

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.183 of 2014
and
M.P.No.1 of 2014

Srinivasan
Petitioner

..

vs

1. Arthanari
2. The Superintending Engineer
Tamil Nadu Electricity Board
Mettur, Mettur Dam
Mettur Taluk, Salem District.
3. The Executive Engineer (O&M)
Keelarippatti
Tiruchengode Taluk
Namakkal District.
4. The Assistant Executive Engineer
(O&M), Tamil Nadu Electricity
Board, (Panchayat), Kollappatti
Tiruchengode Taluk, Namakkal District.
5. The Junior Engineer (O&M)
Tamil Nadu Electricity Board
(Panchayat), Kollappatti Housing
Board Colony, Tiruchengode Town

and Taluk, Namakkal District.
Respondents

..

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 21.09.2012 passed by the learned District Munsif, Tiruchengode in I.A.No.300 of 2011 in I.A.No.1102 of 2007 in O.S.No.273 of 2007.

For Petitioner : Mr.P.Valliappan
For Respondents : Mr.Ma.P.Thangavel for R1
Mr.V.Viswanathan for
RR2 to 5 [TNEB]

ORDER

The plaintiff is the revision petitioner.

2. The plaintiff, aggrieved by the order passed by the court below in allowing the fifth defendant's application filed under Order 26 Rule 9 of the Code of Civil Procedure to re-appoint the Advocate Commissioner, who was appointed earlier in I.A.No.1102 of 2007 to re-visit the petition mentioned

property along with the qualified surveyor, has filed the above revision.

3. The suit is filed by the revision petitioner/plaintiff seeking permanent injunction restraining the Electricity Department not to effect service connection, in the name of the fifth defendant and also for a permanent injunction restraining the fifth defendant from getting service connection.

4. The case of the fifth defendant/first respondent herein is that the suit property as mentioned in the plaint is Survey No.114/1 and the well therein. Since the measurement of Survey No.114 was wrongly mentioned in the village map, the plaintiff/revision petitioner filed IA No.1102 of 2007 to measure Survey No.114/5. At that point of time, the fifth defendant was not added as a party to the suit. When the Advocate Commissioner came to measure the property only, he got the knowledge about the suit. Thereafter, he impleaded himself as a party to the suit by filing IA No.706 of 2009 and

also filed the application in I.A.No.300 of 2011 for re-issuing the same warrant of the commissioner. In the said application he had sought for a direction to the Advocate Commissioner to note down the drawing of the water from the suit well through pipeline and also to find out whether Survey No.115 is being irrigated through the water from the suit well. According to him, the plaintiff is not having any land in Survey Number 115. Therefore, the Commissioner appointed in IA No.1102 of 2007 has to be directed to re-visit the property and file an additional report and plan.

5. The above application was objected to by the revision petitioner/plaintiff by contending that in another proceedings, the title of the plaintiff in Survey No.114 was admitted by the fifth defendant/first respondent herein. Only based on such admission, the right of easement has been claimed by the plaintiff. However, when the defendants 1 to 4 filed the written statement stating that there is a well in Survey No.114/5, which belongs to the fifth defendant, I.A.No.1102 of 2007 was

filed to to appoint a Commissioner to find out if there is any well in Survey No.114/5. However, the application filed by the fifth defendant to re-issue the warrant of the earlier Commissioner was allowed by the Court below.

6. Challenging the same, the plaintiff has come up with the above revision.

7. Admittedly, the suit survey No. is 114/1 with a well therein. Whereas it appears that in IA No.1102 of 2007, the plaintiff has sought for appointment of a Commissioner to visit the property in survey No.114/5, which belong to the fifth defendant. When the suit is filed only seeking relief in respect of Survey No.114/1, there is no reason as to why the appointment of a Commissioner was sought for to measure the property in S.No.114/5. The fifth defendant's case is that his property is lying in Survey No.114/5, which has been measured by the first respondent/plaintiff in the earlier application in I.A.No.1102 of 2007, without even impleading

him as a party. The Advocate Commissioner also has filed his report. Since the fifth defendant was not a party to the same, it is not binding on him. If the plaintiff claims right of title to the suit well in S.No.114/1, the said property has to be inspected by the Commissioner and measurements taken with reference to the revenue records to find out whether there is a well in S.No.114/1. On that basis, only the trial court has allowed the application directing the Commissioner appointed earlier to re-visit the property and file a fresh report and plan.

8. When the trial court has felt that the second report of the Commissioner will be of use to adjudicate the case in its proper perspective, the same has been allowed. The plaintiff challenging to the same is unnecessary and unwarranted.

9. In view of the above, I find no merit in this revision, Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

08.02.2017

vj2

Index : Yes/No

Internet: Yes

To

The District Munsif, Tiruchengode

PUSHPA SATHYANARAYANA,J.,

vj2

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