

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3541 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.24.04.2018 in I.A.No.124 of 2018 in O.S.No.136 of 2013 of the Principal Junior Civil Judge, Mahabubabad.

2. Petitioner is the defendant in the above suit.
3. Respondent filed the said suit against the petitioner for a perpetual injunction restraining the petitioner from interfering with his alleged peaceful possession and enjoyment over the plaint schedule property, which is an agricultural land admeasuring Ac.0.27 gts., in survey No.259 of Mahabubabad Village and Mandal, Warangal District.
4. Written statement was filed by the petitioner opposing the suit claim. It is specifically contended therein that the suit schedule property is not located in survey No.259; that the boundaries shown by the respondent are false and it would fall in survey Nos.258 and 260 of Mahabubabad Revenue Village, and suppressing these facts the suit has been filed.

5. Pending suit, petitioner filed I.A.No.240 of 2014 to appoint Advocate-Commissioner to locate the suit schedule property in survey No.257 or 258 or 260 or 259 and to note down the physical features with the help of Mandal Surveyor.

6. Respondent reported no objection to it.

7. On 21.07.2015, the said application was allowed and an Advocate-Commissioner was appointed to visit the suit schedule property, locate the same, note down the physical features, take photographs and draw sketch map.

8. Two years later, the Advocate Commissioner filed a Memo on 19.09.2017 stating that he issued notice to the Mandal Surveyor on 14.09.2017 and the latter endorsed on the notice that Tippians of the said survey numbers are not available in the Tahsil Office and they are available in the office of the Deputy Inspector of Survey, and requesting the Court to issue notice to the Deputy Inspector of Survey, Mahabubabad.

9. Thereupon, on the same day, i.e., on 19.09.2017, the Court below recorded the Memo and directed the Advocate Commissioner to approach the Deputy Inspector of Survey, Mahabubabad and file report.

10. The Advocate Commissioner however did not file any report.

11. Therefore, a Docket Order was passed on 31.10.2017 closing I.A.No.240 of 2014 and the Court commenced evidence in the matter.

12. Petitioner on 09.04.2018 filed I.A.No.124 of 2018 to reopen I.A.No.240 of 2014 and give necessary directions to the Advocate Commissioner to comply with the order passed by it on 21.07.2015 in I.A.No.240 of 2014 and to execute the warrant. In the said affidavit he also stated that he had suffered kidney damage and was undergoing treatment and so there was some delay in approaching the Court.

13. Counter was filed by the respondent opposing the said application stating that the said application was filed only to drag on the suit proceedings. It was pointed out that I.A.No.240 of 2014 was closed on 21.07.2015 but the petitioner filed the present I.A. on 09.04.2018 and he did not explain the two years delay in filing the petition(I.A.No.124 of 2018).

14. By order dt.24.04.2018, the Court below dismissed the said application. It observed that the Advocate-Commissioner did not file his report; that petitioner did not take steps for

filing of Advocate-Commissioner's report and when the petitioner was asked to lead evidence, this application has been filed without enclosing the report of the Advocate-Commissioner. It was recorded that *because there were instructions given by higher authorities for disposal of the old matters*, this I.A., is being dismissed.

15. Assailing the same, this Revision is filed.

16. Counsel for the petitioner contends that the petitioner cannot be blamed for the delay of the Advocate-Commissioner to execute the warrant entrusted to him pursuant to the order dt.21.07.2015 in I.A.No.240 of 2014; that when the Advocate Commissioner reported that tippans are not available and filed memo on 19.09.2017, the Court below simply gave liberty to the Advocate-Commissioner to approach the Deputy Inspector of Survey, Mahabubabad to get the Tippans; that the Court below did not initiate any action against the Advocate-Commissioner for not securing the said tippans and closed the I.A.No.240 of 2014. He contended that the action of the Court below in not only closing I.A.No.240 of 2014 without enquiring from the Advocate Commissioner why he did not file the report and in refusing to reopen the said I.A., caused grave prejudice to the petitioner and the said order deserves to be set aside.

17. Counsel for the respondent on the other hand contended that the Court below was right in dismissing the said I.A., because the petitioner was trying to drag on the proceedings in a suit of the year 2013. He also contended that there is no necessity to appoint Advocate-Commissioner at all, since the petitioner did not file enough material before the Court below and the initial appointment of the Advocate-Commissioner itself is not correct.

18. I have noted the contentions of both sides.

19. Firstly, when the respondent had reported no objection to the application I.A.No.240 of 2014 filed by the petitioner for localization of the suit schedule property and to note down the physical features, and the Court below had passed an order dt.21.07.2015 on the basis of the said consent/no objection for appointing the Advocate-Commissioner, the respondent cannot now take a contra plea and find fault with the very appointment of Advocate-Commissioner itself. He cannot be permitted to blow hot and cold in this manner.

20. Secondly, the Advocate-Commissioner appointed in I.A.No.240 of 2014 on 21.07.2015 did nothing for almost two years till he filed the Memo on 19.09.2017 stating that Tippans are not available with the Mandal Surveyor and he

came to know that they were available with the Deputy Inspector of Survey and requested the Court on 19.09.2017 to issue notice to the Deputy Inspector of Survey, Mahabubabad.

21. Instead of coming to the aid of the Advocate Commissioner by giving such a direction to the Deputy Inspector of Survey, Mahabubabad, the Court below on 19.09.2017 asked the Advocate-Commissioner to approach the Deputy Inspector of Survey, Mahabubabad and file report.

22. This action of the Court below cannot be sustained because it is the duty of the Court to ensure that the Advocate Commissioner is provided the material to conduct the survey and it cannot refuse to come to the aid of the Advocate-Commissioner by giving a direction to the Deputy Inspector of Survey, Mahabubabad to provide Tippans for executing the Warrant of Commission.

23. When the petitioner filed I.A.No.124 of 2018 to reopen the said I.A. by pointing out the failure of the Advocate-Commissioner to do anything in the matter, the Court below could not have simply dismissed I.A.No.124 of 2018 quoting *instructions of higher authorities for disposal of old matters*

and blaming the petitioner for not taking steps to file the Advocate-Commissioner's report.

24. This is clearly a perverse approach and cannot be countenanced under any circumstance.

25. Accordingly, this Civil Revision Petition is allowed with costs of Rs.1,000/-; the order dt.24.04.2018 in I.A.No.124 of 2018 in O.S.No.136 of 2013 of the Principal Junior Civil Judge, Mahabubabad, is set aside; and the said I.A., is allowed; I.A.No..240 of 2014 is reopened and restored to the file of the said Court; and the Court below is directed to give necessary directions to the Advocate-Commissioner, M.Satyanarayana, or to appoint any other Advocate-Commissioner to execute the Warrant of Commission issued by it on 21.07.2015 in I.A.No.240 of 2014 and ensure speedy execution of the warrant by the Advocate-Commissioner by directing the Deputy Inspector of Survey, Mahabubabad to furnish the Tippans necessary for execution of the Warrant of Commission.

26. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

26th April, 2019.

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