



C.R.P(MD)No.468 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.03.2023

PRONOUNCED ON : 06.04.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.468 of 2023

and

C.M.P(MD)No.2241 of 2023

R.Vellaisamy

...Petitioner/Petitioner/
Plaintiff

Vs.

1.S.Kavitha

2.The Assistant Divisional Engineer
Tamil Nadu Electricity Board,
No.1, Tollgate, Bikshandarkovil,
Manachanallur Taluk,
Trichy District.

...Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 19.01.2023 made in I.A.No.3 of 2023 in O.S.No.477 of 2014 on the file of the District Munsif Court, Lalgudi.



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For Petitioner : Mr.S.I.Muthiah
For R1 : No Appearance
For R2 : Mr.H.Arumugam
For Mr.D.Sadiq Raja

ORDER

The petitioner has filed O.S.No. 477 of 2014 before the District Munsif Court, Lalgudi for declaration of title and recovery of possession of the property against the first defendant/respondent and for mandatory injunction to direct the second defendant to remove the electrical service line post put up in the petitioner's suit property.

2. The petitioner had earlier filed I.A.No.373 of 2014 for appointment of an Advocate Commissioner to note down the physical features and the alleged encroachments made by the first respondent over the suit schedule property. I.A.No.373 of 2014 was allowed.

3. On 06.02.2019, the Advocate Commissioner also filed a report stating that there was encroachment indeed over the suit property by the first respondent/defendant. However the Survey number was mentioned wrongly as S.No.163/31 instead of 163/32.



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4. The first respondent/defendant therefore filed I.A.No.1 of 2019 to scrap the report and plan of the Advocate Commissioner and for reissue of warrant, I.A.No.1 of 2019 was allowed by the District Munsif Court, Lalgudi vide order dated 01.07.2019.

5. Thus the petitioner filed CRP(MD)No.1651 of 2022 to set aside the above said fair and decretal order dated 01.07.2019. CRP(MD)No. 1651 of 2022 was disposed by this Court, vide order, dated 16.08.2022 with a direction to the District Munsif Court, Lalgudi to reissue warrant to a new Advocate Commissioner.

6. Following this, a new Advocate Commissioner was appointed by the District Munsif Court, Lalgudi. In his report, dated 14.12.2022, the Advocate Commissioner stated that there was no encroachment by the first respondent/defendant.

7. Therefore, the petitioner filed I.A.No.3 of 2023 for reissue of a fresh warrant to appoint an Advocate Commissioner in view of the contradiction.



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8. The application was dismissed through order, dated 19.01.2023 stating that the reasons given by the petitioner for appointment of fresh Advocate Commissioner was not acceptable.

9. The petitioner is aggrieved by the impugned order, dated 19.01.2023 passed by the District Munsif Court, Lalgudi in I.A.No.3 of 2023. The relevant portion of the impugned order reads as under:-

”8.1) இந்நிலையில், மனுதாரர் தனது முந்தைய நீதிமன்ற ஆணையர் தனது அறிக்கையில், 1ம் பிரதிவாதி ஆக்கிரமிப்பு செய்துள்ளதாக குறிப்பிட்டு சொல்லியுள்ள நிலையில், புதிதாக நியமிக்கப்பட்ட நீதிமன்ற ஆணையர் தனது அறிக்கையில், ஆக்கிரமிப்பு எதுவும் இல்லை என அறிக்கை தாக்கல் செய்துள்ளதால், நீதிமன்ற ஆணையர் வழக்கு சொத்தை சரியாக ஆய்வு செய்யவில்லை என மனுதாரர் தரப்பில் சொல்லியுள்ள காரணங்கள் ஏற்றுக்கொள்ளும்படியாக இல்லை என இந்நீதிமன்றம் தீர்மானிக்கிறது.

9) மேலும் நீதிமன்ற ஆணையர் தாக்கல் செய்துள்ள அறிக்கையை பொறுத்து, அதில் எந்த பகுதியில் ஆக்கிரமிப்பு உள்ளது என்பது குறித்து நீதிமன்ற ஆணையரை விசாரிப்பதன் மூலம் தெளிவுப்படுத்த இயலும் என்பதாலும், வேறொரு நீதிமன்ற ஆணையரை நியமனம் செய்ய கோரி மனுதாரர் தரப்பில் சொல்லியுள்ள காரணங்கள் ஏற்றுக்கொள்ளும்படியாக இல்லை என்பதாலும், மனுதாரர் தாக்கல் செய்துள்ள இம்மனு தள்ளுபடி செய்து உத்தரவிடப்படுகிறது.”

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.



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11. The Advocate Commissioner appointed by the Court are not expected to give final finding on fact as to whether there is an encroachment by the parties to the proceedings. The Advocate Commissioner can only give a report regarding the physical features of the boundary of the property, if there is a doubt in the boundary. In this case, the Advocate Commissioner appointed earlier pursuant of an order in I.A.No.373 of 2014. The Advocate Commissioner has given a report stating that there was an encroachment by the first respondent/defendant. However, while giving report, the said Advocate Commissioner bungled to the survey number.

12. Thereafter, the respondent/plaintiff had filed I.A.No.1 of 2019 to scrap the report for issue of a fresh warrant. I.A.No.1 of 2019 was also allowed by the Trial Court which was interfered by this Court at the instance of the petitioner and thereafter, fresh warrant was directed to be issued to the new Advocate Commissioner. In the second report given by the Advocate Commissioner on 14.12.2022, the Advocate Commissioner has concluded that there was no encroachment by the first respondent/defendant.



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13. In my view, reports given by the Advocate Commissioner do not meet the requirements of law. The Advocate Commissioner are merely expected to identify the property of the survey number and measure the property and give a report to the Court. They are not expected to state whether there was encroachment or no encroachment. That is a matter of trial.

14. Therefore, in my view, the petitioner has made out sufficient ground for interfering with the order passed by the learned District Munsif Court, Lalgudi. Therefore, the impugned order is set aside. The report of the Advocate Commissioner is directed to be scraped. The case is remitted back to the learned District Munsif Court, Lalkudi to issue a fresh warrant to the Advocate Commissioner with a specific direction to note only the physical feature of the property by identifying it with the help of a surveyor and to give a report. This exercise can be completed by the District Munsif Court, Lalkudi within a period of 45 days from the date of receipt of copy of this order. Thereafter, the Trial Court shall proceed to pass a final judgment and decree in the suit filed by the



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petitioner within a period of nine months.

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15. The present Civil Revision Petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The District Munsif Court, Lalgudi.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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