

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NO.2473 OF 2015

ORDER:-

This revision petition is filed questioning the order, dated 09-06-2015 passed in I.A.No.83 of 2015 in O.S.No.131 of 2006 on the file of the court of Junior Civil Judge, Madakasira.

2. The suit is filed for declaration of title and for a permanent injunction. Initially, I.A.No.161 of 2012 was filed for appointment of an Advocate Commissioner to note down the physical features and an Advocate-Commissioner was appointed pursuant to the order passed in I.A.No.161 of 2012.

3. Questioning the order passed in I.A.No.161 of 2012, C.R.P.No.3290 of 2012 was filed before this court. Initially, this court granted an interim suspension and later vide orders, dated 06-02-2013, the C.R.P.No.3290 of 2012 was dismissed confirming the exercise of the discretion by the lower court. The learned single judge of this court held that there is no error in the order passed by the trial court. It appears from the record that in the interregnum period as the court below and the Advocate Commissioner were not informed of the interim suspension, the Advocate

Commissioner proceeded to execute the warrant. The Advocate Commissioner also filed his report into the court.

4. Later, I.A.No.193 of 2014 was filed to summon the Advocate Commissioner to give evidence and to mark the report and the sketch filed by him. This application was, however, dismissed by the court below by its order dated 27-01-2015.

5. Thereafter, it appears that I.A.No.83 of 2015 was filed to re-entrust the warrant to the very same Advocate Commissioner. This application was allowed and the warrant was re-entrusted to the same Advocate Commissioner. The orders that were passed in I.A.No.83 of 2015 are now impugned in the present revision petition.

6. This court has heard Smt.Akella Padma, learned counsel for the petitioners and Sri Karri Murali Krishna, learned counsel for the respondents.

7. The learned counsel for the revision petitioners submits that I.A.No.193 of 2014 was filed to summon the Advocate Commissioner in order to give his evidence and mark the report and sketch that were prepared by him when he visited the site. This application, as per the learned counsel, is dismissed on 27-01-2015. The learned counsel further submitted that no challenge was taken up against

this order in higher court. Therefore, the learned counsel submitted that the order has become final and hence she submitted that the petition to re-entrust the warrant to the very same Advocate Commissioner is not maintainable in law and is barred by principles of *res judicata* as it would amount to the court overturning its own order, dated.27-01-2015, which was pronounced on merits.

8. In reply thereto, the learned counsel for the respondents submits that the Advocate Commissioner executed the warrant during the period when there was an interim suspension order passed by this court. It is his contention that the Advocate Commissioner should not have executed the warrant when the interim suspension order was in force. He points out that this court also felt that exercise of discretion by the court below in appointing the Advocate Commissioner was upheld and, therefore, if an opportunity is not given to bring Advocate Commissioner's report and sketch into the record, his clients will suffer irreparable loss. He states that the report of the Advocate Commissioner is already on record and he is only seeking the re-entrustment of the warrant to the same Advocate Commissioner.

9. This court after hearing both the learned counsel is of the opinion that the submission of the learned counsel for

the petitioners is correct. There is an order passed in I.A.No.193 of 2014 on 27-01-2015 dismissing the request to summon/examine the Commissioner. This order was passed on 27-01-2015 almost two years after the CRP No.3290 of 2012 was dismissed. Therefore, the court below felt that there was no need to summon the Advocate Commissioner even after the C.R.P was disposed of. Admittedly, no revision or any other challenge was moved against this order dated 27-01-2015 and, therefore, the said order has become final. Once the order has become final and it is not open to challenge. It cannot be set at naught by an indirect method of filing an application for entrustment of warrant to the very same Advocate Commissioner. Principles of *res judicata* and finality of orders are applicable at different stages of the same proceedings also.

10. The fact remains that the order, dated 27-01-2015 was not challenged and the said order has become final. Therefore, re-entrustment of the warrant at this stage is neither correct nor legally tenable. Hence, this court is of the opinion that there are no merits in the order passed by the court below.

Accordingly, the Civil Revision Petition is allowed and the order dated 09-06-2015 passed in I.A.No.83 of 2015 in O.S.No.131 of 2006 on the file of the court of Junior Civil Judge, Madakasira is set aside. In the circumstances, there shall be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

05-11-2018
TSNR

