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Court : Kerala

Decided On : Mar-29-2012

Judge : S.S. Satheesachandran

Appeal No. : OP(C).No. 1144 of 2012 (O)

Appellant : Ragunath

Respondent : Bindu and Another

Judgement :

S.S. Satheesachandran, J.

1. Petitioner is the 2nd defendant in a suit for partition. In the final decree proceedings of that suit, an advocate commissioner deputed by the court, after conducting local inspection and measurement of the properties with the assistance of a qualified surveyor, filed a report and plan before the court, to which, the petitioner/2nd defendant raised objections questioning its acceptability. In the enquiry that proceeded on such objections, the advocate commissioner and also the petitioner were examined. The learned Munsiff, finding no reason to set aside or remit the report, turned down the objections raised by the petitioner/2nd defendant vide Ext.P5 order. Correctness of that order is assailed in this original petition invoking the visitorial jurisdiction vested with this Court under Article 227 of the Constitution of India.

2. I heard the learned counsel for the petitioner. Going through Ext.P5 order with reference to the submissions made by the learned counsel and also other materials tendered with the original petition, I find that interference with that order invoking the extraordinary jurisdiction of this Court is not permissible. What is under challenge is the acceptability of a report and plan prepared by an advocate commissioner deputed in the final decree proceedings in a suit for partition, to give effect to the preliminary decree passed in such suit. Whatever be the objections of one or the other party in the suit to such report and plan unless it is shown that such objections go to the very root of the proceedings and the decision rendered on the merit of the acceptability of that report by the court is an erroneous exercise of jurisdiction, and, if such order is allowed to be sustained it would cause grave injustice, exercise of supervisory jurisdiction by this Court under Article 227 of the Constitution of India cannot be resorted to examine the correctness of that decision, as it is intended only to see that the subordinate court function within the bounds of its authority. Further more, sub rule (1) of Rule 14 of Order- XXVI of the Code of Civil Procedure, for short, the 'Code' delineates the scope within which a report and plan of an advocate commissioner prepared in a final decree proceedings in a suit for partition has to be examined, considered and decided upon. Once a decision is taken on the merit of that report and plan, for varying, setting side, modifying or accepting them, further steps in the final decree proceedings have to follow. In case of acceptance of the report without any modification, nothing more need be done by the court other than passing of the decree. When that be so, once a final decree is passed, any party aggrieved can challenge that decree by way of an appeal, in which, he can raise whatever objections to the order passed by the court over the acceptability of the commission report and plan. So much so, Ext.P5 order passed in the case would no way cause any prejudice to the petitioner/2nd defendant as he can, if so aggrieved, prefer an appeal against the final decree that may be passed in the suit accepting of the commission report and plan, if so advised. In that view of the matter, I find, no interference with Ext.P5 order is called for. Reserving the right of the petitioner to challenge the acceptability of the report in the appeal, if so advised and preferred by him, against the final decree that may be passed in the suit, the original petition is closed.

