

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.7371, 7442 and 7292 of 2018

COMMON ORDER:

These Revisions are filed challenging the common order passed on 03-10-2018 in I.A.Nos.623, 624 and 625 of 2018 in I.A.No.1385 of 2013 in O.S.No.126 of 2011 of the Senior Civil Judge, Peddapalli.

2. Petitioner in all these Revisions is plaintiff in the said suit.
3. The said suit was filed for declaration of title of petitioner and for a perpetual injunction.
4. Pending suit, it appears that in I.A.No.1385 of 2013, an Advocate-Commissioner had been appointed by the Court below and he submitted a report on 20-07-2017. The petitioner had reported no objection to the Advocate-Commissioner's report.
5. Thereafter petitioner filed I.A.No.404 of 2018 and other petitions to reopen the suit and all these I.As. were dismissed on 24-04-2018. Thereafter the suit was heard in part.
6. At that stage, the petitioner filed I.A.No.623 of 2018 under Order XXVI Rule 10(2) C.P.C. to grant permission to cross-examine the Advocate-Commissioner in I.A.No.1385 of 2013 in the open Court regarding the matters referred to by him in his report and the manner in which he made demarcation of the lands in Sy.Nos.352/C, 352/D1 and 353; I.A.No.624 of 2018 under Order XVI Rule 1 C.P.C.

to summon the Mandal Surveyor for the purpose of cross-examination to ascertain the facts which happened during the time of execution of the Commission warrant by the Advocate-Commissioner appointed in I.A.No.1385 of 2013; and I.A.No.625 of 2018 under Section 151 C.P.C. to grant permission to cross-examine the Advocate-Commissioner and Mandal Surveyor.

7. In these three applications, it was contended firstly that the Mandal Surveyor did not survey the land in Sy.No.352/D1 in respect of which the relief of declaration of title was sought, and it was contended that he did not do so because the tippon of the said land was not available; and the Mandal Surveyor can take the help of the Additional Director of Survey and Settlement of the Records of Peddapalli District for conducting survey and fixing of boundary stones if no particulars were available in his office in respect of the said survey number.

8. By order dt.03-10-2018, these three applications were dismissed observing firstly that the petitioner had initially not objected to the Advocate-Commissioner's report at all when it was filed on 20-07-2017; that the matter was then posted for arguments and in fact after submission of petitioner's arguments, respondent's counsel had also argued the matter to some extent; and there was no application filed for re-entrustment of the warrant of the Advocate-Commissioner to execute it further and to fix the boundary stones. The Court below therefore observed that petitions appear to have been

filed to drag on the suit and this cannot be permitted. It also observed that whatever points the petitioner is now raising can still be argued, and cross-examination of Advocate-Commissioner or Mandal Surveyor, who have no personal interest in the case, is not at all required.

9. Assailing the same, these three Revisions are filed.

10. Though learned counsel for petitioner sought to contend that grave prejudice would be caused to petitioner if Advocate-Commissioner and Mandal Surveyor are not cross-examined with regard to the manner in which the Advocate-Commissioner executed the warrant of Commission entrusted to him pursuant to order in I.A.No.1385 of 2013, the fact remains that petitioner had in fact not objected to the Advocate-Commissioner's report at all. Only thereafter the Court had posted the matter for hearing of arguments and arguments of petitioner and a portion of arguments of respondent had already been heard. At that stage, these applications had been filed seeking cross-examination of Advocate-Commissioner and the Mandal Surveyor. Petitioner, if she is objecting to the manner in which the Advocate-Commissioner executed his warrant of Commission, should have also sought for re-entrustment of warrant to the Advocate-Commissioner to do what according to petitioner he did not do earlier. Having failed to do so, after the final arguments in the suit have started, it is not open to the petitioner to now seek to cross-examine the Mandal Surveyor and the Advocate-Commissioner. As

rightly observed by the Court below, petitioner can still argue the points which she wishes to urge on Advocate-Commissioner's report, and there was no necessity to cross-examine either the Advocate-Commissioner or the Mandal Surveyor in the matter since they have no personal interest in the case.

11. I therefore do not find any merit in these Revisions and they are accordingly dismissed at the stage of admission. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-02-2019
Vsv

