

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

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**APPEAL SUIT No.64 of 2016**

**JUDGMENT:**

This appeal is directed against the order dated 13.08.2014 in E.A.No.17 of 2012 in E.P.No.2 of 2011 in O.S.No.15 of 2008 on the file of the Court of the Principal District Judge, Karimnagar (for short, trial Court).

2. The case of the appellant is that the first respondent herein filed O.S.No.15 of 2008 before the trial Court as against the second respondent herein seeking specific performance of an agreement of sale dated 05.03.2003 and obtained a judgment and decree in respect of land admeasuring Ac.2-16 guntas in Sy.No.115/A and Ac.4-00 guntas in Sy.No.161/B, situated at Bhupalapatnam Village, Choppadandi Mandal, Karimnagar District. The first respondent filed E.P.No.2 of 2011 wrongly for Sy.No.162/C instead of 161/B under the guise of mis-description of Sy.No.161/B. She was given Acs.2-20 guntas of land in Sy.No.162/B towards pasupu kumkuma under a registered gift settlement deed dated 30.05.2005 vide document No.741/2005 much earlier to the suit agreement. She filed O.S.No.68 of 2012 on the file of the Court of the Senior Civil Judge, Karimnagar for partition claiming 1/4<sup>th</sup> share in the suit properties and the said Court granted interim injunction not to alienate the suit property and that the decree in O.S.No.15 of 2008 cannot be enforced unless and until a separate share of the appellant to the extent of 1/4<sup>th</sup> share is allotted with metes and boundaries and subject to the result of O.S.No.68 of 2012.

3. The learned counsel for the appellant submits that the trial Court failed to appreciate that the appellant is entitled for 1/4<sup>th</sup> share in the scheduled properties. The trial Court did not allow the appellant to adduce the evidence in support of her claim. He further submits that the trial Court in its order observed that when the plea of the appellant for

adducing the evidence is rejected, she did not challenge the said order. But, said order is only preliminary order, against which, no appeal of revision arises. The trial Court ought to have permitted the appellant to adduce the evidence in support of her claim.

4. A counter-affidavit has been filed by the first respondent. The learned counsel for the first respondent has drawn the attention of this Court to the common order of this Court dated 30.03.2015 passed in CRP.No.2982 of 2014 and CRP(SR).No.23826 of 2014. It is pertinent to mention here that the aforesaid petitions were filed by the father of the appellant herein who raised the same issue as raised in the present appeal. In the said petitions, after hearing both the parties, this Court passed the order as under:

“23. The facts and circumstances of the cases and the principles and parameters laid down in the above referred judgments drive this Court towards an irresistible conclusion that the petitioner herein has totally failed in making out a case, warranting any interference or indulgence of this Court under Section 115 of the Code of Civil Procedure. The contentions sought to be pressed into service by the learned counsel for the petitioner are liable to be rejected as being devoid of any merit. The fact remains that the decree holder is seeking specific performance of contract in respect of the property within the boundaries as mentioned in the suit agreement of sale and decree only and in the name of mis-description of one of the survey numbers, the legitimate right of the decree holder cannot be permitted to be frustrated. Therefore, this Court is of the considered opinion that the Court below correctly exercised its jurisdiction to enable the decree holder to get the fruits of the decree.”

5. It is further important to mention here that pursuant to the order of the trial Court dated 31.12.2013 in E.P.No.2 of 2011, the learned Advocate Commissioner submitted his report on 10.06.2014 and paragraph No.9 of the said report reads as under:

“The total measured suit land is Ac.6-13G (in Sy.No.115/A measuring Ac.2-16G and Sy.No.162/C measuring Ac3-37G) is in a compact block and the area under the way measuring 0-03 gts., is deducted as furnished by surveyor. Therefore, on my physical verification and investigation to avoid confusion of identify of suit land have specifically added the required correct boundaries of owners of the suit land which is as follows:-

East:- P.W.D. road and a portion of land of Munigala chandraiah in Sy.No.178/B and land in Sy.No.178/A belongs to Gurram Madhusadhan

Reddy.

West: Land of Gurram Mallareddy in Sy.No.116 and Gurram Ananthareddy in Sy.No.161

North: Temporary way and land of vendor.

South: Land of Mangali (Garshakuthi) Komuraiah

Therefore, the land covered in the suit schedule boundaries are Sy.Nos.115/A and 162/C as mentioned above, but the given Sy.No.161/B of the Suit land is not within in the suit boundaries.”

6. This Court noted in para 11 of the common order dated 30.03.2015 as under:

“ 11. A perusal of the said Commissioner’s report clearly discloses that the learned Commissioner took the assistance of the Senior Surveyor deputed by the Assistant Director of Survey and Settlement Department, Karimnagar and the Village Revenue Officer and Village Revenue Assistant attended the spot and the Commissioner executed the warrant in the presence of decree holder and judgment debtor and his two sons and prepared a map also, showing the boundaries. Subsequently, vide order, dated 13-08-2014 in E.A.No.62 of 2013 the learned Prl. District Judge accepted the said report of the Advocate Commissioner. The said order, dated 13-08-2014 is under challenge in C.R.P.No.2982 of 2014, whereas the order, dated 31-12-2003 is under challenge in C.R.P.(SR) No.23826 of 2014.

12. The objections of the judgment debtor for enforceability of the said decree are that the E.P. court cannot travel beyond the decree granted by the original Court and there can be no appointment of Commissioner in E.P. proceedings and only in suits Commissioners can be appointed and the E.P. Court exceeded its jurisdiction by appointing an Advocate Commissioner for localizing and identifying the property and the respondent/plaintiff should have sought for amendment of the schedule of the plaint as well as the decree.

13. The contention that in Execution Proceedings, Commissioner cannot be appointed and the E.P. Court has no power to appoint Commissioner under Order 26 Rule 9 of the Code of Civil Procedure has absolutely no merit in view of the reason that as per Order 26 Rule 18-A of the Code of Civil Procedure, the provisions of Order 26 of Code of Civil Procedure are applicable to the proceedings in execution of a decree or order also.”

7. Since the issue raised in the present appeal has already been decided by this Court in the said CRPs, in my considered opinion, there are no merits in the present appeal and the same is accordingly dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

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**SURESH KUMAR KAIT, J**

Date: 16.06.2016  
TJMR