

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

C.R.P.NO.511 OF 2014

ORDER:-

The revision petition is filed questioning the order, dated 09-12-2013 passed in E.A.No.118 of 2013 in E.P.No. 153 of 2011 in O.S.No.339 of 2009 on the file of the court of Senior Civil Judge at Khammam.

2. E.A.No.118 of 2013 is filed under the provisions of Order XXVI Rule 9 CPC seeking to appoint an Advocate Commissioner to inspect the E.P schedule properties, to get the same measured with the help of a Government Surveyor and to file report along with the photographs.

3. The suit O.S.No.339 of 2003 is a suit for permanent injunction. The said suit was decreed. Then E.P.No.153 of 2011 was filed to order the arrest of the JDR and to send her to a civil prison. In that application filed for arrest and detention of JDR, E.A.No.118 on 2013 was filed for appointment of an Advocate Commissioner

4. The claim of the petitioner is that her land is in Sy.No.62 and by wrongly reading the provisions of law and wrong description of the property, her land is also included in the suit schedule property. The suit schedule property according to the respondent is in Sy.No.63. Therefore, the

petitioner wanted the appointment of an Advocate Commissioner to demarcate the land on the ground.

5. After hearing both the learned counsel, the court below dismissed the application. Questioning the same, the present Civil Revision Petition is filed.

6. This court has heard both the learned counsel.

7. The learned counsel for the petitioner submits that his client has been deprived a right of adducing evidence. According to him, without considering the facts pleaded and without giving him an opportunity to adduce evidence, the application was closed. The learned counsel submits that by appointing of an Advocate Commissioner, no prejudice will be caused to the present respondent and that he will introduce other evidence also to show along with Advocate Commissioner's report to show that his claim about the land in Sy.No.62 is justified. Therefore, he prays for an opportunity to adduce adequate and proper evidence. He also submits that if the Government surveyor goes to the plot the correct truth will come out.

8. In reply to this, the learned counsel for the respondent submits that the executing court cannot go beyond the decree. It is his contention that decree has been passed for a definite piece of land with definite boundaries.

The learned counsel submits that an *ex parte* decree was actually passed. Questioning the said *ex parte* decree, I.A.No.810 of 2012 was filed by the present petitioner to set aside the *ex parte* order. The said application was dismissed on merits. Against the same, C.R.P 1629 of 2013 was filed and this court dismissed the said application also. The learned counsel submits that the said order has attained finality. The learned counsel for the petitioner also agrees that the C.R.P.No.169 of 2013 has been dismissed. Therefore, it is clear that the *ex parte* decree has attained finality.

9. Now the question that arises for consideration is:-

Whether an Advocate Commissioner can be appointed to inspect the suit schedule property and to allow the petitioner to adduce the evidence including the Advocate Commissioner about the location of the property in Sy.No.62 or Sy.No.63?

10. POINT:-

There is sufficient strength in the submission made by the learned counsel for the respondent that as the decree has become final, the executing court cannot go beyond the decree. Once the decree is passed for a definite piece of land with four defined boundaries in Sy.No.63, the question of adducing evidence in an executing court to show that the

land in Sy.No.62 has been included wrongly is not tenable. It is settled law that the executing court is bound by the decree and cannot go beyond the decree. Once this principle of law is taken as settled, it cannot be undone in an indirect manner by seeking permission to adduce evidence to show that the decree is wrong or that the land in Sy.No.62 has been wrongly included. What cannot be done directly cannot be done indirectly also. The remedies of the petitioner are elsewhere. This court is, therefore, of the opinion that the as judgment and decree passed by the court below have become final, the same cannot be attacked in an indirect manner by appointing an Advocate Commissioner to demarcate the suit schedule property on the ground. This court is therefore of the opinion that there are no merits in the revision petition.

Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

26-11-2018
TSNR

D.V.S.S.SOMAYAJULU,J