

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.222 of 2014
& M.P.No.1 of 2014

1.K.P.Thangavel
2.T.Mylal

.. Petitioners

Vs.

Mylathal

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 31.08.2012 made in I.A.No.322 of 2012 in O.S.No.319 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioners : Mr.MA.P.Thangavel

For Respondent : Mr.K.Govi Ganesan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 31.08.2012 made in I.A.No.322 of 2012 in O.S.No.319 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

2. The petitioners are the defendants and respondent is the plaintiff in O.S.No.319 of 2009 on the file of the District Munsif Court, Gobichettipalayam. The respondent filed suit for mandatory injunction to remove the damaged underground pipeline, which lies to a length of 454 feet underneath the suit property in S.No.95/3 and direct the petitioners to pay a sum of Rs.200/- per month for use and occupation as damages and for injunction. The petitioners filed written statement on 09.02.2010 and are contesting the suit. The petitioners filed I.A.No.322 of 2002 for appointment of Advocate Commissioner to find out the length of underground pipeline in the land in S.No.95/3.

3. According to the petitioners, underground pipeline are in S.Nos.95/2, 95/3 and 95/5A and the petitioners filed O.S.No.268 of 2009 for permanent injunction on the file of the District Munsif Court, Gobichettipalayam, restraining the defendants therein from interfering with their enjoyment of the said pipeline. The said suit is pending. The respondent is second defendant in the said suit. It is necessary to find out the extent of pipeline in the land in S.No.95/3 belonging to the respondent. In such circumstances, the petitioners have filed application for appointment of Advocate Commissioner to

find out the length of underground pipeline in the land in S.No.95/3 with the help of surveyor.

4. The respondent filed counter affidavit and submitted that in O.S.No.268 of 2009 filed by the petitioners, Advocate Commissioner was appointed and inspected all the three survey numbers with the help of surveyor and the Advocate Commissioner filed a report. The petitioners have not filed any objection to the said report in O.S.No.268 of 2009. The present application is filed only to drag on the proceedings in the present suit filed by the respondent and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application on the ground that the petitioners admitted the existence of underground pipeline in S.No.95/3 and now it is not open to the petitioners to take a contrary stand.

6. Against the said order of dismissal dated 31.08.2012 made in I.A.No.322 of 2017, the present Civil Revision Petition is filed by the petitioners.

7. Heard both sides and perused the materials available on record.

8. From the records, it is seen that the petitioners are not disputing the existing underground pipeline in three survey Nos. 95/2, 95/3 and 95/5A including survey No.95/3 belonging to the respondent. The respondent is claiming that length of underground pipeline in Survey No.95/3 is 454 feet. According to the petitioners, the said averment is not correct. In the present application, the petitioners seeking appointment of Advocate Commissioner to find out the exact length of the pipeline in the respondent land. The learned Judge on misconception that the petitioners are denying the existence of the pipeline in S.No.95/3, dismissed the application. The learned Judge has not properly considered the contention of the petitioners that Advocate Commissioner is necessary to find out the exact length of underground pipeline in the respondent's property i.e., in S.No.95/3. The learned Judge failed to exercise his power properly and committed irregularity in dismissing the application. In the circumstances, the impugned order of the learned Judge is set aside and the matter is remitted back to the trial Court. The learned Judge is directed to appoint the Advocate

Commissioner to find out exact length of the underground pipeline in S.No.95/3 with consequential direction for inspection to take the assistance of surveyor and for filing a report.

9. In the result, the Civil Revision Petition is allowed by setting aside the fair and decretal order dated 31.08.2012 made in I.A.No.322 of 2012 in O.S.No.319 of 2009 on the file of the District Munsif Court, Gobichettipalayam. The learned Judge is directed to appoint Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order and direct the Advocate Commissioner to file a report after inspection within four weeks thereafter and on receiving the report, the learned Judge is directed to dispose the suit in O.S.No.319 of 2009 on merits and in accordance with law, as expeditiously as possible, in any event, not later than 30.04.2017. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No
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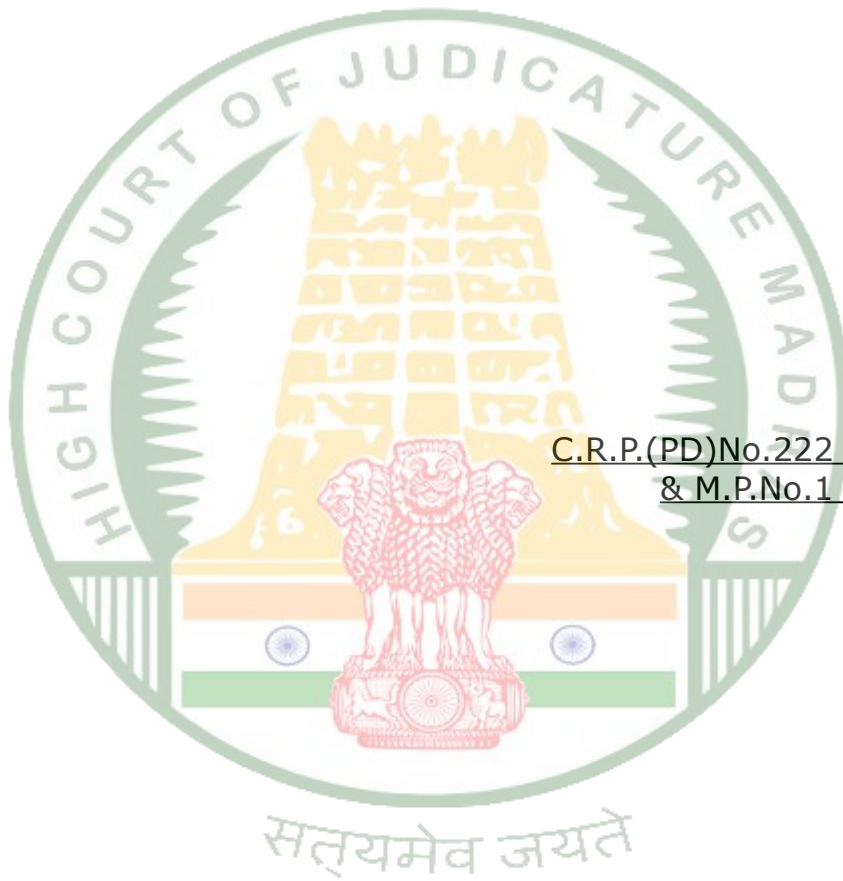
To

The District Munsif, Gobichettipalayam.

31.10.2017

V.M.VELUMANI, J.

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