



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1133 of 2016
and C.M.P. (MD) No.5648 of 2016

Boominathan

... Petitioner/Petitioner/Plaintiff
-Vs-

1. Machamalai

2. Karuppaiah

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order dated 01.03.2016 passed in I.A.No.47 of 2016 in O.S.No.42 of 2009 by the District Munsif, Mudukulathur.

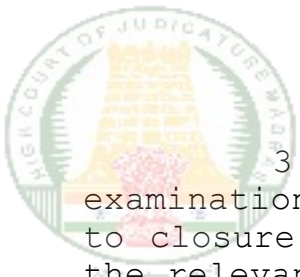
For Petitioner : Mr.K.Kumaravel

For Respondents : Mr.K.C.Ramalingam

ORDER

The revision petitioner is the plaintiff in O.S.No.42 of 2009 on the file of the learned District Munsif, Mudukulathur and in the suit, the plaintiff/respondent herein sought for declaration, permanent injunction, etc. During pendency of the suit, revision petitioner / plaintiff took out an application in I.A.No.47 of 2016 for production of documents in respect of E.B.Service No.259 as well as for summoning the Assistant Executive Engineer or his authorized subordinate for examination in respect of the said document and the said application was dismissed on the ground that there is no need to examine the Assistant Executive Engineer. Challenging the said finding, the petitioner / plaintiff is before this Court.

2. It is the case of the revision petitioner/plaintiff that the electricity connection was obtained in the name of the plaintiff's father in respect of the suit schedule property and subsequently, the entire property was settled in favour of the plaintiff, in which a grocery shop is being run by the plaintiff. It is the further case of the petitioner that in order to enable him to prove that the electricity connection stands in the name of his father, it is absolutely necessary to examine the said officer or his subordinate in respect of E.B.Service No.259. But, the Trial Court, instead of exercising its discretionary power, has simply dismissed the application. It is the further case of the revision petitioner that the parties should not be deprived of proving their case by examining additional witness and production of documents to that effect and it is unfortunate that the Trial Court had rendered a finding to the effect that the document sought is not relevant to decide the case.



3. The revision petitioner states that the refusal to allow examination of a witness and production of a document would amount to closure of doors of evidence and the Trial Court cannot go into the relevancy and admissibility of the document at the threshold and it should be appraised of only after due examination. If the vital document has not been produced and the Assistant Executive Engineer has not been examined in connection with the said document, much prejudice would be caused to the plaintiff. It is further stated that it is a mandate on the part of the Trial Court to ensure the extension of balance of convenience on both sides and the refusal of the Trial Court in summoning and reception of documents will definitely be prejudicial to the defendant and therefore, the said order needs the intervention of this Court for rendering substantial justice to the defendants.

4. Learned counsel for the defendants/respondents herein has strenuously contended that the main intention of the petitioner is to drag on the proceedings. The alleged electricity service connection has not been installed in the suit schedule property and as such, it is highly impossible for the Officer to give particulars of survey numbers in which, each and every connection was provided. It is also contended that it can be easily identified from the name, in which, the receipt for payment of consumption charges is generated and though those receipts were marked on the side of the plaintiff, the defendants highly denied the averments that the receipts belong to the connection, which was installed in the suit schedule property. Contending that the petition filed for summoning the E.B. Officer or his subordinate as well as production of document, is not maintainable in law, it is prayed for dismissal of the civil revision petition.

5. Heard the learned counsel on either side and also perused the material documents available on record.

6. It is seen from the order of the Trial Court that three witnesses were examined by the plaintiff and the case was posted for examination of additional witnesses by the plaintiff. In the meanwhile, the plaintiff had filed an application to ascertain in whose name the electricity connection was provided and the year of connection by way of examination of concerned Officer from the Electricity Board through relevant documents. The observation made by the Trial Court was that the document sought to be produced cannot determine the title of the property, which holds good and from the perusal of Ex.A3 (receipt) produced by the plaintiff, it could be seen that in the receipt, the name of the plaintiff's father finds place and therefore, no useful purpose would be served in examination of the Assistant Executive Engineer or his subordinate and production of the document. Therefore, finding much force in the contention raised by the learned counsel for the respondents and to meet out the ends of justice, this Court is of the view that the order of the Trial Court is liable to be upheld.



7. In the result,

a) the Civil Revision Petition is dismissed, by confirming the order dated 01.03.2016 passed in I.A.No.47 of 2016 in O.S.No.42 of 2009 by the District Munsif, Mudukulathur;

b) the learned District Munsif, Mudukulathur, is directed to conduct the trial of the case in O.S.No.42 of 2009 without giving any unnecessary adjournment to either parties and dispose of the same within a period of two months from the date of receipt of a copy of this order and the parties shall also cooperate for early disposal of the suit within the stipulated period prescribed above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

The District Munsif,
Mudukulathur.

+1cc to M/S.K.C.Ramalingam, Advocate SR.No. 70016

C.R.P. (PD) (MD) No.1133 of 2016
26.06.2018

ar

JM/SKN RSK/SAR 4/10.08.2018/3P/3C