

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4463 of 2018

ORDER:

Petitioners/plaintiffs filed I.A.No.82 of 2018 in I.A.No.144 of 2014 in I.A.No.53 of 2013 in O.S.No.33 of 2013 on the file of the Court of the Judge, Family Court-cum-Additional District Judge, Anantapuramu.

2) Through this I.A.No.82 of 2018 petitioners seek to pass a finding with regard to the observation made by the Hon'ble High Court, in C.R.P.No.1997 of 2015, in the interest of justice.

3) The affidavit filed in support of the petition in para-2 reads as under:

“2. Against orders dated 19.01.2015 passed in I.A.144/2014 in I.A.53/2013 passed by this Hon'ble Court, myself and other petitioners have filed C.R.P.1997/2015 on the file of the Hon'ble High Court and the Hon'ble High Court on 27.07.2017 has dismissed the said C.R.P. with the following rider.

‘However, if the objections are filed on the Commissioner's report as to the measurements taken by the Commissioner or on any other aspect, the trial court is directed to decide the objections on the commissioner's report and if the court finds that it is necessary to re-entrust the warrant, the court may pass appropriate orders after considering the objections if any, filed by both parties on the commissioner's report.’ But the Hon'ble Court has not given any finding on the observation made by the Hon'ble High Court. But the Hon'ble Court has not passed any finding on the above aspect. Hence the petition.”

4) The Court below had considered the prayer and finally dismissed the said application. Further, the C.R.P. No.1997 of 2017 filed against the order, dated 19.01.2015, in I.A.No.144 of 2014 was also dismissed by this Court on dated 27.07.2017.

5) Learned counsel for the petitioner Sri K. Narsi Reddy, while admitting that the prayer made in the Interlocutory Application is a bit confusing and is incohesive, would further submit that what all the petitioners desire to put forward before this Court is seeking a clarification with respect to the order of this Court in C.R.P.No.1997 of 2015 and consideration of objections filed to the Commissioner's report, which was challenged before the Court in C.R.P.No.1997 of 2015. He would further submit that while disposing the C.R.P.No.1997 of 2015, this Court has given liberty to the petitioners to file objections to the Commissioner's report and, as a matter of fact, the petitioners filed objections thereto and sought clarification from the Court below and, if necessary, to appoint a fresh advocate commissioner for re-measuring and re-inspection of the suit schedule property by drawing attention to the plan, dated 20.07.1948, wherein, the length of the measurement was extended upto 563 links, which is in contradiction to the present Advocate Commissioner's report. He would also submit that in the present Advocate Commissioner's report only 503 links were shown, particularly in Sy.No.138, and also 996 links width was in the present Advocate Commissioner's report in contrast to 896 links in the advocate commissioner's report. He would further submit that the error is only on account of improper execution of the warrant by the Advocate Commissioner. He would further submit that no further prejudice would be caused to the respondents if once again advocate commissioner is directed to visit at the cost of the petitioners and execute the warrant in terms of the sketch in O.S.No.125 of 1948, dated 20.07.1948.

6) Perused the record. The arguments advanced by the learned counsel for the petitioners and the fairness on his part that the prayer before the Court below was found a bit confusing, is appreciable.

However, the petitioners' counsel had summarised the grievance of the petitioners and fairly limited his prayer by seeking direction to the Court below to appoint an Advocate Commissioner afresh and further a direction to inspect and measure the site in the light of the sketch prepared in O.S.No.125 of 1948. He would venture to submit that in the present case on hand, the Advocate Commissioner might have committed an error in carrying out the inspection and measuring the site as there is a variation of the area, both in length and width.

7) To appreciate this argument of the learned counsel, it becomes relevant for this court to refer to the finding of the learned Additional District Judge, Ananthapuramu. Learned Judge in para 13 had referred to a finding of the advocate commissioner's report in O.S.No.125 of 1948, in which he had found, as a matter of fact, that the Advocate Commissioner therein did not measure the extent of actual deviation as the 1st defendant therein had obstructed and threatened the Advocate Commissioner. The report of the Advocate Commissioner in 1948 had also referred to the fact that without measurement, the report came to be prepared and the same was copied from the Field Measurement Book, particularly, with regard to Survey Nos.101, 100-2, 100-3. In that view of the matter, learned Judge had found that one cannot find fault with the present Advocate Commissioner's report, who accurately measured and recorded. There being no such complaint in the present case, merely because the measurements taken by the advocate-commissioner are not tallied with the report in 1948, one cannot say that the present report is to be ignored. Therefore, it cannot be said that the objections of the petitioners were not considered when cogent reasons were given by the learned Judge why there is a variation and in what circumstances, there is a variation with respect to the measurements

in the sketch prepared in 1948 to the present sketch and measurements prepared by the present Advocate Commissioner.

8) In those circumstances, the facts as found and in the circumstances, there is no merit in the Civil Revision Petition and the same is accordingly, dismissed. However, it is left open to the petitioners to raise all the objections, if any, during the hearing of the final argument, which shall be considered subject to the credibility or otherwise of the same. No costs.

9) Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 31.08.2018.

CHALLA KODANDA RAM, J.

Note: Issue C.C. in 3 days.
Ssv

