

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1142 of 2018

ORDER:

Heard the learned counsel for the petitioners and Sri Ch.Ramesh Babu, learned counsel for 3rd respondent.

2. Though respondent Nos.1 and 2 are served, there is no representation on their behalf. As regards 4th respondent, since the 3rd respondent is anyway represented, his presence is unnecessary.

3. Petitioners have filed this Revision Petition under Article 227 of the Constitution of India challenging the order dt.23-01-2018 in I.A.No.620 of 2017 in I.A.No.224 of 2009 in O.S.No.96 of 2005 of the Junior Civil Judge, Alampur.

4. The said suit was filed for declaration of title, mandatory injunction and damages etc.

5. The Advocate Commissioner had been appointed to note down the topographical features vide order dt.17-03-2008 in I.A.No.91 of 2007 in O.S.No.96 of 2005. However, it appears that he did not execute the warrant.

6. Petitioners thereafter filed I.A.No.224 of 2009 to discharge the Surveyor Commissioner Sri Asaiah appointed in I.A.No.91 of 2007 and appoint Inspector of Surveyor in his place to

carryout the survey work as per order dt.17-03-2008 in I.A.No.91 of 2007.

7. The said I.A. was dismissed on 06-10-2017 on the ground that the Advocate Commissioner had not executed the warrant and also did not return it and he was absent when the matter was listed.

8. 11 days later, petitioners filed I.A.No.620 of 2017 to restore the same by condoning the delay of 11 days in filing the said application.

9. By the impugned order dt.23-01-2018, the said I.A. has been rejected.

10. Challenging the same, this Civil Revision Petition is filed.

11. When the core issue in the I.A. is whether the delay is liable to be condoned or not, unfortunately, the Court below seems to have proceeded on the merits of I.A.No.224 of 2009 and dismissed I.A.No.620 of 2017 which it ought not to have done. Also, when the Court had appointed an Advocate Commissioner to execute the warrant and he did not do it, petitioners cannot be penalized by the Court in that regard by dismissing I.A.No.224 of 2009 in its entirety.

12. Though learned counsel for the respondents sought to support the said order on the reasoning given by the Court below, I am

of the opinion that the Court below had wrongly exercised its jurisdiction in dismissing I.A.No.620 of 2017.

13. Accordingly, the Civil Revision Petition is allowed; order dt.23-01-2018 in I.A.No.620 of 2017 is set aside; I.A.No.620 of 2017 is allowed and I.A.No.224 of 2009 is restored to the file of the Court below and the said Court is directed to decide the same within six weeks, after hearing both sides. No costs.

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-01-2019

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