
(2010) 07 AP CK 0100

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 379 and 464 of 2010

Smt. S. Alima Bi and S. Sali Basha

APPELLANT

Vs

G. Masthan Reddy

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 16 Rule 2, Order 26 Rule 18A, Order 7 Rule 14, 151

Citation : (2010) 6 ALD 7

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K.V. Raghu Veer, for the Appellant; B. Narasimha Sarma, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This Court while ordering notice before admission granted interim stay for a limited period in these Civil Revision Petitions and the said interim stay is being extended from time to time.

2. The Revision Petitioners are Defendants in O.S. No. 248/2003 on the file of Additional Senior Civil Judge, Kurnool. The Respondent/Plaintiff filed two applications I.A. Nos. 838/2009 and 837/2009 in O.S. No. 248/2003 on the file of Additional Senior Civil Judge, Kurnool under Order XVI Rules 1 and 2 of the CPC (in short hereinafter referred to as "Code" for the purpose of convenience) to issue summons to the Advocate Commissioner in E.P. No. 357/2005 to give evidence and to mark his report as Exhibit and the other application under " Order VII Rule 14 r/w. Section 151 of the Code had been filed praying to receive the documents - certified copy of Commissioner's report in E.A. No. 959/2006 in E.P. No. 357/2005 in O.S. No. 248/2003, certified copy of the plan of Town Survey in E.A. No. 959/2006 in E.P. No. 357/2005 in O.S. No. 248/2003, certified copy of lay out plan in E.A. No. 959/2006 in E.P. No. 357 2005 in O.S. No. 248/2003 and certified copy of objection of the Respondent filed in E.A. No.

959/2006 in E.P. No. 357/2005 in O.S. No. 248/2003. In the light of the respective stands taken by the parties i.e., the averments made in the affidavit filed in support of the application and also the stand taken in the counter affidavit, the learned Judge after recording reasons ultimately allowed the said applications. Aggrieved by the same, these Revisions had been preferred.

3. Sri K.V. Raghuveer, the learned Counsel representing the Petitioners/DEFENDANTS would maintain that the learned Judge totally erred in allowing the applications for summoning the Advocate-Commissioner for marking of the Commissioner's report which was appended in E.P. No. 357/2005 even though the said proceedings were set aside by this Court in C.R.P. Nos. 1834 and 3083/2008. The learned Counsel also would maintain that the learned Judge also totally erred in permitting the reception of documents and by virtue of such permission granted virtually the order made by this Court in C.R.P. Nos. 1834 and 3083 of 2008 had been circumvented. The learned Counsel also further pointed out that even otherwise, when in the light of the dispute relating to the boundaries when clear observations had been made in the Civil Revision Petitions aforesaid and the award of Lok Adalat itself had been set aside and the suit was restored to file, it may that liberty may be given to the parties to move appropriate applications for appt of fresh Commissioner but for marking such report of the Commissioner especially appended in E.P. which in a way indirectly had been challenged in C.R.P. Nos. 1834 and 3083/2008, definitely cannot be sustained.

4. Per contra, Sri Narasimha Sarma, the learned Counsel representing the Respondent would maintain that it is true that in view of the controversy between the parties relating to boundaries, award made by the Lok Adalat had been set aside by this Court and the suit was restored to file with a direction to the learned Additional Senior Civil Judge, Kurnool to dispose of the suit at the earliest point of time. The learned Counsel also would maintain that it is also true that the appointment of the Commissioner was" made in the E.P. in the self-same suit and such appointment of the Commissioner in the E.P. also being permissible in view of Order XXVI Rule 18-A of the Code, the learned Judge thought that. appointing another Advocate-Commissioner may not be just and proper and there may not be any necessity to move yet another application for the said purpose and in the light of the same the learned Judge after recording reasons ultimately came to the conclusion that in the interest of justice these applications are to be allowed and accordingly the said applications had been allowed. Inasmuch as the learned Judge exercised discretion in proper perspective, these are not fit matters to be interfered with under Article 227 of the Constitution of India. The learned Counsel also pointed out to the observations made in paras 6 and 7 by this Court in C.R.P. Nos. 1834 and 3083 of 2008.

5. Heard the Counsel.

6. This Court had gone through the Common Order made by the learned

Additional Senior Civil Judge, Kurnool in I.A. Nos. 838 and 837 in O.S. No. 248/2003. The learned Judge at paras 4 and 5 observed:

The Petitioner filed the suit for specific performance of agreements. The record shows that once the matter was settled before the Lok-Adalat and award was passed basing on which execution proceedings were initiated and later the matter went up to High Court. The High Court restored the suit to file with a direction to dispose of the case within six months from the date of receipt of the copy of the order of the High Court in C.R.P. Nos. 1834 and 3083 of 2008 dt.15-10-2008. The order copy was received by this Court on 21-11-2008. Subsequent to the receipt of the order of the High Court the suit was restored to file and the Plaintiff/Plaintiff commenced trial on 4-2-2009 by filing chief-examination affidavit. Since then the matter underwent several adjournments, by 1-7-09 the Plaintiff examined another witness. Thus in total the Plaintiff examined two witnesses including himself. At the stage when the case is coming for further evidence, the Petitioner filed these petitions to issue summons to the Advocate Commissioner, who was appointed as Commissioner in E.P. No. 357/2005 and to mark the documents as stated above, to give evidence on his behalf and to receive documents.

The record shows that the Petitioner/Plaintiff filed E.P. No. 357/2005 to execute the award passed by the Lok-Adalat. The Respondents contested that petition and they filed E.A. No. 959/2006 in which Advocate-Commissioner by name P. Sreenivasulu was appointed to note down the physical features of the schedule property and to file his report and accordingly he filed his report. As per the direction of the High Court, the suit is restored to file. The dispute between the parties is relating to the property, sold under the agreements in pursuance of which the suit is filed. As argued by the Petitioner, I find that the examination of the Advocate Commissioner, who inspected the property and filed his report is proper and necessary to come to a right conclusion in deciding actual dispute between the parties and receive the documents. If the Respondents have got any objection, they are at liberty to raise their objection at the time of marking the documents which will be considered at that time. Hence, petitions are allowed.

7. There is no serious dispute or controversy that the appointment of Commissioner was made in E.P., no doubt in the self-same suit. Order XXVI Rule 18-A of the Code dealing with Application of Order to execution proceedings specifies "The provisions of this Order shall apply, so far as may be, to proceedings in execution of a decree or order." It is pertinent to note that the award made by the Lok Adalat no doubt had been set aside by this Court in C.R.P. Nos. 1834 and 3083/2008 by order-dated 15-10-2008. This Court observed at paras 6 and 7 as hereunder:

The fact that the parties agreed and by virtue of the compromise the award was made by the Lok Adalat is not in dispute. It appears subsequent thereto an application in I.A. No. 318/2005 in O.S. No. 248/2003 is filed praying for amendment of the schedule i.e., change of door number and the same was

allowed. It is also not in serious controversy that the award of Lok Adalat as such does not contain any schedule. Not being satisfied with the allowing of the said application, the Respondent-Plaintiff further filed another application in E.A. No. 417/2006 in E.P. No. 357/2005 in O.S. No. 248/2003 praying for further rectification and further clarification in the schedule. There appears to be some controversy relating to the boundaries and also some alleged encroachment. This Court is not inclined to express any opinion touching the merits and demerits. Certain portions of the report of the Commissioner also had been pointed out. Be that as it may, here is a case where by consent of parties the award was made by the Lok Adalat. It is needless to say that if the parties consent for any rectification to the schedule definitely it can be made and the award can be put into execution and in such circumstances may be the Respondent-Plaintiff is entitled to get a regular registered sale deed in terms of such award for the reasons best known subsequent thereto the revision Petitioners-Defendants are not willing of execute the sale deed in relation to the changed door number or changed boundaries as the case may be. In such circumstances, inasmuch as no schedule as such had been appended to the award made by the Lok Adalat and in view of the fact that the particulars given in the agreements and the particulars now to be introduced by virtue of the amendment and whether such amendment even if to be allowed relate to the self same property or different property, these questions cannot be effectively adjudicated by the Lok Adalat and hence remitting the matter to the Lok Adalat again may not serve any purpose. Inasmuch as an award would be made by the Lok Adalat by consent of the parties, in the peculiar facts and circumstances of the case, this Court is of the considered opinion that the continuance of the award may not serve any useful purpose in view of serious controversy relating to the identity of the property, the same is hereby set aside and the suit O.S. No. 248/2003 on the file of Additional Senior Civil Judge, Kurnool, is restored to file. The orders impugned in the Civil Revision Petitions are hereby set aside.

However, it is made clear that inasmuch as the suit is being restored, liberty is given to the parties to move appropriate applications in this regard, if they are so advised. Let the learned Additional Senior Civil Judge, Kurnool decide the suit in accordance with law. Inasmuch as the award of Lok Adalat is being set aside and the suit is being restored to file, let the learned Additional Senior Civil Judge, Kurnool dispose of the suit at the earliest point of time preferably within a period of six months from the date of receipt of a copy of this order.

8. The award of Lok Adalat no doubt had been set aside by this Court. In the light of the observations made by this Court since there is serious controversy between the parties relating to the boundaries, the learned Judge thought it fit to exercise the discretion by permitting the documents referred to supra to be received and also by permitting the Respondent herein to examine the Commissioner for the purpose of marking the report of the Commissioner. It is needless to say that the Revision Petitioners are at liberty to cross examine the Commissioner at length if they are so advised and the evidentiary value of these

documents also may be considered at the appropriate stage by the learned Judge. When the learned Judge had recorded convincing reasons and exercised the discretion in allowing the applications, this Court is of the considered opinion that these are not fit matters to be interfered with especially under Article 227 of the Constitution of India. Accordingly, the Civil Revision Petitions shall stand dismissed at the stage of admission. No costs