



C.R.P.(MD) No.807 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.807 of 2024

S.Selvamani
W/o.Karmegam

... Petitioner

Vs.

1.Puliyammal
W/o.Pandian (late)

2.The Chairman
Tamil Nadu Electricity Board,
Annasalai, Chennai.

3.The Assistant Engineer (Distribution),
Tamil Nadu Electricity Board,
Melur Town, Madurai District.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to call for the records relating to the fair and decreetal order dated 08.12.2023 passed in I.A.No.2 of 2022 in O.S.No.490 of 2013, on the file of the District Munsif Court, Melur and set aside the same.

For Petitioner : Mr.S.Srikanth

For R1 : Mr.S.Rajamohamed



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C.R.P.(MD) No.807 of 2024

For R2 & R3 : Mr.B.Ramanathan
Standing Counsel

ORDER

This Civil Revision Petition has been filed against the order dated 08.12.2023 passed in I.A.No.2 of 2022 in O.S.No.490 of 2013, on the file of the District Munsif Court, Melur.

2. The revision petitioner, as the plaintiff, filed the above suit in O.S.No.490 of 2013 for a permanent injunction restraining the second and third respondents/second and third defendants from providing an electricity connection to the first respondent/first defendant's property through a common passage running north-south, situated between the eastern side of the revision petitioner's/plaintiff's property and western side of the first respondent's/first defendant's property.

3. During the pendency of the suit, the revision petitioner/plaintiff filed an application in I.A.No.2 of 2022 for the appointment of an Advocate Commissioner to note down the physical features of the suit property. However, the trial court dismissed the said application, against which the present Civil Revision Petition has been filed.



C.R.P.(MD) No.807 of 2024

4. The learned counsel for the revision petitioner/plaintiff would submit that the suit property is situated on the northern side of the property in S.No.173/9B, having a total extent of 44 cents, which originally belonged to one Muthukaruppan by inheritance; that the said Muthukaruppan executed a Sale Deed in favour of one Thiruvarampotri on 25.02.2008 in respect of 22 cents on the northern side; that thereafter, the said Thiruvarampotri appointed one Iyuppkaan as her power of attorney and executed a general power of attorney deed dated 07.07.2011 in respect of the northern 22 cents; that pursuant to this, the said Iyuppkaan executed a Sale Deed in favour of the revision petitioner/plaintiff on 10.08.2011, pertaining to an extent of 11 cents, with the boundaries “east-west on the northern side 74 ½ feet, on the southern side 78 ¾ feet, on the western side 62 feet, and on the eastern side 63 feet”; that in the Sale Deed, the eastern boundary has been mentioned as a north-south passage; and that the revision petitioner/plaintiff purchased the western 11 cents from Iyuppkaan through a Sale Deed dated 20.07.2012.

5. The learned counsel for the revision petitioner/plaintiff would further submit that, after purchasing the property, the revision



C.R.P.(MD) No.807 of 2024

petitioner/plaintiff has been in possession and enjoyment of the suit property; that, except for the passage situated on the eastern side, the revision petitioner's/plaintiff's property has no access to the main road; that the Village Administrative Officer of Navinipatti Village has issued a certificate regarding the ownership and boundary of the land in S.No. 173/9B, in which the eastern boundary has been mentioned as a passage; that the eastern passage has been in existence for more than 20 years; that the first respondent/first defendant is in no way connected with the eastern side of the common passage; and that, since the first respondent/first defendant has constructed a house on the passage and attempted to obtain an electricity connection from the third respondent/third defendant, the revision petitioner/plaintiff was constrained to file the above suit for a permanent injunction.

6. The learned counsel for the revision petitioner/plaintiff would further submit that since the first respondent/first defendant has obtained an electricity connection for the said house, it has become necessary for the revision petitioner/plaintiff to file an application for the appointment of an Advocate Commissioner to note down the physical features of the said property with the help of qualified surveyors and that, however, the



C.R.P.(MD) No.807 of 2024

trial court has erroneously dismissed the said application, stating that since the case is at the stage of arguments, the application cannot be entertained and therefore, the impugned order requires consideration by this Court.

7. On the other hand, the learned counsel for the first respondent/first defendant would submit that the said application was filed with an intention to delay the disposal of the suit, and therefore, the trial court has rightly dismissed the said application, which calls for no interference.

8. Heard on both sides. Records perused.

9. Since it is the specific case of the revision petitioner/plaintiff that the property in dispute was purchased by the revision petitioner/plaintiff, that the eastern boundary has been clearly mentioned as a north-south passage in the Sale Deed, and that a certificate was also issued by the Village Administrative Officer recognizing the common passage, and since the existence of the passage itself is denied by the first respondent/first defendant in the counter affidavit, this Court is of the



C.R.P.(MD) No.807 of 2024

view that the trial court ought to have allowed the application for the appointment of an Advocate Commissioner to determine the existence of the disputed passage, to establish that the said passage is the only access for the revision petitioner/plaintiff to reach the main road, and to ascertain whether the electricity connection has already been obtained by the first respondent/first defendant, and to file a report, as such the report would assist the court in ensuring a fair and correct adjudication. Considering the above facts and circumstances, the impugned order warrants interference by this Court. Accordingly, the impugned order is set aside.

10. The trial court is directed to appoint an Advocate Commissioner for the purpose of inspecting the property and filing a report, as stated in the affidavit filed in support of the application in I.A.No.2 of 2022, and to direct the Advocate Commissioner to file the report within a specified time frame. This exercise, including the submission of the report by the Advocate Commissioner, shall be completed within a period of three weeks from the date of receipt of a copy of this order.

11. The respondents/defendants are at liberty to file their objections, if any, to the report.



C.R.P.(MD) No.807 of 2024

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12. Considering the fact that the suit has been pending since 2013, the trial court is directed to dispose of the suit by considering the report of the Advocate Commissioner, as well as any objections, on its own merits, untrammelled by any of the observations made by this Court in this order, within a period of one month from the date of receipt of a copy of this order.

13. In the result, this Civil Revision Petition is allowed. No costs.

26.11.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

JEN

Issue Order Copy on 27.11.2024.

Copy To:

The District Munsif,
Melur,
Madurai District.



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C.R.P.(MD) No.807 of 2024

K.GOVINDARAJAN THILAKAVADI, J.

JEN

C.R.P.(MD) No.807 of 2024

26.11.2024