

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.3625 OF 2016

ORDER:

Impugning the dismissal of the application in I.A. No.129 of 2015 filed by the defendant No.1 in O.S. No.5 of 2015 seeking to implead Shankaramma and Dhanalakshmi as parties to the suit O.S. No.5 of 2015 filed by the respondent/ plaintiff for bare injunction, the present revision is maintained.

2) Heard learned counsel for the revision petitioners and learned counsel for the respondent. Perused the material on record.

3) The contention of the learned counsel for the revision petitioners is that the proposed parties are necessary parties and the dismissal is unsustainable and the lower Court should have exercised its discretionary power for effective adjudication under Order 1 Rule 10 (2) C.P.C.

4) A certified copy of the judgment in O.S. No.5 of 2015 dated 08.12.2015 is placed before this Court, which shows that the defendants remained *ex parte* and the suit was decreed granting perpetual injunction in favour of the plaintiff. Once there is no suit pending, the question of impleading any party to the suit does not arise but for the remedy, if at all, if there is any appeal pending to file such application in the pending appeal, as the appeal is continuation of suit. If no appeal is filed by any of the parties to the suit and if no application filed under Order IX Rule 13 C.P.C to set aside the *ex parte* decree to implead therein by fresh application, then the remedy, if any, is to file a third party appeal

by the proposed unsuccessful third parties, if at all aggrieved by the decree and judgment of trial Court.

5) With these observations, the revision is disposed of. No order as to costs.

6) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.22.11.2016
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