

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.No.3486 of 2018

and

Cmp.No.19528 of 2018

1.Amalanathan

2.Kannikairaj

... Petitioners

Versus

1.Perianayagam

2.The Junior Engineer,

Office of the Junior Engineer,
Operation & Maintenance,
TNEB, Kedar,
Villupuram Taluk.

3.The Assistant Executive Engineer,
Office of the Assistant Executive Engineer,
Operation & Maintenance,
TNEB, Trichy Main road,
Opp. To Ezhumalai Poltechnic,
Villupuram.

4.The Executive Engineer,
Office of the Executive Engineer,
TNEB, East Pandy Road,
Villupuram.

5.The Superintendent Engineer,
Office of the Superintendent Engineer,
TNEB, East Pandy Road,
Villupuram.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 01.07.2017 in I.A.No.388 of 2014 in O.S.No.117 of 2014 passed by the Principal District Munsif Court, Villupuram.

For Petitioners : Mr.Saravanan T.K.
For Respondents : No Appearance

ORDER

Challenging the order passed by the Court below in I.A.No.388 of 2014 in O.S.No.117 of 2014, dated 01.07.2017, the present Civil Revision Petition is filed by the defendants 5 & 6.

2.The said suit in O.S. No. 117 of 2014 was filed by the first respondent herein for permanent injunction restraining the defendants 1 to 4 from granting/effecting Electric Service connection to the suit property in favour of the defendants 5 and 6 / revision petitioners herein. It appears that already, the first respondent has filed a suit in O.S. No.310 of 2013 for permanent injunction against the revision petitioners herein, restraining them from putting up any constructions in the suit property as described in A, B, C and D of the plaint schedule. Pending the suit in OS No.310 of 2013, the first respondent filed IA No. 832 of 2013 for interim injunction and it was dismissed on 10.02.2014 on merits. Thereafter, the suit in OS

No.310 of 2013 itself was dismissed for non-appearance of the plaintiff/first respondent herein on 03.03.2017. In the meantime, the first respondent filed the present suit in O.S.No.117 of 2014 to restrain the defendants 1 to 4 from granting/effecting Electric Service connection to the suit property in favour of the defendants 5 and 6 / revision petitioners herein. Pending the suit in OS No.117 of 2014, the Interlocutory Application in I.A.No.388 of 2014 was filed for appointment of an advocate commissioner and it was allowed on 01.07.2017.

3. It is the main contention of the revision petitioners that there is no material placed in the application for the appointment of the Advocate Commissioner. In this matter, there is no need for appointing the Advocate Commissioner and there is no requirement for measuring the property with the aid of the Surveyor. All these facts have not been considered by the Court below. It is for the Electricity Department to verify the ownership and provide Electricity connection.

4. In the present case, the same first respondent filed a suit in OS No.310 of 2013 for permanent injunction restraining the revision petitioners herein from putting up any construction in the suit property as

described in A, B, C and D of the plaint schedule. The said suit was dismissed for default on 03.03.2017. Without considering all these aspects, without providing any reasons for appointing the Advocate Commissioner, the Court below appointed the Advocate Commissioner.

5.Though this Court ordered notice to the respondents and their names also printed in the cause list, when the matter is called, none appeared on behalf of the respondents.

6.Heard the counsel for the revision petitioners and perused the materials available on record.

7.Upon perusing the records, it is seen that the first respondent had already filed one suit in O.S.No.310 of 2013 against the revision petitioners herein restraining them from putting up any construction in the disputed land. Further, the Court below also heard the application for interim injunction in IA No. 832 of 2013 in OS No.310 of 2013 and passed a detailed order on 10.02.2014 refusing to grant interim injunction, but no appeal has been filed to set aside the said order. The suit in OS No.310 of 2013 came to be dismissed for default on 03.03.2017.

8.Under these circumstances, the present suit came to be filed restraining the Electricity Board authorities from granting electricity connection to the revision petitioners.

9.This Court is unable to understand that when the first respondent already filed a suit in OS No.310 of 2013 for permanent injunction to restrain the revision petitioners from putting up any construction and the same came to be dismissed for default, the entertainment of the relief as sought in the present application in OS No.117 of 2014 itself is questionable. Under these circumstances, even the revision petitioners are entitled for the electricity connection, the necessity for the appointment of Advocate Commissioner is not necessary. It is for the Electricity Board to decide whether the electricity connection can be provided to them or not. However, the Court below simply, without providing any reason, in a mechanical manner, allowed the application for appointment of Advocate Commissioner. It is the duty of the Court below to state the reason and the necessity for the appointment of the Advocate Commissioner and how his report is going to help the Court to pass the final Judgment. Even if there are justifiable grounds for such appointment,

this Court is unable to understand that the relief in the main suit is not to provide any electricity connection, in such case, how the first respondent will be entitled to seek the relief, in the application, for appointment of Advocate Commissioner, in which case, how his appointment is going to be helpful for the first respondent is not known. The previous suit in OS No.310 of 2013 was dismissed for default, wherein, the first respondent sought similar prayer as in the present suit and no steps have been taken by the first respondent to pursue the said case. The Court below had passed a detailed order, while dismissing the application for interim injunction in I.A.No.832 of 2013 in OS No. 310 of 2013 and come to the conclusion that the first respondent herein is not entitled any such relief as sought for.

10.Thus, the Court below has not taken into consideration of all these facts while passing the order for appointment of the Advocate Commissioner. The order of appointment of Advocate Commissioner was passed in a mechanical manner. Therefore, this Court is inclined to set aside the order appointing an Advocate Commissioner and accordingly, the order of the Court below is hereby set aside.

11. In the result, the order dated 01.07.2017 in I.A.No.388 of 2014 in O.S.No.117 of 2014 passed by the Principal District Munsif Court, Villupuram is set aside. The Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

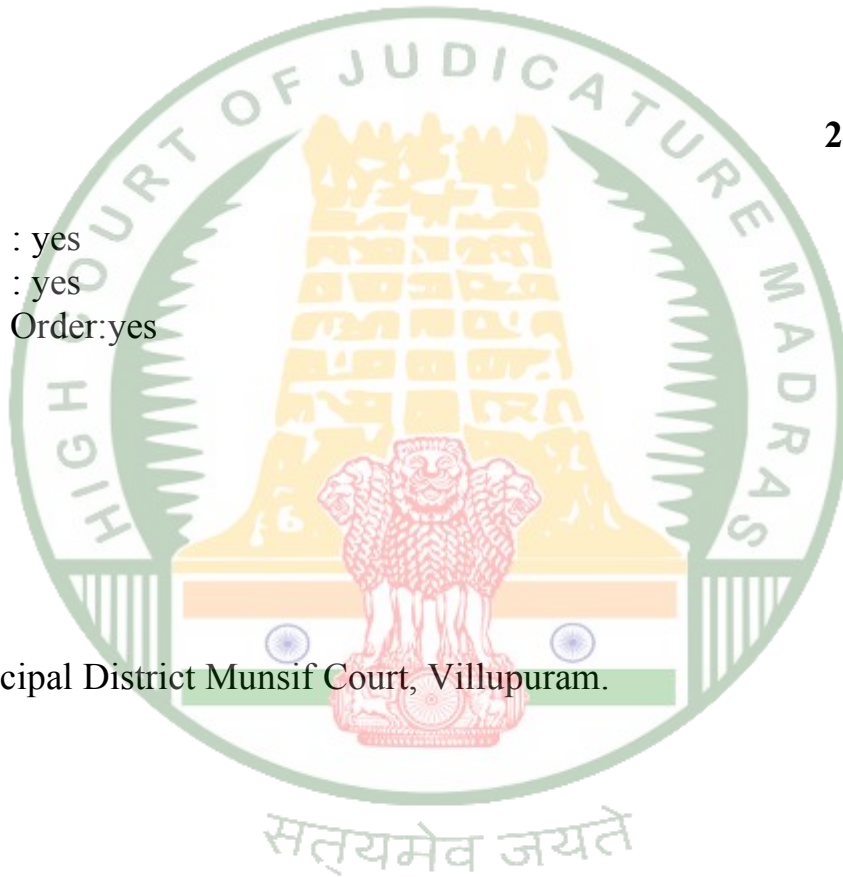
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Index : yes
Internet : yes
Speaking Order:yes

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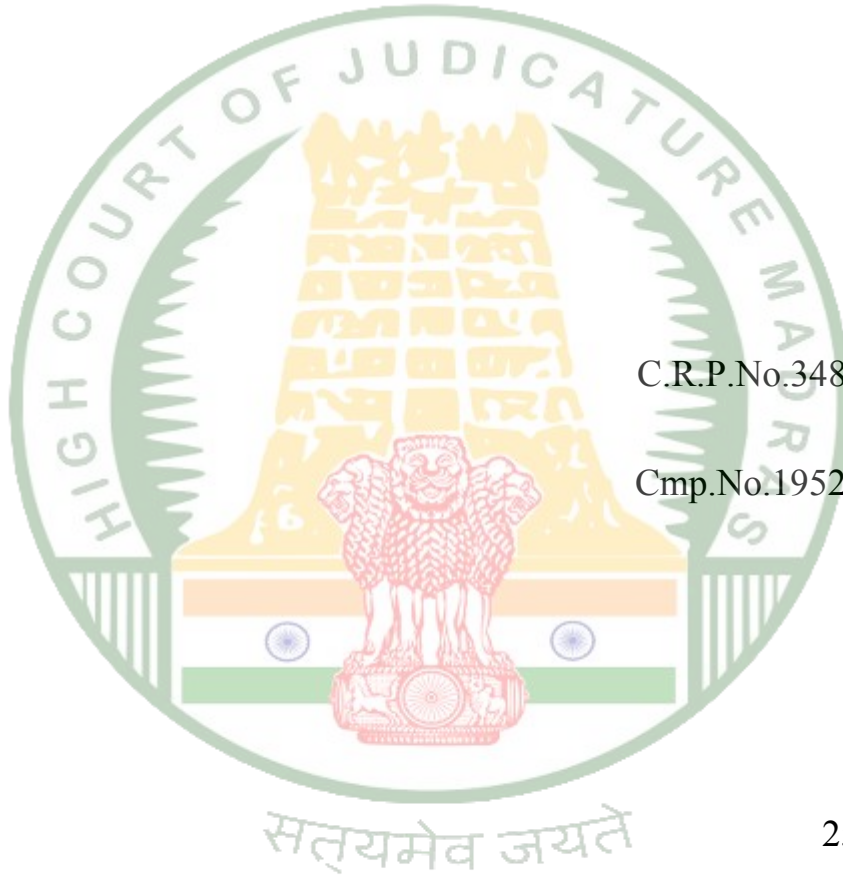
The Principal District Munsif Court, Villupuram.



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KRISHNAN RAMASAMY, J.

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