

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.3486 of 2013
and M.P.No.1 of 2013

1.Balamurugan
2.Sivasankaran

.. Petitioners/Plaintiffs

Vs.

1.Sattanathan
2.Rajendran

.. Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 05.06.2013 in I.A.No.210 of 2013 in O.S.No.656 of 2007 on the file of the Additional District Munsif Court, Cuddalore.

For Petitioners : Ms.R.Meenal
For Respondent : Mr.N.Suresh

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 05.06.2013 in I.A.No.210 of 2013 in O.S.No.656 of 2007 on the file of the Additional District Munsif Court, Cuddalore.

2.The revision petitioners herein as the plaintiffs filed a suit in O.S.No.656 of 2007 for declaration of title and for permanent injunction. An interim injunction was also granted. Due to non appearance of the plaintiffs, the suit was dismissed for default on 23.03.2011. Taking advantage of the same, the respondents/defendants unlawfully put up a compound wall by erecting cement pillars on the western and southern side of the suit property during May 2012. In the southern side, they fixed a iron gate during February 2013. So the revision petitioners/plaintiffs filed an application in I.A.No.210 of 2013 under Order 6 Rule 17 C.P.C. for amend the plaint to include the prayer for mandatory injunction. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the plaintiffs.

3.Learned counsel appearing for the revision petitioners submits that even though the respondents/defendants admitted that they fixed iron gate in para-2 of their counter affidavit, without considering the same, the trial Court has erroneously dismissed the application. Therefore, he prayed for allowing the revision.

4. Resisting the same, learned counsel for the respondents/defendants submits that the revision petitioners have no right over the suit property and the necessary parties were not impleaded in the suit. So the suit is barred by non-joinder of necessary parties. In the affidavit, it was stated that in the year 2012 itself, the defendants had constructed a compound wall and fixed iron gate. But the application was filed only in the year 2013, which is barred by time. Therefore, he prayed for dismissal of the revision.

5. Considered the rival submissions made on both sides and perused the materials available on record.

6. The revision petitioners herein as the plaintiffs filed the suit for declaration of title and injunction. They also obtained interim injunction till the disposal of the suit. Due to non appearance of the revision petitioners/plaintiffs, the suit was dismissed for default on 23.03.2011. Then the plaintiffs filed a petition for restoration and the suit was restored. Thereafter, the plaintiffs/revision petitioners came to know that when the suit was dismissed for default, the respondents/defendants fixed iron gate in the suit property. It is to

be noted that the respondents/defendants admitted the same in para-2 of their counter affidavit, which is extracted hereunder:

“2. Only the iron gate was fixed recently a week prior to the last Thaipooosam fetival, when there was no order of injunction in force.”

7. On perusal of the typed set of papers, it reveals that the suit was dismissed for default, no injunction was in force and so the respondents/defendants had fixed iron gate. Since suit has been restored, the plaintiffs/revision petitioners to seek substantial justice, filed the present application in the year 2013. Hence they filed the application for amendment to include the prayer for mandatory injunction directing the defendants to remove the compound wall as well as the iron gate. That factum was not considered by the trial Court. Per contra, the trial Court has held that the plaintiffs have failed to establish that the iron gate on the southern side of the compound wall has been erected after the order of injunction. In my opinion, the aforesaid finding is contrary to the averments made in para-2 of the counter affidavit filed by the respondents/defendants.

8.Considering the aforestated circumstances of the case, I am of the view, the trial Court has committed an error in dismissing the amendment application. Therefore, the impugned order passed by the trial Court is unsustainable and it is liable to be set aside and it is hereby set aside.

9.Accordingly, the Civil Revision Petition stands allowed. Consequently, amendment application is allowed. No costs. The connected M.P.No.1 of 2013 is closed.

18.12.2015

Index:Yes/No

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To

The Additional District Munsif Court, Cuddalore.

R.MALA,J.

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