

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3962 of 2016

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 27.07.2016 passed in I.A.No.379 of 2016 in F.D.I.A.No.378 of 2016 in O.S.No.88 of 2012 on the file of the Court of the I Additional District Judge, West Godavari district at Narsapur.

2 Heard the learned counsel for both sides.

3 A perusal of the record reveals that the respondents filed O.S.No.88 of 2012 on the file of the Court of the I Additional District Judge, West Godavari district at Narsapur against the petitioners for partition of the suit schedule property. After full fledged trial, the trial court decreed the suit. Feeling aggrieved by the judgment and decree passed in O.S.No.88 of 2012, the petitioners preferred A.S.No.659 of 2016 on the file of this Court.

4 While the things stood thus, the respondents filed I.A.No.379 of 2016 in F.D.I.A.No.378 of 2016 in O.S.No.88 of 2012 for appointment of an advocate commissioner to inspect the suit schedule property and submit the report. The trial court allowed the petition directing the advocate commissioner to divide the suit schedule property into three equal shares and deliver possession of the same to the respondent Nos.1 and 2. Hence the present Civil Revision Petition.

5 Both counsel submitted that initially this Court granted absolute stay in A.S.No.659 of 2016. After hearing both sides, this Court modified the earlier order and permitted the trial Court to proceed further except passing of final decree. The trial court,

without noticing the order passed by this court issued warrant to the advocate commissioner to divide the suit schedule property and allot two shares to respondent Nos.1 and 2.

6 Virtually, the trial court passed a final decree. This court is unable to understand how the trial court passed the impugned order in view of the interim order granted by this court. If the order passed by the trial court is allowed to stand, certainly it would amount to miscarriage of justice.

7 Having regard to the facts and circumstances of the case, this Civil Revision Petition is allowed, setting aside the order dated 27.07.2016 passed in I.A.No.379 of 2016 in F.D.I.A.No.378 of 2016 in O.S.No.88 of 2012 on the file of the Court of the I Additional District Judge, West Godavari district at Narsapur. However, dismissal of this Civil Revision Petition does not preclude the respondents to take appropriate steps. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Dt: 08.08.2018

Kvsn