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CRP.No.524 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

CRP.No.524 of 2023
and CMP.No.4252 of 2023

P.Krishnamoorthi

... Petitioner

Vs.

1.The State of Tamilnadu,
Rep. by the District Collector, Salem

2.The Revenue Divisional Officer,
Salem

3.The Tahsildar, Salem Taluk,
Salem

4.The Village Administrative Officer,
Alagapuram Village,
Salem Taluk

5.The Deputy Superintendent of Police,
The Department of Anti Corruption and Vigilance,
Salem-4

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 14.12.2022 in IA.No.2 of 2022 in OS.No.380 of 2011 on the file of the IV Additional District Munsif, Salem and consequently allow the IA.No.2 of 2022 in OS.No.380 of 2011 as prayed for.



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For Petitioner : Mr.T.Sai Krishnan

For Respondents : Mr.M.R.Gokula Krishnan,
Additional Government Pleader

ORDER

The petitioner herein is the plaintiff in the suit. He filed suit for declaration and permanent injunction with regard to 30 feet pathway said to be existed in survey No.14/2 against defendants 1 to 5. All the 1 to 5 defendants are the Government Officials. Now the case is posted for trial. During the pendency of the proceedings, he filed application in IA.No.2 of 2022 under Order XVI Rule 1(2) of CPC to issue summon to Tahsildar, Salem West Taluk, Jagir Ammapalayam, Salem to cause production of the petition mentioned document as described in the affidavit, more particularly with regard to revenue records for fasali 1403 in order to show that there is a 'nilaviyal pathway' in SF.No.17/1. The said application was objected by the second respondent stating that the petition is false, frivolous and not maintainable in law and on facts.

2. It was the contention of the respondents that the memorandum issued by the third respondent in O.M.No.13630/06(B9) dated 28.09.2006 was without any basis and without verification of the Government records as



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neither the Survey records nor the revenue records such Adangal, FMB, 'A' Register and Village Map do not show the existence of any road as alleged by the petitioner. Further, the S.No.17/1 that the extent of 0.41.05 hectares was transferred to the Department of Vigilance and Anti Corruption by the Government of Tamilnadu. The Government is the owner of the land in S.No.17/1. The Government has got every right to transfer it to another Government Department. It was also alleged by the respondents that the public including the petitioner has to be restricted from entering the property belonging to the Government. Considering both the submissions, the trial judge held that since Tahsildar is already added as the third defendant in the suit, he need not be summoned on the side of the plaintiff as witness. On the other hand, when there is a chance to examine DW3 on the side of the defendants evidence, the plaintiff is having sufficient opportunity to examine the said witness. Therefore, the Tahsildar cannot be summoned. Accordingly, the petition was dismissed. Challenging the said findings, the revision has been filed.

3. Notice served to the respondents and the learned Additional Government Pleader appeared.



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4. According to the contention of the petitioner that in order to prove the plaintiff's case, the revenue records are necessary which is under the control of the Tahsildar. So he filed application to produce those documents. But the same was not accepted by the trial judge. Therefore, if the revenue records are not been produced on the side of the plaintiff, his right to prove his claim will be defeated. Therefore, he prayed to set aside the findings of the trial judge.

5. It is admitted fact that the person who is wanted to be summoned by the plaintiff is ranked as the third defendant in the suit. However, the plaintiff filed suit for declaration in respect of the suit property, more particularly they are claiming pathway named as 'nilaviyal pathway' and to prove the same, the revenue records are the necessary documents, without which he cannot prove his case. Even though the Tahsildar is named as the third defendant, the plaintiff is having every right to prove his case. In future, if the Tahsildar is not examined on the side of the defendants, the right to prove his case will be defeated. The trial judge without appreciating the said facts, erroneously dismissed the application. Therefore, the findings given by the trial judge is set aside and the application in IA.No.2 of 2022 is allowed.



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The trial judge is directed to issue summon to the Tahsildar as per the manner known to law and proceed with the trial and dispose of the case within a period of six months from the date of receipt of this order since because the suit is pending from the year 2011.

6. Accordingly, this civil revision petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

08.03.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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T.V.THAMILSELVI, J.

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To

- 1.The IV Additional District Munsif,
Salem
- 2The District Collector,
Salem
- 3.The Revenue Divisional Officer,
Salem
- 4.The Tahsildar, Salem Taluk,
Salem
- 5.The Village Administrative Officer,
Alagapuram Village,
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