

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.3557 of 2015

ORDER:

This Revision is filed assailing the order dt.10.07.2015 passed in E.A. No.13 of 2014 in E.P. No.204 of 2007 in O.S. No.8 of 1986 of the I Additional Senior Civil Judge at Warangal.

2. Petitioners herein are the Judgment Debtors in the said suit. 9, 11 and 12.

3. The said suit was filed for partition of the suit schedule properties by the 1st respondent herein against the petitioners and other defendants. A preliminary decree was passed in the said suit on 06.06.1994.

4. The preliminary decree was challenged in A.S. No.60 of 1994 but the said appeal was dismissed on 12.03.1999 along with the cross objections. Preliminary decree thus became final since there was no further appeal by any party.

5. Thereafter, an Advocate Commissioner was appointed in I.A. No.822 of 1996 in I.A. No.727 of 1994 on 11.10.1999 to propose allotment of the suit schedule properties among the parties.

6. He submitted a report and on that basis, on 23.12.1999 a final decree was passed in I.A. No.727 of 1994 in O.S. No.8 of 1986 by the Court of the I Additional Senior Civil Judge at Warangal.

7. It is important to note that the 1st respondent/plaintiff/DHR had claimed in the suit only 1/10th share to herself. However, the final decree states as under:

“1. That the respondent No.10 be and is hereby allotted plot No.10 in item No.2, plot No.8 in item No.3, plot No.6 in item No.4, plot No.10 in item No.5, plot No.8 in item No.6.

It is hereby allotted the plot No.9 in item No.2, plot No.10 in item No.3, plot No.10 in item No.4, plot No.7 in item No.5, plot No.6 in item No.6 to the petitioner. In view of the fact that the petitioner and respondent No.10 are mother and daughter and also taking into consideration of the memo filed by the respondent No.10, dt.13-4-1997.

It is hereby allotted the item No.1 to the petitioner and respondent No.10 in the house bearing door No.3-38 situated at Mamnoor village along with “A and B” portion as shown in the Commissioner’s plan. The common passage and well should be maintained as it is as per the present existing enjoyment of the parties concerned.”

8. Items 1 to 5 mentioned in the final decree are as under:

SCHEDULE A SHOWING THE LANDED PROPERTY SITUATED AT MAMNOOR VILLAGE OF WARDHANNAPET (M) OF WARANGAL DIST.

Sl. No.	Sy. No.	Dry/ Wet	Extent Ac-Gts	Hects.	Market Value Rs.
1.	313.C	Dry	0-24	0-60	11,000-00
2.	315	Dry	0-25	0-63	12,000-00
3.	316	Dry	1-10	0-125	25,000-00
4.	317-A	Dry	0-05	0-13	2,500-00
5.	329-B	Wet	1-03	0-108	43,000-00

Dry lands @ Rs.20,000/- per acre.

Wet lands @ Rs.40,000/- per acre.

9. The matter did not end there. There was difficulty in identifying the plots mentioned in the final decree and so E.P. No.204 of 2007 was filed by the 1st respondent for execution of the final decree. In that application she also prayed that judgment debtor 10/respondent 10 herein, who is her daughter should be given joint physical possession of H.No.3-38, which is item 1 of schedule “B” property.

10. An Advocate Commissioner was appointed in I.A. No.112 of 2008 to identify the properties as per the final decree and fix boundary stones and the Bailiff was directed to deliver possession of the same to the 1st respondent and the 10th respondent in terms of the final decree.

11. Petitioners herein preferred CRP. No.2046 of 2009 before this Court against the said order appointing Advocate Commissioner and on 15.06.2010 the said CRP was allowed, and the Executing Court was directed to take necessary steps for specific identification of each plot in each item as shown in the final decree and deliver possession of the plots that were allotted to the 1st respondent/DHR as per the final decree by taking assistance of the Mandal Surveyor.

12. Thereafter another Advocate Commissioner was appointed but he withdrew on 02.09.2010.

13. Subsequently, the Court appointed another Advocate Commissioner to execute the warrant with the help of Mandal Surveyor. He executed the warrant and submitted a report on 15.03.2011.

14. Petitioners filed objections to the said report but the objections were not accepted by the Executing Court. By order dt.28.01.2013 in E.P. No.204 of 2007, the Executing Court simply reiterated the clauses 1 and 2 of the final decree.

15. Petitioners then filed CRP.No.2896 of 2013 before this Court, which was disposed of on 25.07.2013 observing that if the Advocate Commissioner did not comply with the directions of the Executing Court in its order dt.28.01.2013, petitioners are free to file a fresh application before the lower Court for carrying out the directions contained in the said order in its letter and spirit by the Advocate Commissioner. The Court below was directed to consider any application, if filed by the petitioner, and pass appropriate orders after hearing the 1st respondent and the 10th respondent.

16. Petitioners then filed E.A. No.13 of 2014 stating that the Advocate Commissioner did not carryout directions contained in the order of the Executing Court dt.28.01.2013 in E.P. No.204 of 2007. They also contended that instead of dividing A schedule item into 50 plots, Advocate Commissioner had divided it into 10 plots and delivered some plots to respondents 1 to 10 and he had not redelivered some of the items which were earlier handed over to the respondents 1 to 10.

17. Counter affidavit was filed by the 1st respondent opposing the said application.

18. It was contended therein that the Executing Court had earlier overruled the objections of the petitioners and ordered delivery of possession, and the said order was also confirmed in CRP.No.2896 of 2013, and since the matter has been pending for a very long time, the application

filed by the petitioners be dismissed. It was also contended that the Executing Court cannot travel beyond the decree and the doctrine of *res judicata* would be applicable at the successive stages of the same litigation.

19. By order dt.10.07.2015, the Court below dismissed E.A. No.13 of 2014. In its order, it reiterated the events mentioned above and held that since it had already overruled the objections filed by the petitioners to the report of the Advocate Commissioner in its order dt.28.01.2013 passed in E.P. No.204 of 2007, the question of appointing a fresh Advocate Commissioner does not arise and there is no direction by this Court also to appoint a fresh Advocate Commissioner. It also pointed out that there is no mention by the petitioners as to what are the specific items of properties which were not redelivered to them; that on 27.12.2013 a Memo was filed by the 1st respondent/DHR that possession was delivered; and she was satisfied and the said memo had been recorded on 28.07.2013. Thereafter the present application was filed on 27.01.2014.

20. Assailing the same, this Revision is filed.

21. Counsel for the petitioners contended that the order passed by the Court below cannot be sustained since the Advocate Commissioner instead of delivering plot 10 in item 5 to the 1st respondent DHR and plot 7 in Item 5 to respondent 10, delivered plot 8 in item 5 to the 1st respondent and plot 9 to respondent 10. He also contended that the direction in the final decree was to allot particular plots in each of the items 2, 3, 4 and 6, but the Advocate Commissioner clubbed items 1 to 4, divided them and then allotted two plots therein to the 1st respondent and to the 10th respondent and the Advocate Commissioner thus violated the final decree.

22. A comparison of the final decree dt.23.12.1999 in I.A. No.727 of 1994 in O.S. No.8 of 1986 with the allotment made by the Advocate Commissioner through sketches which are filed as annexures to the Civil Revision Petition shows that the petitioners' contention is correct.

23. The counsel for the 1st respondent is unable to show how the actual allotment made by the Advocate Commissioner in the sketches prepared by him is in conformity with the final decree.

24. When this Court in its order dt.15.06.2010 in CRP.No.2046 of 2009 directed localizing by specific identification of each plot in each item as shown in the final decree and delivery of possession of the said plots to the parties as per the final decree, the Court below could not have ignored the said direction and permitted the Advocate Commissioner to allot different plots in each item to the 1st respondent and to the 10th respondent contrary to the final decree.

25. When this Court granted liberty to the petitioners in its order dt.25.07.2013 in CRP. No.2896 of 2013 to approach the Executing Court if the Advocate Commissioner did not comply with the directions contained in the order dt.28.01.2013 in E.P. No.204 of 2007, and the petitioners filed E.A. No.13 of 2014 pointing out the errors committed by the Advocate Commissioner, the Court below could not have simply rejected it on the ground that it had earlier rejected their objections to the Advocate Commissioners report.

26. As stated above, there is patent error in the allotment made by the Advocate Commissioner of plots to the 1st respondent and 10th respondent and it is clearly contrary to the final decree passed in the suit.

27. Though the counsel for the respondent sought to contend that the litigation has been going on incessantly for the last 30 years and a quietus be given to it by dismissing the CRP, I am unable to agree with the said contention. There cannot be execution of a final decree contrary to the final decree as occurred in the instant case.

28. Therefore, the impugned order is set aside; E.A. No.13 of 2014 is allowed and the Court below is directed to examine the issue about the allotment of plots to the 1st respondent and 10th respondent strictly in accordance with the order dt.15.06.2010 passed in CRP.No.2046 of 2009 and the final decree dt.23.12.1999 passed in I.A. No.727 of 1994 in O.S. No.8 of 1986 and ensure compliance in letter and spirit of final decree, which has admittedly attained finality. This exercise shall be completed within two months from the date of receipt of a copy of this order. Any allotment or delivery of possession of plots already done shall be reversed since it is contrary to the final decree.

29. In the result, this Revision is allowed. There shall be no order as to costs.

30. As a sequel, miscellaneous applications, if any pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 12.07.2019
LSK

