



C.R.P.(PD).No.961 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.961 of 2022

&

C.M.P.No.4959 of 2022

1.P.Manivannan

2.P.Bharadhan

...Petitioners

Vs

1.R.Dhanapal

2.D.Selvi

3.The Superintendent Engineer,
TNEB, Udayapatty Sub-Division,
East Salem Division, Salem Taluk and District.

4.The Executive Engineer,
TNEB, Udayampatty Sub-Division,
East Salem Division, Salem Taluk and District.

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5.The Assistant Engineer,
TNEB, Dasanaichenpatty, Salem District.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against Fair and Decreetal order dated 05.01.2022, made in I.A.No.2 of 2021 in O.S.No.1008 of 2012 passed by the I Additional District Munsif Court, Salem.

For Petitioners : Mr.N.Vijaya Basker
for M/s.Law Vision.

JUDGEMENT

Aggrieved by the dismissal of their application seeking to reopen the above suit for the purpose of examining P.W.1 for marking documents, the petitioners are before this Court. The facts are as follows.



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2. The petitioners have filed the suit O.S.No.1008 of 2012 on the file of the I Additional District Munsif, Salem for permanent injunction, mandatory injunction and other reliefs.

3. The petitioners have contended that the suit property belonged to their paternal grand mother, Palaniammal, who had executed a registered settlement deed in their favour on 11.05.2012 and since then they have been in possession and enjoyment of the same.

4. The 1st respondent is their paternal uncle being the younger brother of the petitioners' father one Palanisamy. The 2nd respondent is the wife of the 1st respondent. Respondents 3 to 5 are the officials of the TNEB.

5. It is also the petitioners' case that their paternal grand mother executed a settlement deed in respect of the property adjacent to the



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suit property in favour of her son the 1st respondent under a registered settlement deed dated 09.07.2012. In the said settlement deed Palaniammal had given a right to the petitioners to keep an electricity pole in the property to take electricity through this electric pole and to permit the petitioners to effect repairs on the same. However, contrary to the terms of the settlement, the respondents were interfering with the possession and enjoyment of the suit property by the petitioners and whenever the petitioners have attempted to enter the property they were being prevented by the respondents. Therefore, the petitioners have come forward with the above suit. They had also contended that the respondents have erected another pole.

6. Pending the suit, the petitioners have amended the relief portion, namely, *“directing the defendants 3 to 5 to take away the electricity pole bearing service connection no.322 and install it in the property of the 1st defendant or any where else”*.



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7. The respondents have filed a written statement denying the allegations contained in the plaint. In the written statement they have admitted the existence of the electric pole and contended that the 1st respondent was given a right to use the same. The right to the electricity pole, the line drawn from the pole and the right to use the electricity passing through this line and to repair it has also been granted to the 1st respondent. Their contention is that the petitioners had no right whatsoever to the pole in S.No.322.

8. It appears that the petitioners have come forward with a petition when the matter was posted for arguments to reopen the suit and for the purpose of examining P.W.1 for marking documents. The reason given in the affidavit is that the 1st respondent had made a false complaint against the petitioners' father on 26.10.2015 at Mallur Police Station and when the 1st respondent was questioned about the same he



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had denied it. Therefore, these documents had to be put to the witness.

These documents have now been obtained from the Mallur Police Station under the RTI Act.

9. The respondents had filed a counter inter alia contending that this is nothing but an abuse of process of Court and ruse to protract the proceedings.

10. In their counter the respondents would set out that the suit was filed on 30.08.2012. The 1st witness was examined on the side of the petitioners on 11.08.2015 and the 2nd witness on 16.02.2016. On 07.11.2016, P.W.1 was recalled and examined. The 1st respondent examined himself as witness on 29.03.2016 and on 04.01.2017 the 1st respondent was recalled and cross examined extensively. The evidence on both sides was closed on 07.09.2016. Thereafter, the witnesses were once again recalled and examined on 04.01.2017.



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11. The contention of the respondents was that the petitioners are not permitting the closure of the suit. The respondents would further submit that eight interlocutory applications have been moved by the petitioners and the present petitions were the 9th and 10th in the order.

12. The petitioners had filed I.A.No.73 of 2017 to summon the Officials of the Mallur Police Station and the same was dismissed on 07.03.2017, which is taken on revision to this Court in C.R.P.No.2445 of 2017. The revision was also dismissed on 19.03.2021. After all these interlocutory applications, another application in I.A.No.1 of 2020 was filed seeking direction to the Mallur Police Station to produce the documents. This was dismissed on 30.11.2020 and not challenged by the petitioners. At this juncture, the present application has been filed when the matter at the stage of argument and is therefore an abuse of process of Court.



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13. This application was dismissed by order dated 05.01.2022 and it is this order that is the subject matter of this Court.

14. The matter has come up for admission.

15. Heard the learned counsel and perused the records.

16. A mere perusal of the counter of the respondents to this application, namely, I.A.No.2 of 2021 in O.S.No.1008 of 2012, which has been extracted by the learned I Additional District Munsif, Salem, clearly sets out how at each juncture the petitioners have been effectively stalling the proceedings. The evidence of P.W.1 opened on 11.08.2015 and evidence of the parties had concluded on 07.09.2016 and during the pendency of the various petitions, the petitioners have been moving one petition after another.



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17. A reading of the counter would show that with the impugned application, ten interlocutory applications have been moved. The present petition is only to get over the dismissal of the interlocutory application in I.A.No.73 of 2017 which is confirmed in C.R.P.No.2445 of 2017 and I.A.No.1 of 2020.

18. In these circumstances, the present application is clearly an attempt to protract the proceedings and this Court cannot be a party to the same.

19. In the result, the Civil Revision Petition is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.



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20. The learned I Additional District Munsif, Salem shall endeavour to dispose of the suit at the earliest considering the fact that evidence has been concluded.

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Index : Yes/No

Speaking order/non-speaking order

To,

1.The I Additional District Munsif Court,
Salem.

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P.T.ASHA, J.,

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