

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.Nos.6524/16 & 43/17

COMMON ORDER:

Since these two Revisions arise out of one suit and the parties in both the cases are same, this Court deems it appropriate to dispose of these revisions by way of this common order.

2. Heard the learned counsel for the petitioners and despite service of notice, none appears for the respondent.

3. Defendants in O.S.No.1 of 2016 on the file of Court of Junior Civil Judge, Uravakonda are the petitioners in the Revisions filed under Article 227 of the Constitution of India. The grievance of the petitioners in C.R.P.No.43 of 2017 is non-disposal of the vacate petition i.e. I.A.No.2 of 2016 and challenge in C.R.P.No.6524 of 2016 is to the action of the learned Junior Civil Judge, Uravakonda in closing I.A.No.79 of 2016 in I.A.No.2 of 2016.

4. The respondent herein instituted the above mentioned suit for permanent injunction. Along with the said suit, plaintiff/respondent herein filed I.A.No.2 of 2016 under the provisions of Order 39 Rules 1 and 2 of CPC for temporary injunction. The Court below granted ex parte injunction. According to the learned counsel for the petitioners, the defendants/petitioners herein filed a counter in I.A.No.2 of 2016 and the said I.A. is still pending consideration before the learned Junior Civil Judge, Uravakonda.

5. In the above I.A.No.2 of 2016, defendants/petitioners herein also filed I.A.No.79 of 2016 under Order 26 Rule 9 of CPC for appointment of Commissioner to note down the Cheeni Trees grown in the plaint schedule property and other physical features. The said application was opposed by the respondent/plaintiff by way of filing counter. The learned Junior Civil Judge,

Uravakonda by way of order dated 9.9.2016 allowed the said I.A.No.79 of 2016, appointing Advocate Commissioner. On 31.10.2016, the learned Advocate Commissioner executed warrant and submitted report. Thereafter, the defendants/petitioners herein submitted their objections to the Commissioner's report on 8.11.2016. The learned Junior Civil Judge, Uravakonda closed the said application on 23.11.2016.

6. The grievance of the petitioners in C.R.P.No.6524 of 2016, as advocated by the learned counsel for the petitioners is that the learned Junior Civil Judge grossly erred in closing the petition without considering the objections submitted by the petitioners on the report of the Advocate Commissioner. It is also the submission of the learned counsel for the petitioners that the action of the learned Junior Civil Judge, Uravakonda is not in accordance with Rule 140 of Andhra Pradesh Civil Rules of Practice and Circular Orders, 1980, which reads as under:

“Consideration by Court – At the adjourned hearing of the suit, the Court shall consider the objections, if any, of the several parties to the statement of account and balance sheet or to the report of the Commissioner and may, if necessary, direct any party to bring in a fresh account and balance sheet, or refer the report to the Commissioner with fresh directions, as to the manner of vouching or taking the accounts”.

7. In the instant case, the petitioners herein submitted their objections to the report of the Advocate Commissioner on 8.11.2016. A perusal of the endorsement dated 23.11.2016 made by the learned Judge shows that the Court below simply closed the petition without assigning any reasons. According to Rule 140 of Civil Rules of Practice, it is incumbent on the part of the Court to consider the objections filed by the petitioners herein and to take further action in accordance with the said rule. In the instant case, the same is conspicuously absent. Therefore, the very closure of the Petition without undertaking any such exercise cannot be sustained.

8. For the aforesaid reasons, C.R.P.No.6524 of 2016 is allowed, setting aside the Docket Order dated 23.11.2016 closing I.A.No.79 of 2016 and the said I.A. stands restored to file for consideration of the same as per Rule 140 of Andhra Pradesh Civil Rules of Practice and Circular Orders, 1980. It is further directed that the learned Junior Civil Judge, Uravakonda shall take up I.A.No.79 of 2016 and vacate petition i.e. I.A.No.2 of 2016 filed by the petitioners herein simultaneously and dispose of the same, as expeditiously as possible. C.R.P.No.43 of 2017 also stands disposed of accordingly. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 17.2.2017
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A.V.SESHA SAI, J



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17.2.2017

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