

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.163 of 2019

ORDER:

This Revision is filed assailing the order dt.16.11.2018 in I.A.No.215 of 2018 in O.S.No.390 of 2004 of the Principal Senior Civil Judge, Warangal.

2. Petitioner is the plaintiff in the above suit. He filed the said suit for declaration of title and for recovery of plaint schedule property.

3. Written Statement was filed by the respondents opposing the suit claim.

4. The respondents then filed I.A.No.153 of 2008 in the suit for appointment of an Advocate Commissioner to measure the suit land, fix boundaries and to find out in which survey number the land is located with the help of an Official Surveyor attached to the Office of Assistant Director, Survey and Land Records, Warangal.

5. The said I.A., was allowed on 24.07.2008 and an Advocate Commissioner was appointed, but it appears that he did not execute the warrant issued to him by the Court and returned it and this was recorded in the IA docket on 13.09.2010.

6. Thereafter, another Advocate Commissioner was appointed on 22.11.2010. He also did not execute the warrant and returned it on 08.10.2012.

7. The Court then appointed a third Advocate-Commissioner on 08.10.2012, and on 24.06.2015 he also returned the warrant unexecuted.

8. Subsequently, the Court appointed a fourth Advocate-Commissioner on 23.07.2015. Though he started with the process of execution of the warrant, the Mandal Surveyor, Hanamkonda, who was assisting in the survey, got transferred and another surveyor was not available.

9. On 02.02.2018, when the matter was listed, the Advocate Commissioner did not turn up and the Court therefore dismissed I.A.No.153 of 2008 saying that no headway was made in the suit because of the delay in execution of the warrant by the Commissioner.

10. The respondents then filed I.A.No.215 of 2018 in I.A.No.153 of 2008 in the suit to set aside the order dt.02.02.2018 and restore the said I.A., and to issue warrant of commission again to the Advocate-Commissioner, who had partly executed the warrant, on the ground that location of the land is critical to the decision in the suit, and it would enable the Court to reach a just conclusion in the suit.

11. This application was opposed by the petitioner who contended that his suit is getting delayed because of non-cooperation of the Advocate-Commissioner from time to time and there is no necessity to set aside the order dt.02.02.2018 and restore the I.A.No.153 of 2018.

12. By order dt.16.11.2018, the Court below allowed I.A.No.215 of 2018 on payment of costs. It held that previous Advocate-Commissioners had returned the warrants unexecuted but Sri T.Gopala Krishna, Advocate-Commissioner had partly executed the warrant. It also held that in view of the contention of the respondents that report of the Advocate-Commissioner would aid in the final decision in the suit, it would be appropriate to set aside the order dt.02.02.2018 dismissing I.A.No.153 of 2008 and restore the said I.A. to the file of the Court below by imposing costs to enable the respondents to get the warrant of Commission executed through the said Advocate-Commissioner. It also fixed two months time for execution of the warrant by the Advocate-Commissioner.

13. Assailing the same, this Revision is filed.

14. Counsel for the petitioner reiterated the contentions raised by the petitioner in the Court below.

15. No doubt, the petitioner is a Senior Citizen and the suit filed by him in 2004 had been dragged on because of the non-cooperation of three Advocate Commissioners appointed earlier

and also of the Survey Department by transfer of the Mandal Surveyor subsequently. However, since the Court below was satisfied, while appointing the Advocate-Commissioner initially in I.A.No.153 of 2008 that localization of the suit schedule property would help in deciding the suit, and the Court below also while deciding I.A.No.215 of 2018 kept that issue in mind, I do not feel that there is any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

16. Therefore, this Civil Revision Petition is dismissed at the admission stage and direction is given to the Advocate-Commissioner to complete the execution of the warrant as directed by the Court below within the time stipulated in it. No order as to costs.

17. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

01st February, 2019.

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