

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4928 OF 2016

ORDER:

1) Assailing the order dated 28.07.2016, passed in I.A.No.490 of 2016 in O.S.No.7 of 1995 on the file of the Senior Civil Judge, Amalapuram, wherein an application filed to appoint an advocate-commissioner for recording the evidence of the Hon'ble Sri Justice Sri B.Siva Sankara Rao, Judge, High Court of Judicature at Hyderabad, was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The petitioners herein filed O.S.No.7 of 1995 seeking partition and separate possession of the suit schedule property. During pendency of the suit, Hon'ble Sri Justice Sri B.Siva Sankara Rao, Judge, High Court of Judicature at Hyderabad, while practicing as an advocate at Amalapuram, was appointed as an advocate-commissioner vide orders in I.A.No.120 of 1995 and he submitted his report, which was marked as Ex.A215. When the suit is posted for arguments, the present petition came to be filed to appoint an advocate-commissioner to record the evidence of the advocate-commissioner, who filed the report-Ex.A215, to ascertain certain discrepancies.

3) Respondents filed counter contending that about 21 years back an advocate-commissioner was appointed for inventory and

he filed his report. Objections to the said commissioner's report were filed by the petitioners herein. Inventory list made by the advocate-commissioner along with the objects are part and parcel of the record. Since the said documents were already in the record, there is no necessity to examine the advocate-commissioner, who made the inventory. It is also stated that previously the petitioners filed I.A.No.706 of 2010 to summon the advocate-commissioner, which was rejected.

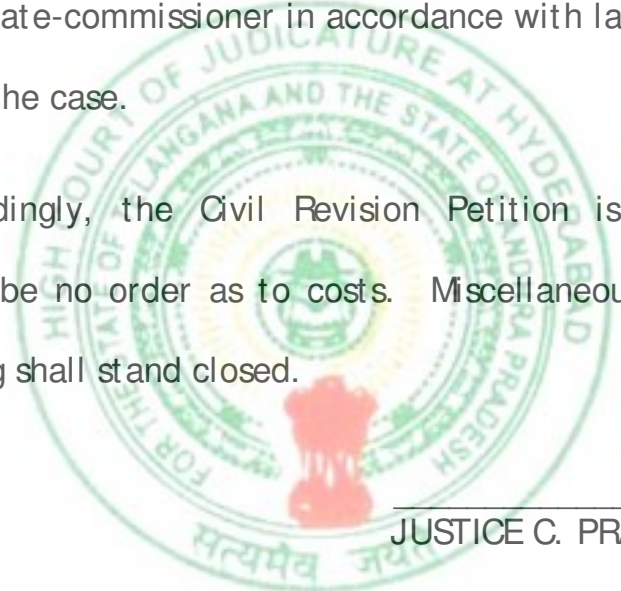
4) After considering the rival contentions, the trial Court dismissed the said petition. Challenging the same, the present Civil Revision Petition came to be filed.

5) Learned counsel for the petitioner mainly submits that the examination of the advocate-commissioner, who made the inventory list, is essential to ascertain discrepancies in producing the documents invented by him. He further submits that the advocate-commissioner, who is the proposed witness, is residing at a distance of morethan 200 km. from Amalapuram, as such, appointment of a Court Commissioner to examine the said witness is essential.

6) Sri E.V.V.S Ravi Kumar, learned counsel for the petitioners, states across the Bar that even in the absence of summoning the advocate-commissioner, the report filed by the advocate-commissioner can be looked into as it has already formed part of the record.

7) As seen from the record, the reason for rejecting the petition is that there is no legal necessity to confront the commissioner's report to the Advocate Commissioner by recording his evidence and the same can be looked into since it has already formed part of the record. The said fact is not disputed by the petitioner. The discrepancies if any, as alleged can be placed before the Court during the course of arguments. Hence, I see no reason to interfere with the order passed by the trial Court. It is needless to mention that the trial Court shall consider the report of the advocate-commissioner in accordance with law, at the time of deciding the case.

8) Accordingly, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

16.02.2018

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