

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.6852 of 2018

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the Docket Order dt.21.06.2017 on the file of the Principal Junior Civil Judge, Siricilla in I.A.No.3 of 2007 in O.S.No.124 of 2006.

2. The petitioners herein are defendants in the above suit.
3. The respondent filed the suit against petitioners for a perpetual injunction restraining them from interfering with his peaceful possession and enjoyment of the suit schedule property.
4. Written statement was filed opposing the suit claim.
5. The petitioners then filed I.A.No.3 of 2007 seeking appointment of an Advocate-Commissioner to note down the physical features of the suit schedule property and to file a report, alleging that the features in the suit land, insofar as the sketch map filed by respondent is concerned, are different from what are actual in existence on the spot, and for elucidation of the matter, the appointment of an Advocate-Commissioner was necessary.
6. This application was allowed by the Court below, and the Advocate-Commissioner filed his report in the Court below on 11.12.2013.

7. The petitioners / defendants filed objections to the said report on 09.06.2017.

8. However, the respondent did not file any objection.

9. Then on 21.06.2017, the Court below passed the following order :

“Objections filed by respondent / defendant on 09.06.2017. No objection reported by plaintiff counsel, hence further proceedings closed. Subject to taking into consideration of CR at appropriate time.”

10. Assailing the same, the present Civil Revision Petition is filed.

11. The counsel for petitioners contended that when petitioners have filed objections to the Advocate-Commissioner's report, merely because the respondent did not file any objections thereto, the Court cannot say that it will consider only the Commissioner's report at the appropriate stage, and not the objections filed by the petitioners.

12. Though the counsel for respondent stated that the above order implied that the Court would also consider the objections of petitioners, in the absence of any statement therein that the Court would also consider the objections of the petitioners to the Advocate-Commissioners' report at the appropriate stage, *prima facie*, it appears that the Court might not consider the said objections filed by the petitioners to the Advocate-Commissioner's report.

13. The counsel for respondent does not deny that objections filed by petitioners to the Commissioner's report are also required to be considered by the Court before disposing of the suit in its final judgment.

14. In this view of the matter, the order dt.21.06.2017 in I.A.No.3 of 2007 in O.S.No.124 of 2006, is set aside. The Court below is directed to consider the Advocate-Commissioner's report as well as the objections filed by petitioners on 09.06.2017 to the said report at the appropriate stage while deciding the suit.

15. Accordingly, the Civil Revision Petition is allowed as above.
No order as to costs.

16. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06.03.2019

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