



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.10.2021

Delivered on : 20.12.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

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C.R.P. (MD)No.2334 of 2018 (PD)
and C.M.P. (MD)No.10387 of 2018

Samuvel Ponnuthurai

... Petitioner/Petitioner/Plaintiff

Vs.

1.N.D.S.Charles

2.The President,
Vadiyur Panchayat,
Vadiyur Villlage,
V.K.Pudur Taluk,
Tirunelveli District.

3.The Commissioner,
Alangulam Panchayat Union,
Alangulam,
Tirunelveli District.

4.The District Collector,
Tirunelveli District,
Tirunelveli.

5.The Special Officer,
Vadiyur Panchayat,
Vadiyur Alangulam

... Respondents/Respondents/Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 14.08.2018 made in I.A.No.437 of 2018 in O.S.No.569 of 2013 on the file of Additional District Munsif Court, Tenkasi, Tirunelveli District.

For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.M.Saravanan for R1

Mr.M.Baskaran,

Government Advocate for R2 to R4

No Appearance for R5

ORDER

This revision is filed against the order dated 14.08.2018 made in I.A.No.437 of 2018 in O.S.No.569 of 2013 on the file of the Additional District Munsif, Tenkasi, Tirunelveli District.



2. The revision petitioner herein is the plaintiff and the respondents herein are the defendants in the original suit.

3. The revision petitioner filed a suit in O.S.No.569 of 2013 to declare the suit property as a common pathway and for a permanent prohibitory injunction order. The petitioner has filed a petition in I.A.No.437 of 2018 for examination of additional witnesses and for marking additional documents. That petition was dismissed by the trial Court. As against the same, the petitioner has approached this Court by way of this Civil Revision Petition.

4. Brief substance of the petition in I.A.No.437 of 2018 is as follows:

The petitioner is having a right over the suit property, which is a common pathway. The petitioner filed a suit for declaration and for permanent injunction. A written statement was filed by the defendants. The case was posted for examination of additional witnesses. Electricity connection was given from the electric post and the evidence of Junior Electrical Engineer of the Electricity Department is necessary to prove that an electric post was erected on the eastern side of the petitioner's house and that the electricity connection was given from the particular post. The petitioner has to prove that the property tax and the water tax are paid by him and to prove those things, the Special Officer, Vadiyur Panchayat Union, Alangulam has to be examined. To prove his ownership in Survey No.374/28 and 29, the Tahsildar, VeeraKeramputhur has to be examined and the documents regarding these facts are to be marked.

5. Brief substance of counter in I.A.No.437 of 2018 is as follows:

The petitioner has filed this suit O.S.No.569 of 2013 regarding Survey No.301/8. The respondents have filed a suit against the petitioner and four others in O.S.No.507 of 2014 and the suit properties in O.S.No.507 of 2014 are Survey No.301/8 and Survey No.374/28 and 29. The respondents filed a petition in I.A.No.37 of 2018 for joint trial of both the suits. In that petition, the petitioner herein has filed a counter affidavit stating that the property in Survey Nos.374/28 and 29 are not connected with the suit properties. Subsequently, the petitioner has filed a petition to add Survey No.374/28 and 29 in the list of properties in O.S.No.569 of 2013 and that petition was dismissed by the trial Court. The fifth respondent is incharge of the Special Officer in Vadiyur Panchayat and hence he cannot be examined as petitioner's side witness. Already a commissioner was appointed and he has filed a report with plan, wherein the electricity connection to the house of the petitioner was clearly stated and that there is no necessity to examine the Junior Electrical Engineer to prove the same. Only with the motive to delay the case proceedings, the petitioner has come



forward with this petition.

6. After hearing both sides, the trial Court dismissed the petition. The revision petitioner filed this revision against the impugned order.

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7. On the side of the revision petitioner, it is stated that the lower Court ought to have taken into consideration the existence of the electricity pole in the pathway and that the electricity connection provided by the Electricity Department can be proved only by summoning the official witnesses. The trial Court is erred in giving a finding that the public documents can be proved by marking certified copies.

8. On the side of the revision petitioner, it is further stated that the burden of proof is on the plaintiff and hence, the plaintiff has to be given an opportunity to mark the documents through the official witnesses. The petitioner purchased the property from the first respondent's father and the petitioner is ready to co-operate the trial within the time frame to be fixed by this Court.

9. On the side of the respondents, it is stated that the suit was filed for declaring the second schedule property in S.No.301/8 as a common pathway. The pathway is exclusive for the defendants. Only at the fag end of the trial, the petitioner has come forward with this petition. If at all the petitioner is really in need of examination of the witnesses, he ought to have filed this petition much earlier. If needed the petitioner can mark certified copies of the public documents. Already a Court Commissioner was appointed and he has filed a report regarding the electricity connection and the details are already available. Property tax receipt can be filed and therefore, there is no necessity to call for officials to prove the property tax. Certified copy of the patta can be obtained. There is no necessity to mark a patta relating to the street adjoining the suit properties. The other authority proposed to be examined by the petitioner is the fifth respondent herein and the plaintiff cannot examine the fifth respondent/fifth defendant as a witness on his side.

10. On the side of the respondents a judgment reported in **1999 1 LW 660 [Kaliaperumal Vs. Pankajavalli]** is cited, wherein it is stated as follows:

"8. The above decision was followed by Kelala High Court in a case between Muhammed Kunju V. Shahabudeen reported in 1969 K.L.T. 170, wherein it is held thus,

"The practice of a party causing his opponent to be summoned as a witness has to be disapproved. As a matter of right, a party



cannot have the opposite party examined as a witness"

9. In view of the settled legal position, I do not think that the petitioner can compel the second defendant to be examined as witness for him."

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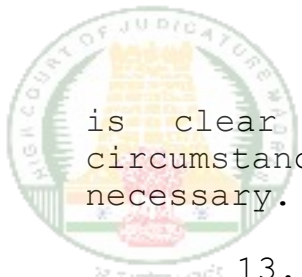
11. Another judgment reported in **2014-4-LW.174 [V.L.Ramanathan Vs. Salem Nagarathar Sangam]** is cited, wherein it is stated as follows:

"7. The decision of this Court relied on by the learned counsel for the respondent reported in (2003) I MLJ 556 (V.P.Subramaniam Vs. P.Saraswathi), in which, it reads as follows:

"13.Coming to the contention of the learned counsel for the petitioner that the petitioner has got every right to file the petitions of present nature seeking a direction to examine the respondent as a witness, this Court is of the view that no party to the proceedings can be compelled to give evidence in a Court of law at the instance of the other. It is always open to the Court to draw an adverse inference by the conduct of the party, who keeps away from the witness box. When that be the principle, it is not known as to how a defendant in the suit can be permitted to be examined as a plaintiff witness. Virtually, it may amount to compel the defendant to appear as a witness of the plaintiff and depose against her. If not, she will be subjected to unnecessary questions, which may not be warranted in the nature of the proceedings."

8. On a careful reading of the above said decision and also as per the provisions of CPC, this Court is of the view that the revision petitioner is not entitled to compel the 4th respondent / 4th defendant to give evidence on the side of the revision petitioner. The finding of the trial Court is not illegal or perverse and therefore, this no need to interfere with the above said findings."

12. It is seen that the petitioner want to examine three witnesses. One witness is a Junior Electrical Engineer. The petitioner wants to examine the Junior Electrical Engineer to prove the erection of electric post in the suit property and to prove that the electricity connection to the petitioner's house through one such electrical post. It is stated that the Court has already appointed a Court Commissioner and the report of the Commissioner



is clear as to the electricity connection. In the above circumstances, examining the Junior Electrical Engineer is not necessary.

13. The petitioner wants to examine the Tahsildar to prove the revenue documents regarding Survey No.374/28 and 29. It is stated that in a petition in I.A.No.37 of 2018 in O.S.No.507 of 2014 filed by the respondents herein, a counter affidavit was filed by the petitioner herein stating that these two survey numbers are no way connected with the suit properties. Even if the properties are connected with the suit properties, the petitioner can mark copies of the documents and there is no necessity to call for the documents from the official witnesses or to examine the official witness to mark public documents.

14. The petitioner wants to examine the Special Officer, Vadiyur Panchayat. The fifth defendant is the Special Officer of Vadiyur Panchayat and the plaintiff cannot compel the fifth defendant to depose against his own case. The documents to be marked through the Special Officer are all public documents. The petitioner can mark the certified copy of the public documents and there is no necessity to examine the Special Officer. The original suit is pending from the year 2013. The petitioner has come forward with this petition only in the year 2018. Allowing this petition will cause further delay in the suit proceedings. Hence, this Civil Revision Petition is dismissed. The trial Court is directed to dispose of the original suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. Additional District Munsif Court, Tenkasi, Tirunelveli District



2.The President,
Vadiyur Panchayat,
Vadiyur Villlage,
V.K.Pudur Taluk,
Tirunelveli District.

3.The Commissioner,
Alangulam Panchayat Union,
Alangulam,
Tirunelveli District.

4.The District Collector,
Tirunelveli District,
Tirunelveli.

5.The Special Officer,
Vadiyur Panchayat,
Vadiyur Alangulam

6.The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-39747[F] dated 21/12/2021)

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-39662[F] dated 21/12/2021)

C.R.P. (MD)No.2334 of 2018 (PD)
20.12.2021

NSN(CO)
KB(31.12.2021) 6P 11C