

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.3.2017

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

C.R.P.(NPD) No.2229 of 2011

Pappathi

.. Petitioner/Plaintiff

Vs.

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Erode Electricity Distribution System,
Mettur, Erode.
- 2 The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Chengapalli, Perundurai Taluk,
Erode.
- 3 The Junior Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Chengapalli, Perundurai Taluk,
Erode District.
- 4 Eswaran
- 5 Ayyavoo

.. Respondents/Defendants

This Civil revision is filed under Section 115 of C.P.C,
against the fair and decretal order dated 10.11.2009 passed in
C.M.A.No.32 of 2008 on the file of the First Additional Sub Judge,

Erode confirming the fair and decreetal order, dated 05.3.2007 made in I.A.No.513 of 2006 in O.S.No.24 of 2001 on the file of the District Munsif cum Judicial Magistrate, Perundurai, Erode District.

For Petitioner : Mr.N.Manokaran
 For Respondent No.4 &5: Mr.S.Kaithamalarkumar
 Respondents 1 to 3 : No appearance

ORDER

This revision is at the instance of the plaintiff in O.S.No.24 of 2001 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai, Erode District.

2 Plaintiff resides in old door No.2/93, new door No.2/55, Kolimedu, Vadamugam, Kangayampalayam Village, Perundurai Taluk, Erode District. Her E.B. service connection is SC 326-1-A. There was threat to disconnect service connection. In the circumstances, she filed the suit in O.S.No.24 2001 for injunction as against the defendants 1 to 3 who are E.B. officials restraining them from disconnecting the service connection and for certain other relief with respect to survey No.64/2. 3rd defendant filed written statement that one Easwaran has given objection that the property belongs to Mahaliamman temple, in the circumstances, the plaintiff has been asked to produce his ownership documents. Subsequently,

defendants 4 and 5 were impleaded in the suit. They have filed joint written statement. Necessary issues were framed. Suit was posted in the special list on 12.4.2004 for trial. Since the plaintiff did not appear, the suit was dismissed for her default.

3 Plaintiff filed I.A.No.513 of 2006 to restore the suit. Plaintiff filed application in I.A.No.513 of 2006 stating that on 11.4.2004, he went to worship Lord Muruga in Palani hills and returned to Village on 12.4.2004. As there was communication gap, he could not present on that occasion.

4 In their counter defendants 4 and 5 have contended that already there were suits in O.S.No.493 of 1996, O.S.No.99 of 2000, O.S.No.70 of 2002, O.S.No.23 of 2001, O.S.No.15 of 2001 and O.S.No.137 of 2001 are pending.

5 Upon hearing both sides, the trial Court dismissed the restoration petition on the ground that there was no proper document to prove the fact that she had gone to Palani Murugan temple and also it is not in the interest of justice to allow the petition.

6 Aggrieved, the plaintiff has preferred this revision.

7 The learned Appellate Judge/First Additional Sub Judge, Erode concurred with the view of the trial Court and dismissed her C.M.A.No.32 of 2008. That is how, this revision before us by the plaintiff.

8 According to the learned counsel for the revision petitioner, the issue as to right of the plaintiff to have the service connection has been agitated. There are counter version in the written statement filed by defendants 4 and 5. Certain other issues are also involved. In such circumstances, dismissal of restoration application by the trial Court and upholding the same by the Appellate Court are not in accordance with law.

9 The learned counsel for the revision petitioner further contended that both the Courts have viewed the reason given by the plaintiff in her affidavit with tinged glasses. The Courts could have given an opportunity to her to agitate the issue when especially there are connected suits are also pending in the same Court.

10 On the other hand, the learned counsel for the

respondents/defendants 4 and 5 would contend that no proper reason has been given. It is easy for the plaintiff to say that he had gone to Palani temple.

11 The learned counsel for the respondents/defendants 4 and 5 further contended that already six suits are pending. All are connected with the same issue. In such view of the matter, both Courts have rightly dismissed the restoration petition in the interest of justice.

12 The learned counsel for the respondents would also submit that I.A.No.513 of 2006 has been returned for insufficient Court fee and he took nearly 2 years to represent it.

13 I have anxiously considered the rival submissions, perused the impugned orders and also the materials on record.

14 Some contentious issues as to plaintiff's right to have service connection with respect to door No.2/55 in S.F.No.64/2 is being agitated. Defendants 4 and 5 have become staunch enemies

and according to them, plaintiff wants to indirectly knock off, grab God's property. There are some other suits having repercussion on the contentious issue.

15 The non representation of the I.A.No.513 of 2006 for a considerable period had been condoned by numbering the said application, again cannot be taken into account by the Court.

16 Trial Court remarked on non-filing of documents to prove the visit of the plaintiff to Palani temple. This can be very easily manouvoured/ manufactured. But it cannot be acceptable, because that will be giving opportunity for making lies.

17 Let us be gentle. No approach with tinged glasses to the reason stated by the plaintiff for her absence on that day. I have already stated that some contentious issues are involved. There are other connected suits. Let all the suits if they are fit to be tried jointly, be tried jointly or they are required to be tried simultaneously depending upon the facts and circumstances of the cases.

18. In view of the foregoing, ordered as under:

(i) This revision succeeds.

(ii) The impugned order, dated 05.3.2007 passed by the learned District Munsif cum Judicial Magistrate Court, Perundurai, Erode District in I.A.No.513 of 2006 in O.S.No.24 of 2001 and the impugned judgment, dated 10.11.2009 passed by the learned First Additional Sub Judge, Erode in C.M.A.No.32 of 2008 are set aside.

(iii) I.A.No.513 of 2006 allowed.

(iv) The suit shall be restored to file.

(v) The trial Court will send notice to both sides fixing an hearing date.

(vi) On the said hearing date, plaintiff shall pay a cost of Rs.2500/- (one set) directly to the learned counsels representing the defendants 4 and 5 or to the parties, as the case may be.

(vii) Both side counsels on record in the trial Court are given liberty to request the trial Court to fix a date for early disposal and when such request is made, the trial Court after giving opportunity to both sides, will fix a date and from the said date within two months, the suit shall be disposed of in accordance with law.

DR.P.DEVADASS, J.,

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(viii) Accordingly, this revision petition is disposed of.

(ix) However, there is no order as to costs.

27.3.2017

Speaking/Non Speaking order

Index : Yes / No

Internet : Yes / No

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To

- 1 The Principal District Judge, Erode
- 2 The First Additional Sub Judge, Erode
- 3 The District Munsif cum Judicial Magistrate,
Perundurai, Erode District.

Copies to

- 1 The Registrar (Judicial)
- 2 The Assistant Registrar, (Appellate side)
High Court, Madras.

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