

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD).No.847 of 2013

&

M.P.No.1 of 2013

D.Ellammal

... Petitioner

Vs.

1.M.Jegadammal

2.Junior Engineer

Tamil Nadu Electricity Board

Mathanur – 635 804

3.T.Kumar

4.T.Gopi

... Respondents

Civil Revision Petition filed Article 227 of the Constitution of India to set aside the order and decretal order dated 07.01.2013 in I.A.No.309 of 2012 in O.S.No.109 of 2008 passed by the Principal District Munsif Court, Ambur.

For Petitioner : Mr.K.Karunakaran

For Respondents : R1 No appearance

R2 to R4 given up

JUDGMENT

Challenge in this revision, is made to the fair and decretal order dated 07.01.2013 and made in the application in I.A.No.309 of 2012 in the suit in O.S.No.109 of 2008 on the file of the learned Principal District Munsif, Ambur.

The revision petitioner herein is the first defendant in the suit, whereas the first respondent is the plaintiff and the respondents 2, 3 and 4 are the defendants 4, 2, 3 respectively in the suit.

2. The first respondent Jagathambal filed the above said suit in O.S.No.109 of 2008 as against the revision petitioner herein as well as the remaining respondents seeking the relief of permanent injunction. The suit was contested by the revision petitioner as well as by the respondents by filing their respective written statements.

3. During the pendency of the suit, the revision petitioner, being the first defendant, had come forward with an application in I.A.No.309 of 2012 under Order XXVI Rule 9 of the Code of Civil Procedure with a prayer to appoint an Advocate Commissioner to note down the physical features of the suit schedule property and also to note down the channel as well as the existing crops and to file a detailed report.

4. This petition was contested by the first respondent/plaintiff and after hearing both sides, the learned trial Judge had proceeded to dismiss the petition with an observation that in the plaint the first respondent/plaintiff had admitted that he is having half share in the suit well and that he had claimed exclusive right over the 5HP motor fitted with the Well as well as over the electricity service connection in S.C.No.91. He has also observed

that since the plaintiff had admitted that the revision petitioner and the defendants were having half share in the well, there was no need to appoint an Advocate Commissioner to note down the fact of taking water from the Well through the pipelines. Having been aggrieved by the impugned order, the revision petitioner, being the first defendant, stands before this Court with this revision.

5. Despite service of notice on the first respondent /plaintiff, he has not chosen to appear either in person or through his counsel. Respondents 2 to 4 were already given up.

6. Heard Mr. T.Karunakaran, learned counsel appearing for the revision petitioner. Perused the grounds of revision along with the impugned order. Having regard to the related to the facts and circumstances, the following order is being passed.

7. As aforesaid, the suit is filed by the first respondent/plaintiff and thereby sought the relief of permanent injunction as against the defendants 1 to 3 restraining them from interfering with his peaceful possession and enjoyment of the schedule mentioned property and the electricity service connection bearing No.91 or trespassing into the suit property in any manner.

8. Admittedly, the first respondent/plaintiff in Paragraph No.1 of the plaint has stated that as per the Will dated 28.11.2006, he is enjoying the suit property with the right of half share in the well and separate HP pumpset with motor. He has also stated that the Encumbrance Certificate dated 12.01.2008 would clearly indicate that the 5HP pumpset motor fitted with Service Connection No.91 stands exclusively in his name.

9. On the other hand, it is the case of the revision petitioner/first defendant that she had been taking water from the well by utilizing the 5HP motor as well as the service connection bearing No.91, which is fitted with the electric motor pump set. It is also relevant to note here that the revision petitioner/first defendant had filed the above said petition in I.A.No.309 of 2012 for appointing an Advocate Commissioner to note down the physical features of the property as well as the service connection bearing No.91 and the channel through which the water is being taken to irrigate the existing crops. What the learned trial Judge has observed is that the revision petitioner/first defendant had stated that she had been taking water from the well by utilizing the electric motor as well as the service connection bearing No.91 and for the purpose of noting down the physical features of the channel through which the water was being taken, she had sought the assistance of the Court to appoint an Advocate Commissioner. In this connection, the learned trial Judge has also observed that since the first respondent/plaintiff had admitted in his plaint that the first defendant was

having half share in the well, there was no need to appoint an Advocate Commissioner to note down the physical features because the plaintiff had also admitted the existence of the Well as well as the 5HP electric motor fitted with service connection No.91.

10. The specific case of the respondent/plaintiff is that 5HP electric motor as well as the service connection are exclusively belonged to him. When such being the case it is for the revision petitioner/first defendant to prove that she had been taking water from the suit well by utilizing the electric motor as well as the service connection. For this purpose, the appointment of Advocate Commissioner may not be required and that it could be proved through the oral as well as the documentary evidences. Only with the above said observation, the petition in I.A.No.309 of 2012 was dismissed by the trial Court.

11. This Court also endorses the view taken by the trial Judge. While the first respondent/plaintiff has admitted the fact of revision petitioner's half share over the suit well, it is for the revision petitioner to prove that she is also having right over the 5HP motor as well as over the service connection bearing No.91. This Court also finds that in order to note down the existence of water channel as well as the crops and the service connection, there is no need to appoint an Advocate Commissioner. It could be proved by leading oral evidence as observed by the trial Judge. Keeping in view of the above fact, this revision is liable to be dismissed as there is devoid of any merits.

Accordingly, the revision petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

01.11.2016

Index: Yes/No
Internet: Yes
gpa

To

The Principal District Munsif Court
Ambur

T.MATHIVANAN.J.,

gpa

C.M.A.No.847 of 2013

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