

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P. No.3902 OF 2017
AND
C.R.P. No.3772 OF 2018

COMMON ORDER:

C.R.P.No.3902 of 2017 is filed under Article 227 of the Constitution of India challenging the order dated 15.06.2017 passed in I.A.No.33 of 2016 in O.S.No.443 of 2004 by the IV Additional Senior Civil Judge, Visakhapatnam dismissing the petition filed under Order XXVI Rule 9 read with Section 151 C.P.C. for failure of the Advocate Commissioner to execute warrant as directed by the Court in pursuance of the conditional order dated 20.04.2017.

C.R.P.No.3772 of 2018 is filed under Article 227 of the Constitution of India challenging the inaction of IV Additional Senior Civil Judge, Visakhapatnam in passing orders on the memos in O.S.No.443 of 2004 filed in pursuance of order dated 11.08.2017 passed by this Court in C.R.P.No.3902 of 2017.

The petitioner is the 12th defendant in O.S.No.443 of 2004 and the respondents 1 and 2.plaintiffs contended that they are owners of property in Survey No.41/4, whereas the petitioner contended that the property described in schedule annexed to the plaint is in Survey No.41/4A, there is a dispute where the property is located and to identify the property the petitioner filed I.A.No.33 of 2016 to appoint an advocate commissioner to localize the suit schedule property with the assistance of Mandal Surveyor and the petition was allowed by order dated 20.04.2017 directing the advocate commissioner to execute the warrant positively by 01.06.2017 otherwise return the warrant unexecuted. But again time was extended till 01.06.2017 and on that day, the advocate commissioner filed memo reporting that the Mandal Surveyor is not cooperating to execute the

warrant and requested another 15 days time to complete the execution of warrant. The Court below did not accede to the request of the advocate commissioner and dismissed the petition by passing impugned order.

Aggrieved by the impugned order, the present revision is filed contending that passing impugned order vide circulars issued by this Court is an illegality and requested to restore I.A.No.33 of 2016 and re-entrust the warrant to the same advocate commissioner to execute the same and file report within the specific time.

During hearing, learned counsel for the petitioner reiterated the contentions raised in the petition while pointing out the illegality of the impugned order, whereas, none appeared for the respondents though proof of service is filed.

Respondents 1 and 2/plaintiffs filed suit for declaration of title and other consequential reliefs to declare that they are owners of the property in Survey No.41/4, which is described in the scheduled annexed to the plaint. But as there is a dispute with regard to the identity of the property with reference to the survey number, the petitioner filed petition for appointment of advocate commissioner to localize the schedule property with the assistance of Mandal Surveyor and the said petition was allowed on 23.06.2016. As the warrant was not executed by the advocate commissioner despite granting time till 16.06.2017 and time was extended only at the request of the advocate commissioner. Strangely, the advocate commissioner filed interim report informing that the Mandal Surveyor was not cooperating to execute the warrant and a copy of letter addressed by the Mandal Revenue Officer is also filed along with the report to establish that the Surveyor was busy in other work and that he could not extend his assistance to execute the warrant and requested for grant of 15 days time. Based on the circular issued by this Court, the Court below dismissed the

petition for non compliance of the conditional order and in fact this Court did not insist the Presiding Officers of the various Courts to dispose of the matter contrary to law and the circular was issued insisting the presiding officers of various Courts to dispose of the cases in accordance with law. Dismissal of application in the guise of directions issued by this Court by way of circular is a grave illegality. Therefore, the impugned order cannot be sustained and the same is liable to be set aside.

In the result, the civil revision petitions are allowed setting aside the order dated 15.06.2017 passed in I.A.No.33 of 2016 in O.S.No.443 of 2004 by the IV Additional Senior Civil Judge, Visakhapatnam while directing the IV Additional Senior Civil Judge, Visakhapatnam to re-entrust the warrant to the same advocate commissioner fixing time to file report and also directed to issue necessary direction to the Mandal Surveyor to assist the Advocate Commissioner to execute the warrant by separate order, and file report subject to payment of necessary fee payable to the department for conducting survey, within a week from the date of receipt of a copy of this order and consequently, I.A.No.33 of 2016 is restored to its file. No order as to costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

29.10.2018

Note: issue c.c. in two days

b/o

kvrn