

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.2939 of 2015
and M.P.No.1 of 2015

1.Senthamarai
2.Arumugam

...Petitioners

Vs

1.M.K.Krishnan
2.The Assistant Engineer (Operation & Maintenance)
Tamil Nadu Electricity Board
Tiruvallur Electricity Distribution Circle (West)
Puzhal, Chennai - 600 066.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 03.06.2015 made in I.A.No.787 of 2014 in O.S.No.384 of 2007 on the file of the District Munsif, Thiruvotriyur.

For Petitioners : Mr.P.Mathivanan

For Respondents : Mr.K.Premkumar for R1
Mr.V.Viswanathan, SC for R2

ORDER

The Civil Revision Petition is arising out of the fair and decretal order dated 03.06.2015 made in I.A.No.787 of 2014 in O.S.No.384 of 2007 on the file of the District Munsif, Thiruvotriyur.

2.The petitioners are the defendants in the suit and originally the suit was filed by the 1st respondent herein O.S.No.384 of 2007 for mandatory injunction and permanent injunction.

3.Pending suit, the Advocate Commissioner was appointed and on the basis of the report and plan dated 15.12.2010 submitted by the Advocate Commissioner the 1st respondent herein filed a petition for amendment to amend the Rough Sketch annexed along with the plaint. The said petition was dismissed. Immediately after dismissal of the said petition again the 1st respondent filed a petition to include the prayer of declaration and certain amendment in the suit schedule mentioned property. The same was allowed by the trial Court in I.A.No.787 of 2014 dated 03.06.2015. Aggrieved by the same, the petitioners preferred this Civil Revision Petition.

4.The learned counsel for the petitioners would submit that the 1st petitioner and 2nd petitioner are none other than his own daughter and son-in-law of the 1st respondent. The suit in O.S.No.384 of 2007 was filed by

the 1st respondent in the year 2007. Subsequently, an Advocate Commissioner was appointed to inspect the suit property and note down the physical features. He inspected the suit property and filed a report that the 1st respondent encroached the portion of the land belonged to the petitioners. Thereafter the 1st respondent filed a petition for amendment to amend the Rough Sketch filed along with the plaint and the same was dismissed by an order dated 12.03.2014 in I.A.No.620 of 2011. The 1st respondent did not prefer any revision as against the dismissal of the amendment petition. Immediately after dismissal of the said petition again the 1st respondent filed a petition to include the prayer of recovery of possession and declaration in respect of the suit schedule property. The trial Court without even discussion or assigning any reason mechanically allowed the petition. Further, the trial Court not even noticed the earlier dismissal of amendment petition filed by the 1st respondent herein. He further submitted that in fact the petitioners also filed a suit as against the 1st respondent. Arising out of the interim order, the petitioners went upto the Hon'ble Supreme Court of India and in S.L.P.No.18907 of 2011, the Hon'ble Supreme Court of India referred the matter before mediation and

conciliation centre of this Court. Both the parties were appeared and entered into mediation agreement dated 27.03.2011. Accordingly, the 1st respondent agreed to sell the suit property for the sale consideration of Rs.21,63,000/-. When the petitioners were ready with the demand draft for the said sum and also on receipt of the xerox copies of the demand draft, the 1st respondent refused to execute the sale deed as agreed by him in the mediation agreement dated 27.03.2011. Thereafter he came up with the present petition for amendment of prayer. Therefore, he prayed for set aside the fair and decretal order made in I.A.No.787 of 2014 in O.S.No.384 of 2007 on the file of the District Munsif, Thiruvotriyur, dated 03.06.2015.

5.Per contra, the learned counsel for the 1st respondent would submit that the present petition for amendment is only to include the prayer in the suit, that too, to avoid multiplicity of further proceedings, since the petitioners also filed a suit as against the 1st respondent herein. All are close relatives, even then, the petitioners are already lodged a false complaint and on the false complaint the 1st respondent and his son were convicted for the offence under Section 326 IPC. In fact the conviction was set aside by this Court as against the 1st respondent and the conviction is

confirmed by this Court as against the son of the 1st respondent. Therefore, there is no possibility for settlement between the parties. He further submitted that the trial Court discussed all the grounds raised by the petitioners as well as the 1st respondent and allowed the petition, only to avoid multiplicity of proceedings in future. Further it is submitted that because of the said amendment no prejudice will be caused to the petitioners and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel for the petitioners; learned counsel for the 1st respondent and the learned Standing Counsel appearing for the 2nd respondent and also perused the materials available on record.

7. Petitioners are defendants in the suit in O.S.No.384 of 2007 filed by the 1st respondent herein. Pending suit, an Advocate Commissioner was appointed and he filed a report dated 15.12.2010. On perusal of report of the Advocate Commissioner revealed that the suit property is classified as Village Natham and there are encroachment by the 1st respondent as well as the petitioners. Therefore, it is necessary to decide the suit for the prayer of declaration and also recovery possession by letting evidence before the trial Court, in order to avoid multiplicity of proceedings between the petitioners

and the 1st respondent. Since already there are dispute between the parties in respect of civil issues as well as conviction in the criminal case, lodged by the petitioners herein, there is no possibility of amicable settlement between them. Therefore, the trial Court rightly allowed the petition and as such this Court finds no irregularity or infirmity in the order of the Court below made in I.A.No.787 of 2014 in O.S.No.384 of 2007 on the file of the District Munsif, Thiruvotriyur, dated 03.06.2015.

8.Accordingly, the Civil Revision Petition is dismissed. However, considering that the suit is of the year 2007, the trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. If the 1st respondent fails to cooperate with the trial, the trial Court is directed to proceed with the case in accordance with law. No costs. Consequently connected miscellaneous petition is closed.

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Index:Yes/No

Speaking Order: Yes/No

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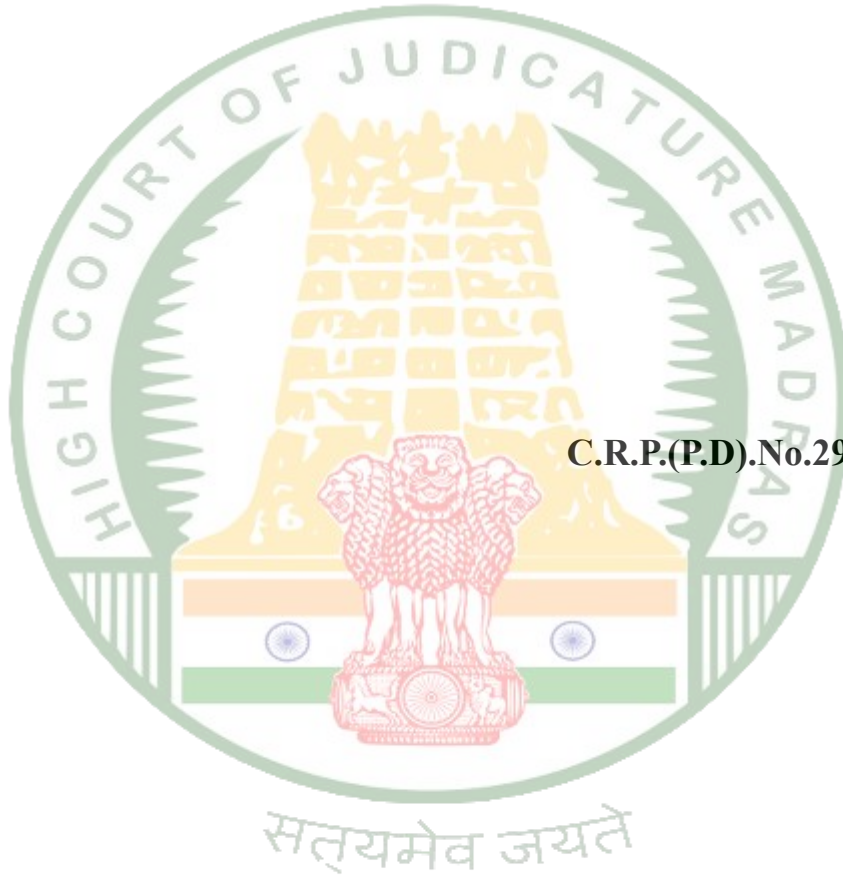
To

The District Munsif, Thiruvotriyur.

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