

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION
Nos. 3267 and 3338 of 2017

COMMON ORDER:

CRP No.3267 of 2017 is filed challenging the order passed in IA No.1634 of 2017 in IA No.1980 of 2013 in OS No.513 of 2010 by the Chief Judge, City Civil Court, Hyderabad.

CRP No. 3338 of 2017 is filed under Article 227 of the Constitution of India by defendant No.1 challenging the order dated 07.06.2007 passed in IA No.2388 of 2017 in IA No.1980 of 2013 in OS No.513 of 2010 passed by the Chief Judge, City Civil Court, Hyderabad.

Since these two revisions are arising out of the common order in both the IAs, I deem it appropriate to dispose of both the revision petitions by this common order.

IA No.1534 of 2017 is filed by the revision petitioner-defendant No.1 under Section 151 CPC seeking permission to file objections on the Commissioner's report submitted in IA No.1583 of 2015, alleging that IA No.1980 of 2013 was filed for passing final decree in terms of preliminary decree to divide the suit property as per the shares allotted in proportionate to their shares declared in the preliminary decree. The Advocate Commissioner filed his report stating that the

property is not feasible for partition. However, the revision petitioner's contention is that it is feasible for partition. But by oversight, revision petitioner/defendant No.1 could not file his objections on the Commissioner's Report. Therefore, requested to receive objections on the Commissioner's report. Whereas, IA No.2388 of 2017 is filed under O-XVI R-1 read with Section 151 CPC to issue summons to the Advocate Commissioner for the purpose of cross-examination to find out truth or otherwise in the conclusions arrived at by the Commissioner in IA No.1583 of 2015.

The trial court dismissed both the petitions by common order dated 07.06.2017 on various grounds. Aggrieved by the same, the present revisions are filed raising several grounds that the trial court did not consider the scope of the petitions. Further, though there was a delay of 137 days in filing objections, the same can be condoned and the objections on the Commissioner's report can be taken into consideration to pass a final decree. But for one reason or the other, the trial court did not consider the same to summon the Advocate commissioner for cross-examination.

No doubt, during the hearing in the court below, the learned counsel for revision petitioner/1st defendant raised several contentions

as urged in the grounds of revision, whereas, respondent Nos.1 and 2 /plaintiffs supported the order in all respects.

As seen from the material available on record, when a Commissioner was appointed and filed his report about the feasibility to partition the suit property in proportion to the shares declared in the preliminary decree. The trial court posted the petition for filing objections, but, for one reason or the other, the revision petitioner/1st defendant did not file objections on the Commissioner report within the time as fixed by the trial court and thereby, his rights to file objections was forfeited. It appears from the record that this litigation is dragging on from 2010. Though initially revision petitioner/defendant No.1 co-operated and reported no objection for passing preliminary decree in terms of Will Deed and invited the Judgment and decree passed under O-XII R-6 CPC, but later, started unnecessary litigation on one ground or the other by giving scope to file the present revision cases. When the petitioner filed objections along with the petition to condone the delay, the court below ought to have afforded opportunity to file objections by the petitioner.

This court already set aside the order dated 21.7.2017 passed in CRP No.7004 of 2017 and remitted back the matter to the trial court to pass appropriate orders affording opportunity to both the parties by

considering the objections filed by the revision petitioner/1st defendant on the Advocate Commissioner's report dated 18.02.2016 and dispose of the IA in accordance with law.

In view of the same, CRP No.3267 of 2017 is allowed and the order in IA No.1634 of 2017 is hereby set aside directing the trial court to receive the objections filed by the revision petitioner/defendant No.1 on the Commissioner's report and consider and pass appropriate orders thereon. However, it is open to the revision petitioner to take appropriate steps upon receipt of objections by the trial court. CRP No.3338 of 2017 is dismissed.

Dt. 30.11.2018
Mjl/*



M.SATYANARAYANA MURTHY, J