

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.7004 of 2017

O R D E R:

This petition under Article 227 of the Constitution of India, is filed by the defendant No.1 in OS No.513 of 2010 and respondent No.1 in IA No.1583 of 2015 in IA No.1980 of 2013, challenging the order dated 21.07.2017 passed by the Chief Judge, City Civil Court, Hyderabad.

Brief facts of the case are that respondent Nos.1 and 2/plaintiffs filed the above suit in OS No.513 of 2010 seeking declaration and partition of the suit schedule property in pursuance of the Will Deed dated 25.05.2006 executed by late Manik Rao Bharati, father of both plaintiffs and defendants. The suit was decreed in terms of Order-XII R-6 CPC based on the admissions for allotment of shares to the respective parties and accordingly, preliminary decree was passed in terms of the Will Deed allotting 30% of share to the respondent No.1; 10% of the share to the respondent No.2; 30% of share each to the defendants subject to repayment of Rs.4,00,000/- to Triambak Rao Bharati. In the suit, the plaintiffs also filed an application in IA No.1583 of 2015 under O-XXVI R-9 CPC to appoint an Advocate Commissioner to note down the physical features of the suit schedule property bearing H.No.2-2-1152/4, New Nallakunta,

Hyderabad- 500 044, and to find out the divisibility or otherwise of the property by metes and bounds into four shares declared in the preliminary decree. The grievance of the revision petitioner is that without considering the objections filed by him and without affording opportunity to him, the trial Court passed the impugned order, which is illegal and arbitrary and is liable to be set aside. Questioning the same, the present revision petition is filed.

As stated above, as per Will Deed, 1st petitioner is entitled to 30% of the share; 2nd petitioner is entitled to 10% of the share; defendant Nos.1 and 2 and 3rd respondent are entitled to 30% of the share each. The Will Deed further states that both the parties shall pay a sum of Rs.4,00,000/- to Triambak Rao Bharati, brother of late Manik Rao Bharati, father of both the parties. Since the suit schedule property is not divisible, the testator of the Will Deed, directed that the suit property may be sold and the sale consideration of Rs.4,00,000/- shall be shared after repayment of the hand loan of Rs.4,00,000/- to Triambak Rao Bharati, brother of the testator. Petitioner No.1/defendant No.1 did not come forward for sale of the property as directed in the Will Deed, the plaintiffs/respondent Nos.1 and 2 were constrained to file a suit for partition of the suit schedule property and to pass a preliminary decree for determination of the shares in terms of the Will Deed.

After passing preliminary decree, the plaintiffs filed IA No.1980 of 2013 for passing of final decree by permitting them to go for a private sale and distribution of the proceeds of the sale consideration in proportion to the shares allotted to each of them in the preliminary decree dated 22.12.2012. The petitioner No.1/defendant No.1 filed counter claiming that the suit property is divisible by metes and bounds, the plaintiffs filed an application in IA No.1583 of 2015 for appointment of an Advocate Commissioner for the purpose referred to above. As the respondent did not file counter, the trial court upon hearing the argument of the counsel appearing for both the parties passed an order appointing Sri J.Krishna Murthy, as an Advocate Commissioner. Thereupon the said Advocate Commissioner on execution of warrant filed his report, which reads thus:

"On his physical verification of the schedule property, he found that the building seems to have built to serve the needs of joint family. In his opinion, on his inspection of the entire building, it does not appear to be divisible into four independent portions as per the shares allotted in the preliminary decree i.e., 30, 30, 30, 10 by metes and bounds for convenient enjoyment independently with all amenities like car parking space, water storage sump, water connection etc., and providing of independent entrances. Therefore, in view of the above, in his opinion, the suit

schedule property is not divisible into four shares as allotted in the preliminary decree by metes and bounds."

In view of the above observations, the Advocate Commissioner opined that the suit schedule property is not divisible into four shares as allotted in the preliminary decree by metes and bounds. In view of the above conclusion, the court permitted the petitioner to go for auction of the property invoking Section 2 of the Indian Partition Act. While the matter stood thus, the revision petitioner/1st Defendant, filed objections against the Advocate Commissioner's report raising the following objections.

- "1. *The Commissioner is totally wrong in stating that the suit building is not divisible into independent portions by metes and bounds as per the share allotted to the parties in the preliminary decree.*
2. *The drawing/plan of the suit building prepared by the Commissioner is not correct. The Commissioner omitted to note down the following:*
 - i) *The projection of the master bed room of plaintiff 1 into portion of defendant 1 and attached bathrooms and their plinth areas.*
 - ii) *The balconies in the first floor and their plinth areas.*
 - iii) *Portions in occupation of the plaintiff-1 and defendant 1 & 2 in the ground floor and first floor of the building.*
 - iv) *The share of the plaintiff-1 in the property is only 10% and he is not staying in Hyderabad at all."*

The Commissioner arrived at such conclusion without any basis and therefore, redirect the Commissioner to inspect the premises as it is. But the trial court did not consider the objections and passed the order impugned in this revision while observing that the report of the Advocate Commissioner will be taken into consideration at the time of passing final decree.

Aggrieved by the order, the present revision is filed on the ground that non-consideration of the objections on the report of the Advocate Commissioner is denial of an opportunity and it is against the principles of natural justice and that too, closing the petition without taking further steps is contrary to law and relying on the report of the Advocate Commissioner taking further steps in the matter is a serious error.

During the course of hearing, Sri O.Manohar Reddy, learned counsel for petitioner raised several contentions and drawn attention of this court to the decisions of the Apex Court in *R.Ramamurthi Iyer V.Raja V.Rajeswara Rao*¹, *Rani Alok Dudhuria and others V. Goutam Dudhuria and others*², *Shub Karan Bubna V.Sita Saran Bubna*³ and *Hasham Abbas Sayyad V.Usman Abbas Sayyad and others*⁴.

Based on the law laid down in the above decisions, the learned counsel

¹ (1972) 2 Supreme Court Cases

² (2009) 13 Supreme Court Cases 569

³ (2009) 9 Supreme Court Cases 689

⁴ (2007) 2 Supreme Court Cases 355

for petitioner prayed this court to set aside the order impugned exercising the powers conferred under Article 227 of the Constitution of India by rejecting Commissioner's Report.

Whereas, Sri Mahendra Rao, learned counsel for the respondent Nos.1 and 2 contended that the Commissioner's report cannot be brushed aside at this stage and the powers of this court under Article 227 of the Constitution of India is limited extent and none of the grounds are sufficient to interfere with the order passed by the court below and hence the order under challenge cannot be interfered with. In support of his contention, he placed reliance on the decisions of the Apex Court in *K.V.S.Ram V.Bangalore Metropolitan Transport Corpn.*,⁵ and *State through Special Cell, New Delhi V.Navjot Sandhu Alias Afshan Guru and others* ⁶ *Estralla Rubber V.Dass Estate (P) Ltd.*,⁷ and thereby, requested to dismiss the petition at the stage of admission itself.

Considering the above rival contentions of both the counsel and upon perusing the material available on record, the point for consideration in this revision is as follows:

Whether appointment of an Advocate Commissioner and accepting his report without considering the objections of the

⁵ (2015) 12 Supreme Court Cases 39

⁶ (2003) 6 Supreme Court Cases 641

⁷ (2001) 8 Supreme Court Cases 97

petitioner warrants interference of this Court while exercising powers under Article 227 of the Constitution of India ?

It is an undisputed fact that the Advocate Commissioner was appointed in IA No.1583 of 2015 in IA No.1980 of 2013 in OS No.513 of 2010 by the Chief Judge, City Civil Court, Hyderabad, for the purpose stated in the earlier paragraphs of this order. The Advocate Commissioner filed his report making certain objections which is extracted in the earlier paragraphs. But the petitioner/1st defendant allegedly filed objections on the Advocate Commissioner's report dated 18.02.2016 whereas, the order was passed on 21.07.2017. A bare look of the order impugned, the Chief Judge, City Civil Court, Hyderabad did not consider any of the objections and passed the order impugned in this revision.

Before advertng to the merits of the case, it is appropriate to look at the powers of this Court under Article 227 of the Constitution of India. The power under Article 227 of the Constitution of India is limited and such power can be exercised, revisional jurisdiction under Article 227 of the Constitution of India is limited and nature of the jurisdiction is supervisory over the subordinate courts or the tribunals under the control of the High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge passed by the subordinate court or tribunal

within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of the Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise. The court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances.

- "a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) when refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise."

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- "a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;

- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is found on no material or is perverse;
- e) To correct an error of law, not being an error apparent on the face of the record;
- f) To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

Article 227 of the Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of the Constitution of India, as held by the Apex Court in

State (N.C.T. of Delhi) V.Navjor Sandhu @ Afsan Guru⁸ that under Article 227 of the Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, such order cannot be interfered, since the power can be exercised only to keep the subordinate Courts or Tribunals within its bounds.

Thus, Article 227 of the Constitution of India confers power on the High Court not only supervisory but also superintendent power of judicial revision also even where no appeal or revision lies to the High Court under ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu.

As discussed above, in view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

⁸ (34) 2005 (3) ALT (CrI.) 125 (SC)

In **KVS Ram's case** cited supra (5), **Estralla Rubber's case** cited supra (7) and **Afsan Guru's case** cited supra (6) while dealing with the scope and powers of this Court under Article 227 of the Constitution of India the Apex Court was of the considered view that Article 227 of the Constitution of India, this court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law and justice, where if this Court does not interfere, a grave injustice remains uncorrected.

Thus, in view of the limited scope of jurisdiction vested on this court under Article 227 of the Constitution of India, and in view of the settled law by the Apex Court, it is appropriate to advert to the order passed by the court below which I extracted above.

The revision petitioner filed objections which I extracted in the earlier paragraphs. But, the Chief Judge, City Civil Court, Hyderabad passed order as extracted above, and observed that, then Commissioner's report will be taken into consideration at the time of passing final decree. Nowhere in the order, the Court discussed about the objections and not even adverted to them. The reason for not

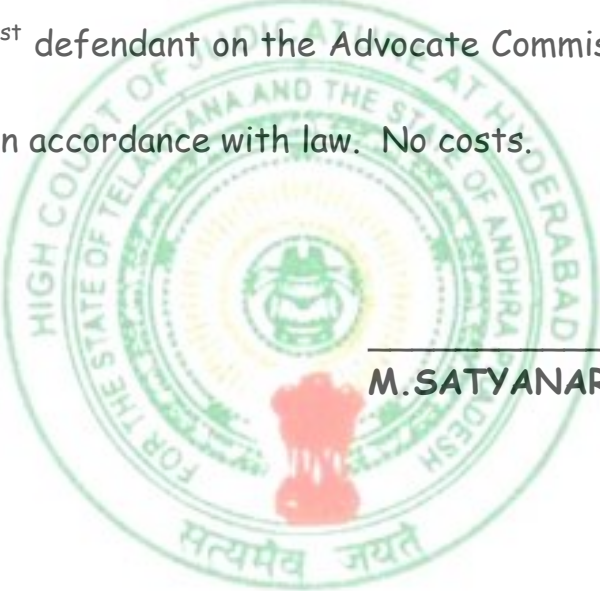
adverting to the objections is that, the objections were not filed within time. However, filed IA No.692 of 2007 in IA No.1980 of 2003 in OS No.513 of 2010 before the Chief Judge, City Civil Court, Hyderabad, with a request to condone the delay in filing objections on the Commissioner's report and receive the objection. But, the Court declined to receive the objections. However, this Court by order in CRP No.6803 of 2017 allowed the petition condoning delay in filing objections on the Commissioner's report and directed to receive the objections, consider and to pass appropriate orders in accordance with law.

In view of the directions issued in CRP No.6803 of 2017, the Chief Judge, City Civil Court, Hyderabad, is directed to decide the objections on the Commissioner's Report afresh and proceed further. If, for any reason, the objections on Commissioner's report were not considered, it would amount to violation of principles of natural justice and failure to afford a reasonable opportunity to the parties would render justice, injustice to the parties, since the proceedings are at the stage of final decree. Therefore, the order under challenge passed by the trial Court is in flagrant violation of principles of natural justice and contrary to the procedure being followed by the courts, more particularly, when the petitioner filed an objection on the Commissioner's report, the trial court ought to have considered the

objection/rejected the same and consequently, the impugned order is liable to be set aside.

Accordingly, the civil revision case is allowed. The impugned order passed in IA No.1583 of 2015 in IA No.1980 of 2013 in OS No.513 of 2010 on the file of Chief Judge, City Civil Court, Hyderabad, is set aside and the matter is remitted back to the trial court to pass appropriate orders in IA No.1583 of 2015 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 in accordance with law. No costs.

Dt.30.11.2018
Mjl/*


M. SATYANARAYANA MURTHY, J