

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION NO. 931 OF 2018

ORDER:

Heard the learned counsel for the petitioner.

2. The petitioner is the plaintiff in O.S.No.118 of 2010. The said suit was filed for declaration of title and delivery of possession. The said suit was dismissed on 10.7.2014. Against the same, the petitioner preferred A.S.No.78 of 2014 on the file of the III Additional District Judge, Nellore. When the appeal was pending, the petitioner filed I.A.No.189 of 2015 for appointment of an Advocate Commissioner to localize the suit schedule property with the assistance of Mandal Surveyor, Vidavaluru mandal, Nellore district. The said application was allowed and an Advocate Commissioner was appointed. It appears that the Advocate Commissioner could not execute the warrant for nearly two years and in those circumstances, I.A.No.189 of 2015 was dismissed and the Commissioner was directed to return the warrant, by order dated 25.10.2017.

3. The petitioner filed I.A.No.953 of 2017 seeking to restore the said I.A.No.189 of 2015 which was closed on 25.10.2017 on the ground that the earlier Advocate Commissioner issued a notice to both sides informing that she is going to execute the warrant on 28.10.2017. In spite of the same, when the

Appellate Court dismissed the application with the following order, the present Civil Revision Petition is filed:

“No counter reported. Heard. Ample opportunity was given by this court to file commissioner report since 2015 and this court dismissed the petition and this petition is also dismissed.”

4. This Court noticed that the earlier order passed by the lower Appellate Court on 25.10.2017 as well as on 7.11.2017 are cryptic orders. There was no proper application of mind by the learned District Judge. At the same time, this Court also noticed negligence on the part of the Advocate Commissioner in not executing the warrant for nearly two years. In those circumstances, the petitioner should have asked for re-entrustment of the warrant to another Advocate for execution. But such steps were not taken by the petitioner also. In view of the lapses committed by the counsel for the petitioner as well as by the Court, this Court does not intend to interfere with the impugned order but gives liberty to the petitioner to file an appropriate application if the petitioner so desires and it is for the lower Appellate Court to consider the said application uninfluenced by the earlier orders passed in the applications filed by the petitioner.

5. This Civil Revision Petition is accordingly, dismissed subject to the above observations.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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A. RAMALINGESWARA RAO,J

Date: 2.4.2018

KPM

