

**THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI**

**CIVIL REVISION PETITION No.224 OF 2017**

**ORDER:-**

The present civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC') is filed assailing the order dated 27.10.2016 passed in E.P.No.26 of 2014 in LAC No.56 of 2011 in O.S.No.120 of 2010 on the file of the Court of Principal Junior Civil Judge, Sattenapalli, Guntur District.

2. The case of the petitioner/defendant in brief is that:

The revision petitioner is the defendant in O.S.No.120 of 2010. The respondents / plaintiffs filed O.S.No.120 of 2010 seeking the relief of permanent injunction. After filing of written statement, the matter was referred to Lok Adalat and in view of the settlement in Lok Adalat, an award was passed on 05.03.2011. Thereafter, execution petition under Order XXI Rule 32 CPC is filed seeking to send the plaintiffs/ Judgment Debtors to civil prison for violating the terms of award passed in LAC No.56 of 2011 and to attach the movable properties of the Judgment Debtors towards compensation.

3. The E.P was dismissed by the Court below observing that the Lok Adalat award discloses that the Judgment Debtors are entitled for 19.4 inches on Northern side and 23.6 inches on Southern side and they are within that site as per commissioner's report. The E.P filed by the Decree holder alleging that the Judgment debtors are claiming more site than the extent of 19.4 inches on Northern side and 23.6 inches on Southern side is disbelieved. Even the

averments of Decree holder in his affidavit lacks the date of alleged encroachment of the site by the Judgment debtors or the extent of site encroached by the Judgment debtors. Hence, in the absence of any details regarding the alleged encroachment made by the Judgment debtors, a bare averment that Judgment debtors are claiming more extent than 19.4 inches on Northern side and 23.6 inches on Southern side is not suffice to detain the 2<sup>nd</sup> Judgment debtor in civil prison and attach his movable properties and dismissed the execution petition. Aggrieved by the said order, the petitioner has come before this Court by way of this revision.

4. Heard Sri B.Chinnapa Reddy, learned counsel for the petitioner and Sri GVS Mehar Kumar learned counsel appearing on behalf of the 2<sup>nd</sup> respondent.

5. Learned counsel for the petitioner submits that while passing the order impugned the Court below failed to take into consideration the Lok Adalat award, Commissioner's report. As per the award, the Judgment debtors are having 19.4 feet on their Northern side and 23.06 feet on their Southern side, but the Judgment debtors are claiming more extent than that was recorded in Lok Adalat award which has not been taken into consideration by the Court below. He further submits that the Commissioner's report also supports the case of the petitioner that the Judgment debtors have encroached the land beyond the award. He submits that, in view of the dismissal orders passed by the Court below, the petitioner will suffer irreparable loss. He further submits that though the Commissioner was appointed and

report was submitted, the said Commissioner's report is not marked as exhibit. Learned counsel for the petitioner submits that the Commissioner's report was part of the record and it was not marked as an exhibit and the Court below failed to take into consideration the Commissioner's report as such, the order impugned is liable to be set aside.

6. On the other hand, learned counsel for the 2<sup>nd</sup> respondent submits that the 2<sup>nd</sup> Judgment debtor has not violated the terms of the award and he is in possession of the property as per measurements mentioned in the award. He submits that the Court below has taken into consideration all these things and rightly dismissed the petition. The revision petitioner has not raised any valid grounds and the revision petition has to be dismissed.

7. Heard the learned counsel for the petitioner, learned counsel for the respondents and perused the material available on record. As rightly pointed out by the learned counsel for the petitioner, the court below failed to mark the commissioner's report and the learned counsel for the petitioner has drawn the attention of the Court to the Commissioner's report. A bare perusal of the same reveals that the measurements that are mentioned in the report, the findings of the court are contrary and further on what basis the Court below has come to the conclusion that the judgment debtors have not encroached the land is not clear. It is also observed in the order that the petitioner has not categorically mentioned what are the encroachments made.

8. Hence, in the interest of justice, this Court deems it appropriate to set aside the order and remand the matter back to the Court below and direct the Court below to give an opportunity to both the parties to raise their objections to the Commissioner report and other objections and pass appropriate orders, within three (3) months from the date of receipt of a copy of this order.

9. With the above direction, this Civil Revision Petition is disposed of. There shall be no order as to costs.

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

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**JUSTICE LALITHA KANNEGANTI**

Date: 25.03.2021  
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**THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI**

(Disposed of)

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