



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P(PD) (MD)No.1164 of 2013 and
M.P. (MD)No.1 of 2013

1.Mathiyazhakan

2.Subaselastin Ando

... petitioners

Vs.

1. Anthony Pitchaikannu

2. The Assistant Commissioner,
Ward Office,
Tirunelveli Municipal Corporation,
Melapalayam, Tirunelveli-5.

3. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

... Respondents

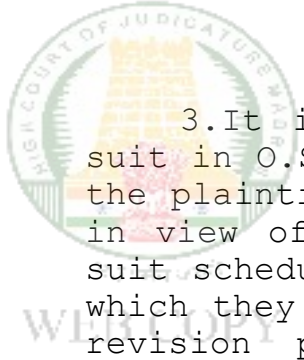
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, set aside the fair and decreetal order passed in I.A.No.1016 of 2012 in O.S.No.248 of 2010 dated 30.03.2013 on the file of the First Additional District Munsif Court, Tirunelveli by allowing this Civil Revision Petition.

For petitioners : Mr.H.Arumugam
For R1 : Mr.K.Chengiz Khan
For R2 & R3 : Mr.Aayiram K. Selvakumar
Additional Government Pleader

ORDER

Revision petitioners are third parties to the suit in O.S.No. 248 of 2010 pending on the file of the First Additional District Munsif Court, Tirunelveli. The first respondent in this revision petition filed the said suit against the Assistant Commissioner, Tirunelveli Municipal Corporation / second respondent herein for declaration to declare that the building plan submitted by the plaintiff on 18.09.2008 is deemed to be approved.

2.It is submitted by the learned counsel appearing for the revision petitioners that the plaintiff in the suit has put up construction encroaching the street and that the offending construction is in the place which is used as a road.



3. It is submitted that the revision petitioners have filed a suit in O.S.No.632 of 2008 for demolition of the building put up by the plaintiff in this suit. According to the revision petitioners, in view of the offending construction put up by the plaintiff in suit scheduled property, they are deprived of their right of access which they have been using for a large number of years. Since, the revision petitioners have filed another suit for removal of encroachment made by the plaintiff, according to them they are necessary and proper parties in the suit filed by the plaintiff for declaration that the building plan submitted by him on 18.09.2008 is deemed to be approved. It is stated that the suit in O.S.No.632 of 2008 is now transferred to the Principal Sub Court, Tirunelveli and re-numbered as O.S.No.297 of 2011. It is seen that the suit filed by the revision petitioners is not disclosed in the present suit.

4. Considering the facts and circumstances of the case, the only issue that arises for consideration in this Civil Revision Petition is whether the revision petitioners are proper and necessary parties to the suit. It is not in dispute that the revision petitioners have filed another suit in respect of the same property for removal of encroachment. In that suit they have sought for a declaration that the suit property is a road and for a mandatory injunction directing the defendants therein to remove the construction put up by the plaintiff.

5. Though the question falls for consideration in both suits relates to the lawful possession of the plaintiff over the property in which he had put up construction, the issue to be resolved in the present suit namely O.S.No.248 of 2010 is whether the building plan submitted by the plaintiff can be taken as approved. When it is stated that the construction of building is in a public place, any one interested can defend the suit. Especially when the revision petitioners are affected by the construction, they are very much interested.

6. The Court below has dismissed the Interlocutory Application in I.A.No.1016 of 2012 in O.S.No.248 of 2010 filed by the revision petitioners to implead themselves as parties, on the ground that they are neither necessary nor proper parties to the suit.

7. Since the plaintiff in the present suit has filed a suit for declaration that the plan submitted by him on 18.09.2008 is deemed to be approved, it is clear that plaintiff has put up construction before ever obtaining approval for his building plan.

8. In such a situation, this Court is of the view that the revision petitioners are absolutely necessary parties in the suit as the subject matter of the suit to be decided by the trial Court will have a bearing in the suit filed by the revision petitioners regarding the character of property and access to the revision petitioners to their private property. When there is disputes over the vacant land and the rival parties, who object to the



construction, are entitled to be heard before approval of plan submitted by the other party. In that view of the matter the order of lower Court in I.A.No.1016 of 2012 is liable to be set aside.

9.As a result, the Civil Revision Petition is allowed and I.A.No.1016 of 2010 in O.S.No.248 of 2010 on the file of the First Additional District Munsif Corut, Tirunelveli stands allowed. Consequently, connected Miscellaneous Petition is closed. There shall no order as to costs.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Principal Subordinate Judge,
Tirunelveli.
2. The First Additional District Munsif,
Tirunelveli.
3. The Assistant Commissioner,
Ward Office,
Tirunelveli Municipal Corporation,
Melapalayam,
Tirunelveli-5.
4. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

Copy To:-

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- + 1 CC TO Mr.H.ARUMUGAM, ADVOCATE IN SR No. 70209
- + 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 70178

GNS

TE/RP/SAR-3 : 30/07/2018 : 3P/9C

C.R.P. (PD) (MD) No.1164 of 2013
27.06.2018