

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3147 of 2015

and

M.P.No.1 of 2015

1.V.Devaraj

2.V.Purushothaman

.. Petitioners

Vs

1.Balasundaram

2.State rep. by The District Collector,
Vellore District, Sathuvachari,
Vellore.

3.The Planning Officer,
O/o.District Collector,
Sathuvachari, Vellore-9.

4.The Block Development Officer,
O/o.Block Development Office,
Gudiyatham, Vellore District.

5.Anusuya

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.07.2015 made in I.A.No.236 of 2015 in O.S.No.153 of 2014 on the file of the District Munsif Court, Gudiyatham.

For Petitioners : Mr.G.Vinod Kumar

For Respondents : Mr.S.Chandrasekaran

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 01.07.2015 made in I.A.No.236 of 2015 in O.S.No.153 of 2014 on the file of the District Munsif Court, Gudiyatham.

2.Heard the learned counsel for the petitioners and the learned counsel for the respondents.

3.Learned counsel for the petitioners submitted that the petitioners as plaintiffs filed a suit for declaration of 'C' Schedule property and also for mandatory injunction after removal of foundation laid down in 'C' Schedule property and also injunction in respect of 'B' Schedule property. During the pendency of the suit, the petitioners filed an application in I.A.No.236 of 2015 to implead the first respondent's wife as 5th respondent stating that the first respondent/first defendant encroached upon the property of the plaintiffs and constructed Green House in which the first respondent's wife is one of the beneficiary. He further submitted that in the written statement filed by the

4th defendant, it was specifically mentioned in paragraph No.4 that the first respondent's wife/proposed party is the beneficiary in the Green House Scheme and fund was allotted to him and it is also stated that foundation also put up by the first defendant's wife and work order was subsequently cancelled after filing of the suit for mandatory injunction and hence, she is a proper and necessary party. That factum was not considered by the Trial Court. Hence, he prayed for setting aside the order passed by the Trial Court in I.A.No.236 of 2015.

4.Resisting the same, the learned counsel for the respondents submitted that admittedly the first defendant is the owner of the property and he alone made the construction. The 5th respondent/proposed party is none other than the wife of the first defendant/first respondent. He further submitted that they have not encroached upon the property of the plaintiffs/revision petitioners. The Trial Court in its order in paragraph No.7 has clearly discussed that no evidence has been produced to show that the 5th respondent/proposed party has encroached upon the property and made construction and dismissed the application. Hence, he prayed for dismissal of the revision petition.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6. The petitioners as plaintiffs filed a suit for declaration of title to the suit property and also for mandatory injunction in respect of 'C' Schedule property and injunction in respect of 'B' and 'C' Schedule properties against four persons. The first defendant is the adjacent land owner, defendants 2 to 4 are the Government Officials. During the pendency of the suit, the 4th defendant, Block Development Officer filed a detailed written statement wherein it was specifically mentioned that the first defendant's wife is one of the beneficiary of Green House Scheme, fund was allotted to her, work order dated 03.03.2014 was issued and foundation was also put up by the first defendant's wife. Since the plaintiffs made objection for construction claiming that portion of the property was encroached by the first defendant, the work order has been cancelled. So, whether the 5th defendant/proposed party has made foundation in the property of the plaintiffs is to be decided only at the time of trial. Therefore, for obtaining binding decision against the 5th defendant/proposed party, she is a necessary and proper party as a beneficiary under the Green House Scheme. In such circumstances, I am of the view that the 5th defendant is a necessary party for proper adjudication as per Order 10 Rule 1 CPC. Hence, I am of the view that the impugned order passed by the Trial Court in I.A.No.236 of 2015 is unsustainable and the same is liable to be set aside. Accordingly, the order passed by the Trial Court in I.A.No.236 of 2015 is hereby

set aside.

7. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

8. Learned counsel for the petitioners/plaintiffs sought for early disposal of the suit. Considering the representation made by the learned counsel for the petitioners, the Trial Court is directed to dispose of the suit in O.S.No.153 of 2014 within a period of three months from the date of receipt of a copy of this order.

27.11.2015

Index: Yes/No
Internet: Yes/No
cse

To

The District Munsif Court, Gudiyatham.

R.MALA. J.,

cse

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