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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.540 of 2020

and

C.M.P. (MD)No.3391 of 2020

Thilagam : Petitioner/Petitioner/Plaintiff

.. Vs ..

1.Lingam

2.Packiyam : Respondents 1&2/Respondents 1&2/Defendants 1 & 2

3.The Assistant Engineer (Operation and Maintenance),
Tamil Nadu Electricity Board,
North Venganallur Village,
Rajapalayam Taluk,
Virudhunagar District.

4.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Ponnagaram Sub Station,
Rajapalayam Town,
Virudhunagar District.

5.The Executive Engineer (Distribution),
Tamil Nadu Electricity Board,
Ponnagaram,
Rajapalayam Town,
Virudhunagar District.

6.The Panchayat Special Officer,
Melapattam Karisalkulam Panchayat, M.P.K.Pudupatti,
Rajapalayam Panchayat Union,
Rajapalayam Taluk,
Virudhunagar District.

7.The Block Development Officer,
Rajapalayam Panchayat Union,
Melapattam Karisalkulam,
Rajapalayam Taluk,
Virudhunagar District.

: Respondents 3-7/Respondents 3-7/
Proposed Defendants 3 to 7



PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order made in I.A.No.823 of 2017 in O.S.No.13 of 2016, dated 10.03.2020 on the file of the Additional Sub Court, Srivilliputtur.

For Petitioner : Mr.M.Thirunavukkarasu
For Respondents 1 & 2 : Mr.Ashok Kumar
For Respondents 3 to 5 : M/s.S.M.S.Johny Basha
For Respondents 6 & 7 : Mr.J.Gunaseelan Muthiah

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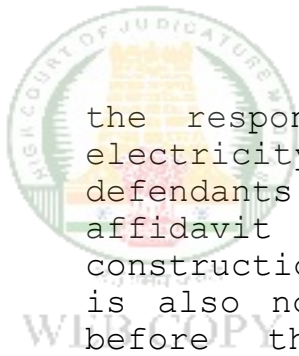
ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.823 of 2017 in O.S.No.13 of 2016 on the file of the Additional Sub Court, Srivilliputtur.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.1.The revision petitioner, as plaintiff, filed the suit in O.S.No.13 of 2016 for declaration of his title and for recovery of possession in respect of first and second schedule of property. In respect of third schedule of property which is shown as a portion of the first schedule, the prayer in the plaint was to remove the encroachment made by defendants 1 and 2. In other words, the relief is also for mandatory injunction directing the defendants 1 and 2 to remove the construction put up by them in the third schedule property.

2.2.During the pendency of the suit, the revision petitioner filed a petition in I.A.No.637 of 2016 for an injunction restraining the defendants from putting up any construction in the suit property. It appears that before the local body, the revision petitioner requested them not to make property tax assessment in favour of third defendant for the building put up by the defendants in the suit. Similarly, the Chief Engineer of the Electricity Board was requested not to give service connection to the building put up by the defendants in the suit. Subsequently, the revision petitioner/plaintiff filed a petition in I.A.No.823 of 2017 to implead the respondents 3 to 7 in this Civil Revision Petition, as parties to the suit. The respondents 3 to 5 are representing the Tamil Nadu Electricity Board and the respondents 6 and 7 are representing the local body. In the counter affidavit filed by the proposed parties, a stand has been taken stating that the respondents 3 to 7 are not necessary and proper parties. However,



the respondents 3 to 5 have admitted that they have extended electricity service connection to the building put up by the defendants 1 and 2. From the averments made in the counter affidavit filed by the parties, it is not known whether the construction was made long prior to the suit or after the suit. It is also not known whether the electricity service connection was before the suit or after the suit. In the plaint, there is no specific averment and there is no relief prayed for against any of the proposed parties. It is admitted that there is no averment involving the official respondents/proposed parties, associating them with the relief claimed in the suit. The trial Court dismissed I.A.No.823 of 2017 mainly on the ground that the proposed parties are not proper or necessary parties as no relief is prayed for as against them.

3.The learned Counsel appearing for the revision petitioner submitted that steps have been taken for necessary amendment to include additional prayer, directing the Electricity Department to disconnect the electricity service connection and to direct the local body to cancel the property tax assessment. It is further stated that such amendment cannot be resisted as the electricity service connection was given to the defendants 1 and 2 during the pendency of the suit. Similarly, the property tax assessment was made in favour of the defendants despite the request made by the revision petitioner after the suit. In such circumstances, this Court is convinced that the grievance of the petitioner as reflected in the pleadings is genuine, though the proposed parties are not necessary and proper parties, having regard to the relief that was prayed in the suit. The learned Counsel appearing for the revision petitioner has stated that the revision petitioner will file a petition for amendment of plaint introducing additional prayers of mandatory injunction against the proposed parties. In such event, it is impossible for the revision petitioner to seek amendment without impleading the parties. The dispute relates to title. The proposed parties are official respondents who are bound by the orders of the Court in case any request is made before them for disconnection of the electricity supply or for cancellation of the property tax assessment. Further, their presence may be necessary only for the purpose of getting a binding judgment so that they cannot take a stand that they are not parties to the suit in which the issue has been decided. Technically the submission of the petitioner that the proposed parties are formal and proper parties for getting a complete adjudication and to avoid further litigation is acceptable and therefore, this Court is unable to sustain the order of the lower Court dismissing the petition for impleading the proposed parties.

4.As a result, this Civil Revision Petition is allowed and the
<https://hcservicesrecords.gov.in/hcservices/>al Court in I.A.No.823 of 2017 in O.S.No.13 of 2016



is set aside. I.A.No.823 of 2017 in O.S.No.13 of 2016 stands allowed. No costs. Consequently, the Civil Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (Records)

/ /2020

Sub Assistant Registrar(CS)

SRM

To

The Additional Sub Judge,
Srivilliputtur, Virudhunagar District.

C.R.P. (MD) No.540 of 2020

12.08.2020

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