

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.4830 of 2016

ORDER : (Oral)

The petitioner is aggrieved by order dated 2nd August 2016, passed in I.A.No.266 of 2016 in O.S.No.205 of 2009 on the file of Principal Junior Civil Judge, Narasaraopet.

2. The petitioner filed above I.A. under Order 26 Rule 9 and Section 151 of CPC to appoint an Advocate Commissioner to measure the extent of the property of respondent/defendant No.1 as the earlier Advocate Commissioner appointed in I.A.No.617 of 2015 failed to note the correct measurements of the said property.

3. Before the trial Court, the petitioner sought to redirect the Advocate Commissioner in I.A.No.617 of 2015 to measure the properties of herself and the property of respondent/defendant No.1 located on the Eastern side of her property and the properties of defendants 2 and 3 on the Western side of suit schedule property.

4. The case of petitioner before the Court below is that the Advocate Commissioner's report in respect of measuring the property of respondent/defendant No.1 is not correct. The actual measurements of the property of respondent/defendant No.1 on Northern and Southern side is 11 feet 10 inches. But the Advocate Commissioner did not note the correct measurements. In the said circumstances, another Advocate Commissioner was sought to be appointed to measure the property of respondent/defendant No.1.

5. The 1st respondent filed counter affidavit before the Court below, whereby, contended that the petitioner has been intentionally filing petitions only with a view to drag on the proceedings. The petitioner, her people and Advocates concerned were present while the Commissioner was taking measurements with the help of the Surveyor. Only with a view to fill up lacunas, the petitioner filed the petition with an ulterior motive to drag on the proceedings wantonly.

6. Upon hearing the counsel for the parties, the Court below opined that in I.A.No.617 of 2015, Advocate Commissioner was appointed who executed the warrant and filed his report. Subsequently the petitioner filed her objections. However, the Court observed that if the petitioner is aggrieved by the report of the Advocate Commissioner, she is at liberty to file her objections and satisfy the Court on such objections. In addition, she may ask for re-entrustment of warrants to the same Advocate Commissioner or seek the Court to appoint another Advocate Commissioner by setting aside the report of the earlier Advocate Commissioner. However, having filed her objections simultaneously filing another petition under Order 26 Rule 9 seeking appointment of another Advocate Commissioner is strange to the procedural law as it may allow the parties to go on filing petitions to appoint another Advocate Commissioner again and again.

7. It is not in dispute that the Advocate Commissioner filed report twice and in the subsequent report it is specifically stated that 'ABCP' marked portion belongs to 2nd respondent/2nd defendant. Three stair building was constructed in this marked portion and there is no possibility to measure properly. The measurements of the building are mentioned as AP=26 feet,

PC=97.7 feet, CB=25.7 feet and AB=98 feet. Each stair is having two portions and in ground portion business is running in the name and style of 'Sarada Maggam Works and Pooja Ladies Corner'.

8. It is not in dispute that at the time of execution of the Advocate Commissioner's warrant, the petitioner, his Advocate and the 1st respondent's Advocate were present and submitted work memo before the Advocate Commissioner. Accordingly, the Advocate Commissioner filed the detailed report and also expressed inability as to how it is not possible to take measurements. Further, measurements were taken in the presence of Surveyor.

9. In view of the facts recorded above, I find no illegality or perversity in the order passed by the Court below.

10. Finding no merit in the instant petition, same is accordingly dismissed. No costs. Pending miscellaneous applications, if any, shall stand closed.

24th March 2017

ajr

SURESH KUMAR KAIT, J