

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.5060 of 2017

ORDER :

Heard both sides. Perused the grounds in the revision and impugned order dt.06.09.2017 in I.A.No.729 of 2015 in O.S.No.152 of 2006 on the file of the X Addl.Chief Judge, City Civil Court, Hyderabad.

The very order of the lower Court from para-15 to the extent relevant in deciding the revision is very clear on the settled law that unless the first Commissioner's report is expunged or scrapped, the question of appointing second Commissioner does not arise and the lower Court also referred two expressions in this regard in para-15 however even from the expression placed reliance on Kushal Vs. Shyam Rao¹ of this Court supra, what it is observed in para-6 and 7 is the following:-

6. The reasons given by the learned Subordinate Judge to appoint second commissioner are not convincing. The learned Subordinate Judge opined that the Commissioner who was appointed already is a junior and that his report can be improved by appointing a senior advocate of the Bar, but the same is inconsistent with the appointment of the first commissioner who has already done a part of the work, which is not found to be defective nor rejected. Secondly, if a portion of the commission work was not fulfilled by the commissioner for any reason, it is possible to direct the very same Commissioner to complete the work with further materials and the co-operation of the parties and their advocates. Even assuming that the report of the first commissioner is not complete, the Court could still consider whether the evidence on record through the report of the Commissioner was adequate or inadequate to decide the controversies between the parties in regard to the assessment of mesne profits. Patently, the report of the Commissioner covered

¹ (1997) 1 ALD 3

the assessment of mesne profits for at least two years. Without examining these implications, the learned Subordinate Judge has landed in error in appointing the second commissioner, which this Court disapproves as inconsistent with the law and in exercise of jurisdiction beyond the scope of law therein. Thus, the order cannot be sustained.

7. In the result, the revision petition is allowed. The matter is remitted back to the learned Subordinate Judge to reconsider whether the same Commissioner can be directed to complete the commission work as required for the purpose or to make use of the very material on record to decide the controversies between the parties without resorting to appoint the second commissioner or to pass a final order after hearing both the sides, and in case he comes to the conclusion that the report of the Commissioner, which is already submitted, should be rejected, the learned Subordinate Judge shall record reasons for so rejecting, in the light of the observations made above. The fact that the case is old is a matter which should be taken into consideration to expeditiously deal with the matter by the learned Subordinate Judge and in any case, not later than two months from the date of communication of a copy of this order. No costs.

Therefrom also there is nothing to interfere with the impugned dismissal order for appointment of second Commissioner concerned but for giving liberty to the petitioner if at all the first Commissioner's report including from his cross-examination as C.W.1 is incomplete to ask the trial Court for any re-entrustment or the like to decide on own merits.

Having regard to the above, the revision is disposed of. Consequently, Miscellaneous Petitions, if any, pending in this Revision, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:20.12.2017
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