

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P.(PD).No.2054 of 2011

and M.P.No.1 of 2011

- 1.Minor Arul
- 2.Minor Ajith

(Minor petitioners represented by
their next friend Mahalingam)

...Petitioners

Vs

- 1.Subramaniam
- 2.Selvaraj
- 3.Tamil Nadu Electricity Board,
by its Chairman,
Anna Salai,
Chennai - 600 002.
- 4.Assistant Executive Engineer
T.N.E.B.,
Erumaipatty,
Namakkal Taluk and District.

- 5.Junior Engineer (O&M),
T.N.E.B.,
Pottirettypatty,
Namakkal Taluk & District.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to allow the above C.R.P. and set aside the order and decretal

order dated 28.1.2011 made in I.A.No.1182 of 2008 in O.S.No.604 of 2008 on the file of the Additional District Munsif Court, Namakkal.

For Petitioners : Mr.V.Perumal,
for Mr.T.Dhanyakumar
For R1 & R2 : No Appearance
For R3 to R5 : No Appearance
(Private Notice served)

ORDER

The above Civil Revision Petition is filed challenging the order passed by the Additional District Munsif, Namakkal refusing to implead the Revision Petitioners in the suit in O.S.604 of 2008 .

2.The facts in brief relevant to dispose of this revision petition are as follows:

The Revision petitioners have filed a suit in O.S.No.558 of 2008 against the respondents herein and others for a declaration that the property situated in Survey No.1/1 of Pudukottai village, Namakkal Registration, Erumapatty Sub-Registration District belongs to them and for a consequential injunction restraining the respondents and others from interfering with their peaceful possession and enjoyment of the suit property and also to declare the suit bore well as belonging exclusively to the Revision petitioners and that the

respondents herein and others have no right to obtain a new electricity service connection to the suit bore well in their name.

3.As a counter blast to the above suit, the respondents 1 & 2 had filed a suit in O.S.No.604 of 2008 on the file of the District Munsif Court, Namakkal for an injunction restraining the respondents therein (the Electricity Board) from disconnecting their service connection bearing No.92, which is situated in the second item of the suit property for the bore well. In the second item property, they asked for the injunction restraining the Electricity Board from disconnecting the wires with reference to the change over switch. The suit first item was described as the property in Survey No.2/1 and the second item of property has been simply described as Survey No.1. The suit in O.S.No.558 of 2008 relates to Survey No.1/1 and the grievance of the revision petitioners in the suit O.S.No.558 of 2008 is that the respondents 1 & 2 are using a switch in their land to draw water from the bore well situated in the revision petitioners' land.

4.The revision petitioners therefore took out an application in I.A.No.1182 of 2008 to implead themselves in the suit O.S.No.604 of 2008 on the file of the District Munsif, Namakkal. The revision petitioners wanted

to get themselves impleaded as the respondents had managed to get an order of interim injunction by just impleading the Electricity Board, totally suppressing the caveat, that has been filed by the revision petitioners against the respondents 1 & 2. The revision petitioners contended that by deliberately not making them as a party and by only making the Electricity Board as party, the respondents 1 & 2 have got the order of injunction behind the back of the revision petitioners. Therefore they have to be necessarily impleaded in this petition to put forth their arguments.

5.The learned Additional Munsif, Namakkal, has dismissed the application on the ground that the relief is only sought for with reference to service connection No.92 and this service connection stands in the name of the respondents and they being the dominant litus, they were free to choose their defendants. Challenging this order, the revision petitioners are before this Court .

6.Heard Mr.V.Perumal, the learned counsel appearing on behalf of the petitioners and perused the papers and notes submission. Though, the notice has been served on the respondents, they have not entered appearance.

7. Without going into the merits of the case, on a mere perusal of the complaints in both the suits, it is clear that the dispute is with reference to the drawing of water from the well situated in Survey No.1/1 by using the service connection situated in Survey No.2/1 and having service connection No.92. Even the second item of the suit property, which is described in the suit in O.S.No.604 of 2008 is with reference to Survey No.1. This appears to be a deliberate omission since, even in the revision petitioners' suit this Survey Number appears to have been sub-divided.

8. That apart, when the revision petitioners entered caveat against any proceedings being initiated by respondents 1 & 2 by deliberately not adding them as parties in the suit in O.S.No.604 of 2008, the respondents 1 & 2 have very cleverly obtained interim orders from the Court. The interim order is causing prejudice to the revision petitioners and they are to be heard in the suit in O.S.No.604 of 2008. The observations made by the learned Judge for dismissing the application is false and deserves to be interfered with.

9. In the result, the Civil Revision Petition is allowed and the order and decretal order dated 28.1.2011 made in I.A.No.1182 of 2008 in O.S.No.604 of

2008 on the file of the Additional District Munsif Court, Namakkal is set aside.

No costs. Consequently, the connected Miscellaneous Petition is closed.

17.09.2018

Index: Yes/No
Internet: Yes/No
mbi/rpl

To

1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai - 600 002.

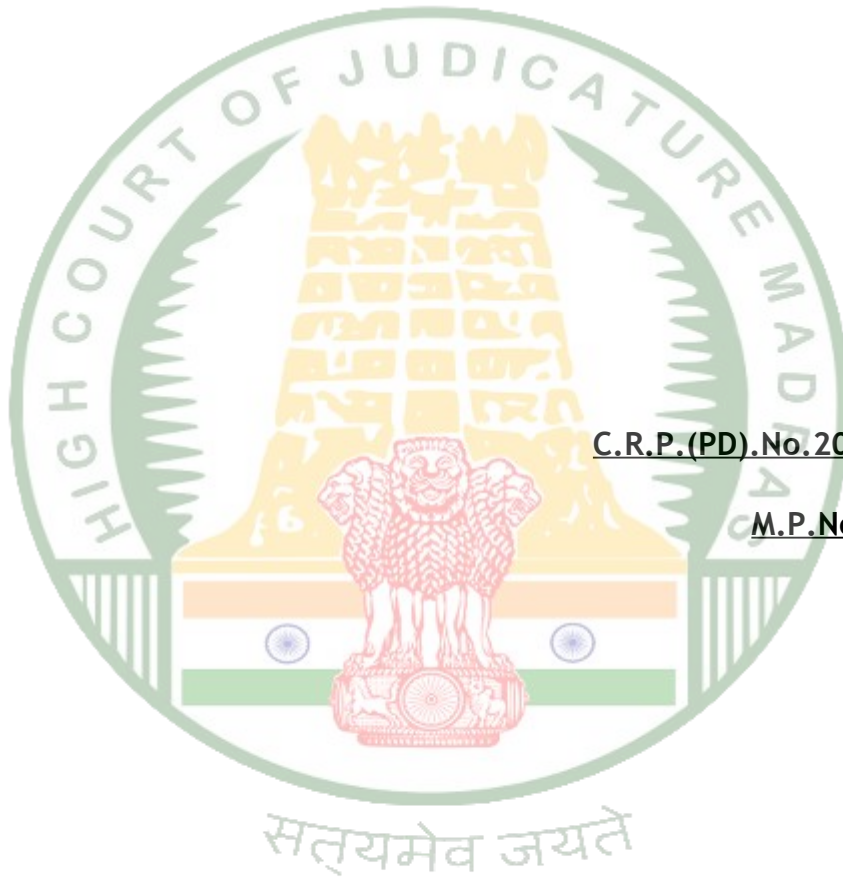
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P.T.ASHA, J.

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