



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2022

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THE HONOURABLE MRS.JUSTICE S. ANANTHI

CRP(PD) (MD).No. 2325 of 2017 and

CMP(MD).No. 11222 of 2017

WEB COPY

Paulthurai

.. petitioner/1st Respondent/
Plaintiff

Vs.

1.Paraman

..1st Respondent/Petitioner/
1st Defendant

2.The Superintendent Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd., Madurai.

3.Th Divisional Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Usilampatti,
Madurai District.

4.The Assistant Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Uthappanaickanoor,
Usilampatti, Madurai District.

.. Respondents 2 to 4/Respondents 2 to 4/
Defendants 2 to 4

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.09.2017 made in I.A.No.603 of 2016 in O.S.No.254 of 2014 by the District Munsif Cum Judicial Magistrate No.I, Usilampatti.

For Petitioner	... Mr. D. Malaichamy
For R1	... Mr. Barathan
For R2 to R4	... Mr. B. Ramanathan Senior Counsel

ORDER

The revision petitioner / plaintiff has filed this revision to set aside the order passed in I.A.No.603 of 2016 in O.S.No.254 of 2014, which was filed by the first defendant to appoint an Advocate Commissioner to note down the physical features in the suit schedule property with the help of Surveyor, which was allowed by the learned District Munsif Cum Judicial Magistrate No.I, Usilampatti. Aggrieved by the said order, the present revision has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>



2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The revision petitioner has filed a suit in O.S.No.254 of 2014 for permanent injunction not to disturb the EB connection in the well of the property. The first defendant and the 4th defendant / Electricity Department have filed a written statement and disputed the identity of the property and has stated that the well is not situated in S.No.208/1, which was mentioned in the suit property. But, it is only situated in S.No.490 and the service connection also was obtained for Well in S.No.490.

4. The learned counsel appearing for the petitioner would submit that the defendant has no *loco standi* to file a Commission Petition. Further, in support of his contention he has relied on the Judgments of this Court reported in **2018(2) MWN (Civil) 60 (Natarajan Vs. Rajapandi)** and **2013(1) MWN (Civil) 878 (M.A. Saravanan and others Vs. Kannan and others)**.

5. Even though the plaintiff has to prove his case the identity of the property itself is in question. As per the above said Judgments relied on only the plaintiff has to prove his case. The defendant cannot file commission application to disprove the plaintiff's case. But in the case on hand the dispute is only with regard to the identity of the property whether the well is situated in S.No.208 /1 or in S.No.490 is the relevant issue to be decided in the case. Therefore, the appointment of the Commissioner is necessary to identify the property. Hence, the learned District Munsif Cum Judicial Magistrate No.I, Usilampatti has rightly allowed the petition and hence, there is no reason warranting interference by this court.

6. In the result, this Civil Revision Petition is dismissed, confirming the order, dated 19.09.2017 passed in I.A.No.603 of 2016 in O.S.No.254 of 2014 by the District Munsif Cum Judicial Magistrate No.I, Usilampatti. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp



To

The District Munsif Cum Judicial Magistrate No.I, Usilampatti.

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-7455[F] dated 21/02/2022)

+1 CC to M/s.B.RAMANATHAN, Advocate (SR-7557[F] dated 21/02/2022)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-7703[F] dated 22/02/2022)

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