



C.R.P(MD)No.2478 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 14.08.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2478 of 2018
and
C.M.P(MD)No.10978 of 2018

Jeyasingh

...Petitioner / Petitioner/

Plaintiff

Vs.

1.The Thasildar

Nanguneri Village,

Nanguneri Taluk,

Tirunelveli District.

2.The Revenue Divisional Officer,

Seranmahadevi,

Tirunelveli District.

3.The District Collector,

Tirunelveli,

Tirunelveli District.

4.The Tamil Nadu Industrial Development Corporation,

Through its Managing Director,

Chennai – St.George Fort.

...Respondents/Respondents/Defendants



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair order and decretal order, dated 14.08.2018, passed by the Sub Court, Vallioor, in I.A.No.627 of 2018, in O.S.No.31 of 2012.

For Petitioner : Mr.K.Sudalaiyandi

For Respondents : Mr.M.Vijayam
for M/s. King & Partridge for R4

: Mr.Senthil Ayyanar
Government Advocate for R1 to R3

ORDER

The instant Civil Revision Petition has been filed against order, dated 14.08.2018, passed by the Sub Court, Vallioor, in I.A.No. 627 of 2018, in O.S.No.31 of 2012.

2. The learned counsel for the petitioner would submit that they are claiming easement of necessity through the suit property, therefore, the appointment of Advocate Commissioner would be very much essential to find out the passage as well as to identify the alleged encroachment.

3. The learned Government Advocate for the respondents 1 to 3 and the learned counsel for the fourth respondent would vehemently object the application on the ground that the Commission of



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appointment is to collect evidence. In this regard, the learned counsel would rely upon the judgment reported in **2006-5-CTC-178 (T.K.Krishnamurthy vs Tamil Nadu Water and Drainage Board)** and prayed for dismissal of the application.

4. The Court below, on considering the fact that the Advocate Commissioner should not be appointed for collection evidence, has ultimately dismissed the application.

5. I have given my anxious consideration to the either side submissions.

6. The one and the only contention put forth by the learned counsel for the petitioner is that, they are claiming right over the passage on the ground of easement of necessity and wanted to find out the existing encroachment therein. This Court is of the view that unless the existence of passage and right over passage is proved, the question of alleged encroachment will not emerge for adjudication. Therefore, the very appointment of commission is premature and liable to be dismissed.



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7. It is also pertinent to mention here that the Court below has also rightly found that the Advocate Commissioner could not be appointed to collect the evidence. Therefore, the order passed by the Court below does not require any interference.

8. At this juncture, the learned counsel for the petitioner would submit that now the suit is transferred to the Sub Court, Nanguneri, and renumbered as O.S.No.5 of 2021.

9. In the result, the instant Civil Revision Petition stands **dismissed**. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

14.08.2023

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



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To

1.The Sub Court,
Vallioor.

2.The Thasildar
Nanguneri Village,
Nanguneri Taluk,
Tirunelveli District.

3.The Revenue Divisional Officer,
Seranmahadevi,
Tirunelveli District.

4.The District Collector,
Tirunelveli,
Tirunelveli District.

5.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Sub Court,
Nanguneri.



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C.KUMARAPPAN,J.

Ls

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