

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)Nos.808 to 810 of 2023
and
C.M.P.(MD)Nos.3700 and 3703 of 2023

L.Sekar

... Petitioner in all C.R.Ps.

-Vs-

1.P.Ragavan

2.The Commissioner,

Thanjavur Municipal Corporation,

Thanjavur.

... Respondents

in C.R.P.(MD)Nos.808 & 810 of 2023

P.Ragavan

... Respondent

in C.R.P.(MD)No.809 of 2023

PRAYER in C.R.P.(MD)No.808 of 2023: Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order made in I.A.No.138 of 2022 in I.A.No.27 of 2022 in O.S.No.36 of 2022 on the file of the Additional District Munsif Court, Thanjavur dated 16.02.2023.

PRAYER in C.R.P.(MD)No.809 of 2023: Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order made in I.A.No.139 of 2022 in O.S.No.36 of 2022 on the file of the Additional District Munsif Court, Thanjavur dated 16.02.2023.

PRAYER in C.R.P.(MD)No.810 of 2023: Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order made in I.A.No.137 of 2022 in O.S.No.36 of 2022 on the file of the Additional District Munsif Court, Thanjavur dated 16.02.2023.

For Petitioner : Mr.G.Karnan

(in all C.R.Ps.)

For R2 : Mr.N.Dilip Kumar

(in C.R.P.(MD)Nos.808 and 810 of 2023)

COMMON ORDER

The petitioner / plaintiff has filed O.S.No.36 of 2022 on the file of the Additional District Munsif Court, Thanjavur, for a permanent injunction, restraining the defendant from interfering with the possession of the plaintiff in the suit property.

2.In the aforesaid suit, the petitioner has also filed an application for temporary injunction in I.A.No.27 of 2022. The defendant / respondent herein has also filed I.A.Nos.137 to 139 of 2022. I.A.No.137 and 138 of 2022 have been filed to implead the Commissioner, Thanjavur Municipal Corporation, Thanjavur as the 2nd defendant in the suit and in I.A.No.27 of 2022. I.A.No.139 of 2022 has been filed for appointment of Advocate Commissioner. The trial Court has allowed all three applications for impleading the Commissioner of Thanjavur Municipal Corporation, Thanjavur and also the application filed for appointment of Advocate Commissioner. Aggrieved by the said orders, the petitioner filed these Civil Revision Petitions before this Court.

3.The learned counsel appearing for the petitioner has placed reliance of the decision of the Hon'ble Supreme Court of India in the case of ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and others*** reported in ***(2010) 7 SCC 417***, wherein the Court has set out a limitation under Order 1 Rule 10(2) C.P.C.. It is submitted that the Court wrongly exercised the jurisdiction by allowing the applications

filed in I.A.Nos.137 and 138 of 2022. It is further submitted that since the petitioner is the *dominus litis*, it is for him to choose the parties and it is not open for the defendant to move the application for impleading the parties.

4.I have considered the arguments advanced by the learned counsel for the petitioner and perused the materials available on record carefully.

5.It is the specific case of the respondent that the petitioner has encroached the common pathway, which is the public property and therefore, it is just and necessary to implead the Commissioner, Thanjavur Municipal Corporation, Thanjavur as a party. No doubt, the powers under Order 1 Rule 10(2) C.P.C. is wide nevertheless the power can be exercised by the Court only in appropriate case, where the Court is of the view that the person may be necessary in order to enable the Court to complete the trial and settle the questions involved in the suit.

6.In my considered view, since the land in question belongs to the Thanjavur Municipal Corporation, according to the contesting respondent /

defendant, it would be ideal for the Court to implead the Thanjavur City Municipal Corporation as the party respondent. It is the specific case of the respondent / defendant that the petitioner has put up a construction over the land in T.S.No.2840 and that there were also objections pursuant to which, the ditch dug by the petitioner was closed by the Municipal authorities. However, despite the same, the petitioner has put up a construction by encroaching the municipal land and thus, the respondent / defendant was constrained to move the applications. In my considered view, no interference is warranted with the order passed by the Trial Court. Accordingly, these Civil Revision Petitions are liable to be dismissed, accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

24.03.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

MYR

C.R.P.(MD)Nos.808 to 810 of 2023

C.SARAVANAN, J.

MYR

To:

1.The Additional District Munsif Court,
Thanjavur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P.(MD)Nos.808 to 810 of 2023

Dated:

24.03.2023