



C.R.P(MD)No.1404 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1404 of 2023

and

C.M.P(MD)No.7025 of 2023

Sundar

...Petitioner/1st Respondent/
1st Defendant

Vs.

1.Thomas Reegan

...1st Respondent/Petitioner/
Plaintiff

2.The Government of Tamil Nadu,
Through its District Collector,
Tirunelveli.

3.The Executive Engineer,
Irrigation, Public Works Department,
Valliyoar, Radhapuram Taluk,

4.Anthony Vinnarasu,
Achampadu Panchayat President,
Achampadu, Radhapuram Taluk,
Tirunelveli District.

5.The District Forest Officer,
Tirunelveli Circle,
Palayamkottai.

6.The Divisional Forest Officer,
Tirunelveli Forest Circle,



C.R.P(MD)No.1404 of 2023

Palayamkottai.

...Respondents 2 to 6/
Respondents 2 to 6/
Defendants 2 to 6.

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.13 of 2023 in O.S.No.293 of 2012 on the file of the Principal District Munsif Court, Valliyoor dated 21.03.2023.

For Petitioner : Mr.M.Subbiah

For Respondents : Mr.G.Aravinthan

ORDER

This case was listed today under the caption “for clarification”.
The order dated 21.06.2023 passed in this Civil Revision Petition is recalled.

2. By the impugned order dated 21.03.2023, the Trial Court was allowed I.A.No.13 of 2023 in O.S.No.293 of 2012 on the file of the Principal District Munsif Court, Valliyoor, with the following observations:-



C.R.P(MD)No.1404 of 2023

7. Coming to the case on hand, the plaintiff claims the suit property is a catchment area. The records show that defendant No.1 and defendant No.4 admit and agree that suit property belongs to 1st defendant.

8. On perusal of the written statement of D1 and D4 it reveals that there is no conflict of interest between Defendant No.1 and Defendant No.4. Since Defendant No.4 admits and agrees that suit property belongs to 1st defendant .

9. It is no doubt that defendants 1 and 4 filed separate written statements, however the interest of defendant and defendant no.4 are common and sailing together, and under no circumstances the defendant No.1 can be called as adverse party so as to cross examine DW2 who deposed for Defendant No.4.

10. For the above said reason, it appears that defendant No.1 have common interest with Defendant No.2 as Defendant No.1 is not having an independent claim. Hence Dw1 have no right to cross-examination Dw2.

Accordingly, this petition is allowed.

3. The first respondent/plaintiff had filed an application under Sections 137 and 138 of the Indian Evidence Act to cross examine the first and fourth defendants who were examined as Dw1 and DW4 herein.

4. The fourth respondent is the Panchayat President elected in the year 2022. In the written statement filed by the fourth respondent/fourth



C.R.P(MD)No.1404 of 2023

defendant, the fourth respondent/fourth defendant has categorically given a statement against the petitioner in Paragraph No.13, which reads as under:

"13. நீர்பரப்பு பகுதிகளில் கட்டுமானம் செய்யக் கூடாத என்பது வாஸ்தவமே. ஆயினும் வருவாய் துறையினர் புல எண்.638ல் கண்ட சொத்திற்கு எந்த சட்டத்தின் அடிப்படையில் தனி நபர் பெயரில் பட்டா வழங்கியுள்ளனர் என்பதை இந்த பிரதிவாதி அறியமாட்டார். இந்த பிரதிவாதி பஞ்சாயத்து உறுப்பினர்களின் தீர்மானப்படி புல எண்.638னை வீட்டு மனைகளாக 1ம் பிரதிவாதி விற்பனை செய்தாலும் அதில் கட்டுமானம் செய்ய அனுமதி வழங்கக் கூடாது என்று தீர்மானம் நிறைவேற்றப்பட்டு மேல் அதிகாரிகளுக்கு நகல்கள் அனுப்பப்பட்டுள்ளது. ஷை தீர்மானத்தின் அடிப்படையில் நாளது தேதி வரை புல எண்.638ல் உள்ள சொத்துக்களுக்கு எவ்வித கட்டிட அனுமதியும் இந்த பிரதிவாதி அலுவலகம் வழங்கவில்லை."

5. It is the specific case of the respondent in the suit that the suit schedule property is a water body in S.No.638 in Achampadu Village.

6. It is therefore submitted that in response to the answer elicited by the plaintiff during the cross examination of the fourth defendant on 03.03.2023, the plaintiff has to further cross-examine the fourth respondent.

7. Per contra, the learned counsel for the respondents submits that the petitioner and the fourth respondent are sailing together. Therefore,



C.R.P(MD)No.1404 of 2023

there is no necessity for cross-examining the fourth respondent. The learned counsel for the respondents also referred to averments in Paragraph No.4 of the written statement of the fourth respondent. It is submitted that they are sailing together, therefore, the question of cross-examination of the fourth respondent does not arise.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

9. The impugned order seeking to deny the right of cross-examination to the petitioner is liable to be interfered with as ultimately the purpose of the trial in a suit is to ascertain the truth. There are statements in the written statement filed by the fourth respondent. What the first respondent/plaintiff has elicited during examination are only answer to the content of Exhibit C2. This question was unnecessary as document speak for themselves.

10. Be that as it may, I am inclined to set aside the impugned order passed I.A.No.13 of 2023 in O.S.No.293 of 2012 before the Principal District Munsif Court, Valliyoor. The Principal District Munsif Court, Valliyoor is directed to allow the petitioner to cross examine the fourth



C.R.P(MD)No.1404 of 2023

respondent and complete the trial as expeditiously as possible preferably within a period of 6 months from the date of receipt of copy of this order.

11. Thus, the impugned order passed in I.A.No.13 of 2023 stands set aside. The present Civil Revision Petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

24.07.2023

Index : Yes / No
NCC : Yes / No
kkd
To

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



WEB COPY



C.R.P(MD)No.1404 of 2023

C.SARAVANAN, J.

kkd

C.R.P(MD)No.1404 of 2023

24.07.2023