second objection is that the Commissioner did not execute the warrant as per the directions of the Court and the third objection is to re-direct the Commissioner for execution afresh. Though the objections are not the objections that are urged before this Court, but still it is the duty of the Court to decide the objection raised before the trial Court whether the Commissioner executed the warrant in terms of the warrant or not, but the trial Court did not

even advert to the objections while deciding the petition and passed an order and not even referred to the objections filed before the Court, leave alone finding on objections.

Therefore, the order passed by the trial Court is illegal and the same is set aside and remitted to the trial Court to decide the objections filed by the petitioner herein, as expeditiously as possible, in any event not later than two months from the date of receipt of a copy of this order, in accordance with law.

With the above observation, these civil revision petitions are allowed. No costs.

The Miscellaneous Petitions, if any, pending in these revision petitions shall stand closed.

JUNE 22, 2017
ssp

M. SATYANARAYANA MURTHY, J

