



WEB COPY



C.R.P. (PD) NO.716 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. (PD) NO.716 OF 2023

AND

CMP NO.5579 OF 2023

Thasan

... Petitioner

Vs.

M.Sakthivel

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 19.01.2023 made in I.A.No.02 of 2023 in O.S.No.328 of 2017 on the file of the Sub Court, Palacode.

For Petitioner : Mr.N.Manokaran
For Respondent : Ms.R.Vidhya

ORDER

Challenging the fair and decretal order dated 19.01.2023 passed in I.A.No.02 of 2023 in O.S.No.328 of 2017 by the learned Sub Judge, Palacode, this Civil Revision Petition is preferred by the petitioner.



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2. The respondent is the plaintiff in the Suit filed in O.S.No.328 of 2017 for the relief of declaration, permanent injunction and to declare the sale deed (Doc.No.1668/2006) stood in the name of the second defendant as null and void. In the said Suit, the petitioner is the first defendant and he filed an interlocutory application in I.A.No.02 of 2023 to issue summons to the officials of Electricity Board to examine them as witnesses on his side. The said application was objected by the respondent/plaintiff. By considering the contention raised by the respondent/plaintiff, the Trial Court, dismissed the interlocutory application on 19.01.2023 holding that the electricity officials are no way connected to the issue in the Suit and as such, there is no merit in the arguments advanced by the first defendant / petitioner herein. Challenging the same, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

4. On perusal of the records, it reveals that the second defendant in O.S.No.328 of 2017 has filed a Suit in O.S.No.91 of 2012, which was transferred and renumbered as O.S.No.77 of 2019 for the relief



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of declaration, permanent injunction and also to declare the Sale Deed dated 29.11.2011, which stood in the name of the respondent herein as null and void.

5. Before the Trial Court, a joint trial was conducted in both the Suits and issue involved in both the Suits is with respect to the Well in S.No.257/1, Thirumalvadi Post, Palacode Taluk, Dharmapuri District and the electricity service connection in S.C.No.133. Both the parties are claiming right over the same. Now, after closure of the evidence on the side of the plaintiff, the first defendant / petitioner herein has filed the present application in I.A.No.02 of 2023 in O.S.No.328 of 2017 seeking to issue summons to the officials of the electricity board with regard to the maintenance of the service connection. The learned Trial Judge, dismissed the same, as it is highly belated and the reason assigned by the petitioner is also not acceptable. However, the entire claim between the parties is with respect to the electricity service connection in S.C.No.133 and the Well in S.No.257/1.

6. Therefore, this Court is of the considered view that the electricity board officials are necessary parties to adduce evidence with



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respect to the electricity service connection provided to S.No.257/1. But the learned Trial Judge, without appreciating the same, dismissed the interlocutory application, which is liable to be set aside.

7. Accordingly, the order dated 19.01.2023 passed in I.A.No.02 of 2023 in O.S.No.328 of 2017 by the learned Sub Judge, Sub Court, Palacode is set aside and the learned Trial Judge is directed to consider the matter on merits and pass orders, within a period of three months from the date of receipt of a copy of this order, after providing opportunities to the parties to adduce evidence.

8. In fine, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2023

Index : Yes/No
Internet : Yes/No
TK

To

The Sub Judge
Sub Court
Palacode.



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T.V.THAMILSELVI, J.

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