

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.08.2016

Coram

The Hon'ble Mr.Justice M.DURAIWAMY

CRP(NPD)No.986 of 2014

1. L.Narayana Reddy
2. L.Muniamma
3. L.Suresh Reddy

...Petitioners

Vs

1. Muniappa @ Fadda Muniappa
2. Madesh

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order passed in R.E.P.No.30 of 2008 in O.S.No.340 of 2005 dated 14.03.2013 on the file of the District Munsif cum Judicial Magistrate No.1, Hosur, Krishnagiri District.

For Petitioners : Mr.R.Jayaprakash
For Respondents : Mr.P.Mani

ORDER

Challenging the fair and decreetal order dated 14.03.2013 passed in R.E.P.No.30 of 2008 in O.S.No.340 of 2005 on the file of the District Munsif cum Judicial Magistrate No.1, Hosur, Krishnagiri District, the plaintiffs have filed the above Civil Revision Petition.

2. The plaintiffs filed a suit in O.S.No.340 of 2005 for declaration and permanent injunction. After contest, the suit was decreed by the trial Court. Pursuant to the decree granted in O.S.No.340 of 2005, the plaintiffs filed an Execution Petition in R.E.P.No.30 of 2008 to punish the defendants for disobedience of the decree for permanent injunction. The defendants/Judgment debtors filed their counter disputing the averments stated in the Execution Petition.

3. Before the Executing Court, an Advocate Commissioner was appointed in R.E.A. No.88 of 2009 and the Advocate Commissioner also filed his report along with a Sketch marked as Exs.C1 and C2. Though the Advocate Commissioner has filed a Sketch mentioning the suit property and other details, he has not measured the suit property and given the measurements in the plan as well as in his report. The Executing Court, taking into consideration the Advocate Commissioner's report, dismissed the application, finding that the Judgment Debtors have not disobeyed the decree for permanent injunction and dismissed the Execution Petition.

4. The learned counsel for the petitioners submitted that in the Commissioner's report, the Advocate Commissioner has stated that there

is an encroachment measuring to one cent of land of the plaintiffs on the eastern side of the defendants lands and inspite of the said finding, the Executing Court has dismissed the Execution Petition. The learned counsel for the petitioners further submitted that the Commissioner may be asked to revisit the property and measure the suit property and file his report and plan with measurements.

5. Heard the learned counsel on either side and perused the materials available on record.

6. Having regard to the submissions made by the learned counsel on either side, I am of the view that the Advocate Commissioner may be directed to revisit the property and measure the suit property and file his report and plan with measurements. If the measurements are given in the Commissioner's report and plan, that would solve the dispute between the parties. If the defendants have violated the decree for injunction, in that case, they can be punished for disobedience. In the absence of measurements given in the Commissioner's report and plan, the Executing Court has dismissed the petition.

7. For the reasons stated above, I am of the view that the order passed by the District Munsif, Hosur, in R.E.P.No.30 of 2008 is liable to be set aside and the matter may be remitted back to him for fresh consideration. Accordingly, the order dated 14.03.2013 passed in R.E.P.No.30 of 2008 is set aside and the matter is remitted back to the District Munsif Court, Hosur, for fresh consideration.

8. The District Munsif, Hosur is directed to re-issue warrant of Commission to the same Advocate Commissioner with a direction to measure the suit property and file his report along with plan with actual measurements. The District Munsif, Hosur is also directed to decide the matter afresh after receiving the Advocate Commissioner's report and plan, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed. No costs. Connected miscellaneous petition is closed.

17.08.2016

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To
The District Munsif
cum Judicial Magistrate No.1,
Hosur, Krishnagiri District.

M.DURAI SWAMY,J

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