

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.5642 of 2016

ORDER

Heard both sides and perused the grounds of revision and the impugned docket order, dt. 02.08.2016 of the lower Court in I.A.No.678 of 2016 in I.A.No.279 of 2016 in pending suit O.S.No.246 of 2011 passed by the learned Addl. Senior Civil judge, Tirupati.

It is the suit for declaration of title and other reliefs sought by the sole plaintiff against the 4 defendants. There is an application in I.A.No.279 of 2016 for appointment of Advocate-Commissioner to note down the physical features and to measure the suit property with the help of mandal surveyor. The lower Court allowed the petition on 04.07.2016 by appointing Sri A.Venkatesulu, Tirupati as Advocate-Commissioner and issued warrant and directed to visit the suit property and get measure with the help of Mandal Surveyor based on title deeds of petitioner and FMB of Gollapalli village, Group No.56, Kallar village accounts- Sarkaru Punja S.No.13/ 1. As the petitioner/ plaintiff, it appears, not diligent in cause execution of the warrant, the trial Court closed the petition I.A.No.279 of 2016. To re-open the same, I.A.No.678 of 2016 is filed saying unless the Commissioner visits the property and measure and demarcate by noting physical features with the assistance of surveyor, the plaintiff will suffer injustice and it is due to the non-availability of the Mandal Surveyor warrant could not be executed and not otherwise and the same is rejected by the trial Court holding that in spite of giving specific direction

to execute the warrant and file the Commissioner's report on or before 26.07.2016, the petitioner failed.

As the Mandal Surveyor is not fixing the date for the request of the Commissioner who is officer of the Court appointed by warrant of the Court, the Court can take recourse against the Mandal Surveyor on memo of the Commissioner instead of closing the petition.

Having regard to the above, the Revision is allowed by setting aside the docket order dt.02.08.2016 in I.A.No.678 of 2016 impugned herein and also closure order is set aside by restoring I.A.No.276 of 2016 for the Commissioner for executing the warrant with Mandal Surveyor's assistance to the extent of measurements and so far as noting of physical features concerned, if not any interim report filed, he can visit and file which is subject to the payment or deposit of the Commissioner's fee before the lower Court within one week from the date of receipt of the order if not already deposited or paid. If the Mandal Surveyor not responds to the notice, the trial Court can summon the Mandal surveyor to assist with the expenses of the plaintiff and if he disobeys to take legal recourse.

Consequently, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:03.01.2018
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