

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) No.380 of 2018
and CMP No.2040 of 2018

Madesh

.. Petitioner

Vs.

1. L.Narayana Reddy

2. L.Muniyamma

3. L.Suresh Reddy

Muniappa @ Pedda Muniappa (died)

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal orders dated 05.01.2018 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 Court No.1, Hosur.

For Petitioner : Mr. P.Mani

For Respondents : Ms. Kavia Baskaran
for M/s.R.Jayaprakash

ORDER

This matter is taken up for hearing through Video-Conferencing.

The third defendant, who had suffered an order for arrest for disobeying the decree for injunction at the hands of the Executing Court, has come up with this Revision.

2. The suit in OS No.340 of 2005 was filed by the plaintiffs seeking permanent injunction restraining the defendants therein from interfering with his possession of 3 cents of land situate in Survey No.129/12B within specific boundaries. According to the plaintiffs, the said extent of 3 cents was purchased by the plaintiffs under 2 Sales Deeds dated 26.04.1976 and 03.09.1981 in two bits. It is also specifically averred that those two bits of lands were now clubbed and renumbered as Survey No.129/12B. Though the defendants filed a written statement making certain claims, they eventually admitted the title of the plaintiffs to the suit property which is shown as an extent of 3 cents in Survey No.129/12B.

3. On the basis of the said admission, the Trial Court granted a decree for declaration of title and injunction. Claiming that the defendants had trespassed into the property and dug up a pit in order to provide a Septic Tank, the plaintiffs filed REP No.30 of 2008 seeking arrest and detention of the defendants under Order 21 Rule 32 of the Code of Civil Procedure. In the Execution Petition a totally new plea was taken by the defendants/ judgment debtors stating that the Survey No.129/12B belongs to them and it does not belong to the plaintiffs. Certain documents in support of their claim were also sought to be filed in execution.

4. A Commissioner was appointed in the Execution Petition. He inspected the property and filed a Report stating that there was an encroachment by the defendants in the plaintiffs' property by digging a pit for provision of a Septic Tank. After considering the said Report, the learned District Munsif dismissed the Execution Petition by an order dated 14.03.2013. Aggrieved the plaintiffs preferred a Civil Revision Petition in CRP No.986 of 2014. The said Civil Revision Petition was allowed by this Court by order dated 17.08.2016 directing the Trial Court to re-issue the

warrant to the same Commissioner with a direction to measure the property and file his Report along with Plan and actual measurements. The learned District Munsif was also further directed to decide the matter after receiving the Advocate Commissioner's Report in accordance with law.

5. Thereafter, the Commissioner visited the property with the help of the Village Administrative Officer and Surveyor, measured the property and filed his Report showing that the defendants had in fact dug up a pit in the plaintiffs' land which was the subject matter of the decree. The Commissioner was also examined before the Executing Court.

6. The defendants filed objections to the Report of the Commissioner stating that the two items of properties purchased by the plaintiffs in Survey No.129/1B2 have been clubbed and assigned a new Survey No.129/12B itself is wrong and as per the Revenue Records the land in Survey No.129/12B stands in the name of the defendants' ancestors. It is their further claim that there was no encroachment and the place where the pit has been dug belonged to the defendants.

7. The Executing Court upon a consideration of the Commissioner's Plan and Report concluded that there has been an encroachment and the defendants had dug up a pit in the plaintiffs' land which is covered by a decree for permanent injunction. On such findings, the Trial Court allowed the Execution Petition and directed detention of the judgment debtor. Aggrieved the second judgment debtor Mr.Madesh is on revision. It is seen from the records that the first judgment debtor Muniappa @ Pedda Muniappa is now no more.

8. I have heard Mr.P.Mani, learned counsel appearing for the petitioner in support of the Revision and Ms.Kaviya Baskaran, learned counsel appearing for Mr.R.Jayaprakash, for the respondents.

9. Mr.P. Mani, learned counsel appearing for the petitioner would vehemently contend that the very description of the property is wrong. According to him, the place where the pit has been dug belongs to the defendants and the claim that the two bits of land purchased by the plaintiffs' ancestors under the two Sales Deeds of the year 1976 and 1981

have been assigned in one Survey No.129/12B itself is incorrect. Therefore, the Commissioner should be directed to measure the land as per the two Sale Deeds in two bits and find out the exact location of the pit. I am afraid such a contention cannot be entertained at this stage that too in Execution proceedings.

10. As already pointed out the plaint very specifically alleges that these two plots have been clubbed together and Survey No.129/12B has been assigned to them. There is no denial of such a claim, made in the plaint, in the written statement. From the judgment in the suit, it is found that the defendants have admitted the claim of the plaintiffs to the suit property which had resulted in a decree being passed. The decree in the suit in OS No.340 of 2005 is one based on admission. That being so, I do not think the defendants can be allowed to resile from the said admission made by them which has fructified into a decree.

11. An attempt is made by Mr.P.Mani, learned counsel to produce documents before me, particularly, the Revenue records to show that the

Survey No.129/12B stands in the name of ancestors of the defendants and therefore, the plaintiffs cannot claim that there has been encroachment. By doing this, the learned counsel is inviting me to re-open the decree and test the veracity of the decree on the basis of the documents which are now sought to be introduced. I am afraid such an exercise cannot be carried out by me, particularly, in a Revision under Section 115 of the Code emanating from execution proceedings.

12. I therefore do not see any illegality or irregularity in the order of the Trial Court, hence the Civil Revision Petition is **dismissed**, confirming the order of the Trial Court. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

05.10.2020

jv

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Index: No

Internet: Yes

Speaking order

To

1. The District Munsif cum
Judicial Magistrate Court No.1,
Hosur.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

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