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C.R.P. (PD) No.5088 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.5088 of 2023

and C.M.P.No.29611 of 2023

1. K.Naveneethammal
2. Viswanathan
3. Vijayalakshmi
4. Harikrishnan
5. Logesh

.. Petitioners/Petitioners/Defendants

Versus

G.Saroja

.. Respondent/Respondent/Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.7 of 2023 in O.S.No.1206 of 2020 dated 03.11.2023 on the file of the VII Assistant City Civil Court, Chennai.

For the Petitioners : Mr.A.Sundara Vadhanan

For the Respondent : Ms.Selvi Rajesh



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ORDER

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This Civil Revision Petition arises against the dismissal of the application filed to frame additional issues.

2. The suit in O.S.No.1206 of 2020 has been presented by the sole respondent. She sought for the relief of permanent injunction, with respect to 'A' schedule, declaration and for mandatory injunction with respect to 'B' schedule property and for costs. According to her, she purchased the property to an extent of 5160 sq.ft. in the year 1969. Thereafter, she purchased an additional extent of 351 sq.ft. from one Ranganathan in order to have passage for her property. She would plead that she settled two portions of the property purchased by her in favour of her daughters Prema and Sudha and she was holding to an extent of 2916 sq.ft., after said alienations. The cause of action of the suit is that the defendants, who are neighbours, had encroached upon the property marked as 'B' schedule. Since her title was being denied, she sought for declaration of title. In order to remove the encroachments, she sought for mandatory injunction.



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3. On service of summons, the defendants had filed detailed written statement pleading that they had put up construction within their four boundaries and the plaintiff does not have any right over the 'B' schedule.

4. On the basis of these pleadings, issues were framed and the parties went for trial. Both sides agreed that the proof affidavit of the plaintiff has been filed. But the documents are yet to be marked. At that stage, the defendants took out an application to frame additional issues than those framed by the Court on 12.09.2022.

5. The issues the defendants wanted the Court to frame were :

1] Whether the plaintiff is entitled to continue the suit after having settled the property in favour of her daughters?

2] Whether the construction put up by the plaintiff was after plan approval from the statutory authorities?

3] Whether the plaintiff is entitled to declaration of title with respect of the 'B' schedule.



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6. The learned Judge received this application in I.A.No.7 of 2023.

After receipt of the counter, he dismissed the application. Against which the present Revision Petition.

7. Heard Mr.A.Sundara Vadhanan, for the Civil Revision Petitioners and Ms.Selvi Rajesh, for the respondent.

8. Mr.Sundara Vadhanan and Ms.Selvi Rajesh would reiterate their contentions they placed before the trial Court. In so far as the first issue is concerned, I do not find it an issue at all for the simple reason, one co-owner can maintain a suit for declaration of title and recovery of possession on behalf of other co-owners. Similarly, the suit does not relate to whether the construction that has been put up by the plaintiff is approved or not. It is a simple suit pleading that the neighbour of the property has encroached upon the plaintiff's extent. Therefore, the first two issues that has been sought for by the defendants, do not arise for consideration in the present proceedings. In so far as the third issue is concerned, the plaintiff herself has sought for declaration of title of B schedule property. Therefore, that would be necessary issue which has to be gone into by the Court.



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9. Consequently, this Civil Revision Petition is partly allowed and the Order in I.A.No.7 of 2023 in O.S.No.1206 of 2020 dated 03.11.2023 is set aside in part. The Order of dismissal with respect to the first and second issues that has been suggested by the defendants are sustained. It is set aside only in so far as the issue No.3 is concerned. The Court shall frame an issue with respect to declaration of title of the 'B' schedule as suggested by the Civil Revision Petitioners. According to both sides, their respective clients are senior citizens and the suit should be concluded at an early date. The learned VIII Assistant Judge, City Civil Court, Chennai is requested to expedite the suit at all stages. Consequently, connected miscellaneous petition is closed.

20.08.2024

vrc

Index : Yes / No

Internet:Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

The VIII Assistant Judge, City Civil Court, Chennai.



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V.LAKSHMINARAYANAN, J.

VTC

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