

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.3905 of 2016

and

C.M.P.No.19863 of 2016

1.Kaliammal
W/o.Krishnan

2.Pandian
S/o.Raman

3.Chandran
S/o.Raman

.. Petitioners/Petitioners/Judgment Debtors/
Defendants

-Vs.-

Muniammal
W/o.shanmugam

.. Respondent/Respondent/Decree Holder/
Plaintiff

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India as against the fair and decretal order dated 05.11.2015 made in R.E.A.No.44 of 2014 in R.E.P.No.710 of 2009 in O.S.No.193 of 2006 on the file of the II Additional District Munsif Court, Salem.

For Petitioner : Mr.C.Prabakaran

ORDER

The present Civil Revision Petition has been filed challenging the fair and decreetal order dated 05.11.2015 made in R.E.A.No.44 of 2014 in R.E.P.No.710 of 2009 in O.S.No.193 of 2006 on the file of the II Additional District Munsif Court, Salem, wherein the application filed under Order 1 Rule 10 CPC came to be dismissed.

2.At the time of admission, heard the arguments advanced by the learned counsel for the petitioner in length.

3.The learned counsel for the petitioners would submit that the petitioners herein had filed an application in R.E.A.No.44 of 2014 to implead a third party, one Angayee w/o.Late Raman as one of the respondent in R.E.P.No.710 of 2009 stating that she is having right over the suit pathway. The executing Court had dismissed the said application, as against which the present Civil Revision Petition has been preferred.

4.Considering the submission made by the learned counsel appearing for the revision petitioner and on perusal of the typed set of papers, it is seen

that the respondent herein as plaintiff had filed the suit in O.S.No.193 of 2006 on the file of the Principal District Munsif, Salem for declaration to declare that the plaintiff is entitled to right of way through the A,B,C,D portion to reach their properties in door No.85 and also for mandatory injunction for removal of the construction made in the portion marked C D, against the revision petitioners herein. The said suit was decreed against which the revision petitioners/defendants filed an appeal in A.S.No.32/2008 on the file of the Additional Subordinate Judge, Salem, which was also dismissed. Thereafter, the second appeal was also dismissed. While so, when the respondent/plaintiff filed the execution petition for mandatory injunction, the petitioners herein filed an application in R.E.A.No.44 of 2014 to implead a third party one Angayee w/o.Late Raman as one of the respondent in R.E.P.No.710 of 2009 stating that she is having right in the pathway. However, the executing Court had dismissed the said application.

5.It is pertinent to note that during the course of trial neither the revision petitioners nor the said Angayee had filed any application for impleading, till the case ended in finality in the second appeal. If really the said Angayee is having any right over the property, she would have filed an application to implead herself even before the Trial Court, before the case ended in finality in the second appeal. But during the course of the E.P

proceedings, the revision petitioners/defendants have come forward with such an application which would clearly reveal the malafide intention of the revision petitioners/defendants to prevent the respondent/plaintiff from enjoying the fruits of the decree.

6. In such circumstances, I am of the considered view that the Executing Court had considered the application preferred by the revision petitioners in proper perspective and dismissed the same and I do not find any illegality or infirmity in the order passed by the Executing Court. Hence, the Civil Revision Petition deserves to be dismissed and the same is accordingly, dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No

R.MALA, J.

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