

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

CIVIL REVISION PETITION No.4995 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 24.11.2014, passed in I.A.No.1014 of 2014 in I.A.No.32 of 2011 in O.S.No.19 of 2006, by the Senior Civil Judge, Sathupalli.

The suit O.S.No.19 of 2006 is filed for recovery of possession by the plaintiff against the defendant and also a decree of mandatory injunction to remove the basement and super structure of the building made by him. Initially an application for appointment of a commissioner was filed in I.A.No.32 of 2011 and the same was allowed on 27.02.2012. Later, I.A.No.1014 of 2014 was filed in the said I.A.No.32 of 2011 to re-entrust the warrant and to re-direct the commissioner to survey the properties. This application came to be allowed, vide the impugned orders, dated 24.11.2014. This order is now challenged in the present revision petition.

This court has heard Sri Srinivas Ambati, learned counsel for the petitioner and Ms.N.Revathi for Sri V.Venugopalarao, learned counsel for the respondents. The learned counsel for the respondents states that he is appearing for all the respondents.

The short and simple question that arises for consideration is whether the court below committed any error in passing the impugned order.

As noticed by this court, the suit is filed for recovery of possession and for mandatory injunction to remove the constructions made by the defendant in the suit property. The plaintiff filed I.A.No.32 of 2011 under Order 26 Rule 9 CPC to appoint a commissioner. The court passed an

order appointing an Advocate-Commissioner and directing him to measure the suit schedule property and the defendant's property with reference to the partition deed document boundaries and also to assess the year of construction of the house into the site of the defendant and to note down the physical features of RCC building pertaining to the site along with boundaries of the schedule in the petition and also the plaint schedule with the help of a qualified surveyor. Thereafter, it appears that the warrant was not fully executed. It is averred by the petitioner in I.A.No.1014 of 2014 that the Advocate-Commissioner was obstructed, but the revision petitioner states that they did not obstruct the advocate-commissioner. Nevertheless, another application in I.A.No.1014 of 2014 was filed to give further directions to the advocate-commissioner to follow the directions in I.A.No.32 of 2011 with a further direction to measure the land of the respondent/defendant along with the land gifted by him to his daughter. The court below while passing the impugned order, merely directed the advocate-commissioner to note down the physical features of the property as directed in I.A.No.32 of 2011. No other direction was given. Still the same was challenged in the revision.

Ms.Nimmagadda Revathi, learned counsel, appearing for the respondents also fairly conceded that the order passed in I.A.No.32 of 2011 in February, 2012 was confirmed in CRP No.1301 of 2012. She argues that the measurements of the land allegedly gifted by the plaintiff to his daughter would be beyond scope of the warrant and in support of her contention, she relies upon a judgment of this court in *Batchu Narayana Rao v. Batchu Venkata Narasimha Rao*¹. The learned counsel submits that the earlier order dated 27.02.2012 passed in

¹ 2010 (5) ALD 83

I.A.No.32 of 2011 has become final. In addition, the learned counsel for the respondents points out that the court in the impugned order merely directed the commissioner to note down the physical features as per the order in I.A.No.32 of 2011 and no further direction has been given.

This court, after noticing all the facts and hearing the learned counsels, notices that the order in I.A.No.32 of 2011 as confirmed by the orders of this court in CRP No.1301 of 2012 has become final. Even in the impugned order no direction was given to measure the suit property along with the land given by the plaintiff to his daughter. Since the impugned order merely confirms what has been stated in the order in I.A.No.32 of 2011 on 27.02.2012, this court is of the opinion that nothing survives for consideration in this revision petition. Earlier order passed in February, 2012 in I.A.No.32 of 2011 is already been confirmed. The court below, in the opinion of this court, did not commit any error. Although a prayer is made for measuring the land gifted to his daughter by the plaintiff, the court below did not accede to the said request. A reading of the impugned order shows that earlier directions given in I.A.No.32 of 2011 are directed to be followed.

Therefore, this court finds no merits in the present civil revision petition, and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 13.12.2018
Dsr