



C.R.P(MD).No.746 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.746 of 2024

and

C.M.P(MD)No.3966 of 2024

1.P.Maharajan

2.M.Muthulakshmi

3.P.Nagarathinam

4.Kavitha ... Petitioners / Respondents 1 to 4 / Defendants 1 to 4

Vs

1.R.Ramesh Raja

represented through his Power Agent,

V.Rajasekaran

... 1st Respondent / Plaintiff

2.R.Annapoorani

... 2nd Respondent / 2nd Defendant

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 16.02.2024 passed in I.A.No.4 of 2023 in O.S.No.93 of 2023 on the file of the Principal District Munsif Court, Thirumangalam.



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For Petitioners : Mr.S.Pandiyaraj

For R1 : Mr.R.Suriyanarayanan

ORDER

This Civil Revision Petition is filed to set aside the order dated 16.02.2024 passed in I.A.No.4 of 2023 in O.S.No.93 of 2023 on the file of the Principal District Munsif Court, Thirumangalam.

2. The suit in O.S.No.87 of 2023 was filed by the respondent herein seeking the relief of permanent injunction, restraining the respondents from interfering into their right of enjoyment and for costs. Pending the process, he filed I.A.No.4 of 2023, seeking appointment of an advocate commissioner under Order 26 Rule 9 read with 151 of C.P.C. That came to be allowed by the trial Court, against which this Civil Revision petition is preferred by the defendants.

3. The averments made in the petition are that the well is a common well to both the parties. But whereas, the respondents namely, the revision petitioner herein are claiming absolute right in the well. So a commissioner must be appointed to establish the fact that the well is situated within the suit property.



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4. That was resisted by the revision petitioners stating that the well is not mentioned in the sale deed. It is not a common well also. So there is no necessity for appointment of commissioner.

5. The trial Court after hearing both sides, recorded the finding that the availability of the well can be found out only by appointment of commissioner. That will not cause any prejudice to the case of the revision petitioners. By recording such a finding, the commissioner was appointed. Against which, this revision is preferred.

6. Learned counsel for the petitioners reiterated the very same averments made in their counter before the trial Court. He would also submit that appointment of commissioner will amount to collection of evidence which is not permissible under law. There is no necessity for identification of the well, since it was mentioned in the suit schedule properties. Learned counsel for the petitioners would further submit that without any basic documents or right over the property, the petition has been filed which according to the revision petitioners, is *per se* illegal.



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7. The issue with regard to the ownership of the well, can be decided at the time of trial. If it is a common well, as alleged by the respondent herein, then there will be an indication in the sale deed. Moreover, the location of the well can be found out only by the commissioner. On that account only, the trial Court allowed the petition. Absolutely, no prejudice will cause to the revision petitioners. Finding location of the disputed well, will not amount to collection of evidence. Moreover, the report of the commissioner, will help the Court to record a just finding, so that unnecessary oral and documentary evidence can be avoided. On that account, I find absolutely, no reason to entertain this Civil Revision Petition, even at the admission stage.

8. With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

27.03.2024

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

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To

- 1.The Principal District Munsif Court, Thirumangalam.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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