

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.635 of 2018

ORDER :

Heard the counsel for petitioner. None appears for respondent.

2. This Civil Revision Petition is filed assailing the order dt.18.01.2018 passed in I.A.No.1125 of 2017 in O.S.No.526 of 2016 on the file of I Additional Junior Civil Judge, Tirupati.

3. The petitioner herein is defendant in the above suit.

4. The respondent / plaintiff filed the above suit for perpetual injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the plaint schedule property.

5. The respondent filed I.A.No.778 of 2016 for appointing a Court Commissioner to visit the suit schedule premises, and to note down the existing physical features with the help of a Mandal Surveyor.

6. Warrant was executed, and report was filed by the Court Commissioner.

7. The matter was then posted for filing objections by the petitioner to 20.01.2017.

8. The petitioner did not file objections, and the petition was closed.

9. The Court Commissioner mentioned in his report the measurements of the property and answered work memos, and also filed photographs along with the report.

10. Thereafter, the evidence on the side of respondent was closed on 24.08.2017, and the matter was posted for evidence of petitioner.

11. The petitioner examined DWs.1 and 2, and when it was posted for further evidence, he filed I.A.No.1125 of 2017 to appoint the same Advocate-Commissioner or a new Advocate-Commissioner and a Mandal Surveyor, and to entrust a fresh warrant or modify the earlier warrant so as to have the entire land of extent Acs.7.1 cents measured, with a direction to the Surveyor to specify plot No.27 in the layout claimed by respondent, and plot No.41 claimed by petitioner.

12. The main contention of petitioner was that the Advocate-Commissioner had told both parties that it was not possible to identify plot Nos.27 or 41.

13. The said application was opposed by the respondent stating that the application is filed only to drag on the proceedings in the suit, and that the Mandal Surveyor had given a report earlier identifying the suit property.

14. By order dt.18.01.2018, the Court below dismissed the said I.A. holding that the petitioner did not file objections to the Court-Commissioner's report though opportunity was given to him; and after waiting for a year, he filed the present application, obviously

with an intention to delay the trial in the suit. It also held that the second Court-Commissioner cannot be appointed unless and until the report of the 1st Court-Commissioner is expunged.

15. Assailing the same, the present Civil Revision Petition is filed.

16. Though the counsel for petitioner sought to contend that petitioner would suffer grave and irreparable loss if he was not given an opportunity to have the property re-surveyed through another Advocate-Commissioner or the same Advocate-Commissioner, since petitioner did not file any objections to the Court-Commissioner's report (appointed in I.A.No.778 of 2016 in O.S.No.526 of 2016 at the instance of respondent), and since he filed this application belatedly after waiting for one year, I am of the opinion that the Court below did not commit any error of jurisdiction in refusing to allow I.A.No.1125 of 2017.

17. Therefore, the Civil Revision Petition fails, and it is accordingly dismissed. No order as to costs.

18. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.03.2018

Ndr/*