

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.2833 of 2009

ORDER

This Civil Revision Petition is directed against the order dated 22.8.2008 in E.P.No.774 of 2003 passed by the I Additional Junior Civil Judge, Eluru.

The petitioners are the decree holders, who filed the said EP seeking execution of decree by removing the obstructions made by the respondents and to lay road of 20 feet through Court Amin.

A counter-affidavit was filed on behalf of the 3rd respondent-Municipality stating that it took all steps for formation of 20 feet road and has almost formed the road. When they wanted to take steps for removing the part of encroachment, W.P.No.10221 of 2000 was filed and the Municipality was directed to proceed with the matter after due process of law and to maintain status quo. In terms of the said direction, the Municipality is taking further action and when the entire steps are completed, it would remove the remaining encroachments and form the remaining road portion in terms of the decree.

Considering the said averments, the Executing Court dismissed the petition by observing as follows:

“In the instant case, it is not the case of the petitioner to deliver any property to the petitioners or to put them in possession of any property. Therefore, in view of the circumstances discussed earlier and in view of the provisions laid down under Order 21 Rule 35, the decree is not executable through Court Amin. However, it is open

to the petitioners to execute the decree in due procedure available under law. Hence, this petition is liable to be dismissed and accordingly, this point is answered.”

The trial Court passed a decree in favour of the petitioners in O.S.No.519 of 1989 directing the 3rd respondent-Municipality to lay 20 feet road connecting 80 feet wide Ashoknagar road with the existing road in NGO’s colony within two months.

In the circumstances stated in the counter-affidavit filed by the 3rd respondent-Municipality that they would lay 20 feet road and take steps to remove the remaining part of encroachment in view of the order passed by this Court in W.P.No.10221 of 2000, the order passed by the trial Court on 22.8.2008 cannot be said to be erroneous.

In view of the same, the Civil Revision Petition is dismissed.
No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

21st October, 2016
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