



C.R.P(MD)No.850 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.850 of 2022

and

C.M.P(MD)No.3391 of 2022

Kannan

... Petitioner

Vs

1.Poobalan

2.Sudarrajan

3.The Keezhapavoor Selection Grade Town Panchayat,
Represented by its Executive Officer,
Surandai Salai,
Keelapavoor Village,
Alangulam Taluk.

4.The Government of Tamil Nadu,
Represented by its District Collector,
District Collector Office,
Tirunelveli.



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5.The Tamil Nadu Electricity Board,
Keelapavoor,
represented by its Junior Executive Engineer,
Alangulam road,
Keelapavoor Village,
Alangulam Taluk.

6.The Tamil Nadu Electricity Board,
Keelapavoor,
Represented by its Assistant Engineer,
Alangulam Road,
Keelapavoor Village,
Alangulam Taluk.

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and executable order dated 07.12.2021 passed in the application in I.A.No.2 of 2021 in O.S.No.262 of 2016 on the file of the Principal District Munsif Court, Tenkasi.

For Petitioner	: Mr.J.Barathan
For R1 and R2	: No appearance
For R3 and R4	: Mr.A.Sivanu Pandian Government Advocate (Civil)

ORDER



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This Civil Revision Petition is filed to call for the records and set aside the fair and executable order dated 07.12.2021 passed in the application in I.A.No.2 of 2021 in O.S.No.262 of 2016 on the file of the Principal District Munsif Court, Tenkasi.

2. The suit in O.S.No.262 of 2016 filed by the first respondent herein namely Poobalan against one Sudarrajan and others, seeking the relief that the gift deed dated 02.12.2015 executed by him, is not valid under law and for permanent injunction. Pending the process, a petition was taken out by this revision petitioner to implead himself as the proposed 6th defendant, with the following averments: He is the owner of the property in Survey No.294 /7, 294/9. They are using the property situated in Survey No.294/7 as pathway. No other alternative pathway is available to his property. From 24.07.2021 onwards, the first respondent namely Poobalan is trying to encroach upon the property. A police complaint was also given. If the property is encroached by the first respondent herein, then the petitioner cannot reach his house. On that ground he filed a petition to implead himself as a necessary party.



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3. That was resisted by the first respondent herein namely the plaintiff. As per the report of the Commissioner, the II schedule of the property is not a pathway. On that ground, a suit in O.S.No.300 of 2021 is filed by the petitioner herein, in which the first respondent herein is arrayed as first defendant. In the suit, a document dated 09.10.2015 is shown. Even the property mentioned by the petitioner herein in his own plaint and the description of the property now under dispute does not tally. So he is not a necessary party. The trial Court dismissed the petition by observing that all the defendants remained *ex parte*. Now the suit is pending for further evidence on the part of the plaintiff. No document has been shown by the petitioner herein to show that the suit II schedule property is a pathway leading to his house. In O.S.No.300 of 2021, the suit property is described as Survey No.294/12. By observing so, the trial Court dismissed the petition that he is not a necessary party.

4. Heard both sides. One short point that arises for consideration is that a comparative reading of O.S.No.262 of 2016 and the plaint in O.S.No. 300 of 2021 is required for proper understanding of the issue.



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5. In plaint No.262 of 2016, which is filed by the first respondent herein, the suit in II Item is mentioned as 10 feet in North - South measuring about and 87 feet on the East-West, totally measuring about 870 sq.ft. This property, according to the first respondent lies, on the North of Item-I of the suit schedule property. Item-I of the suit property is mentioned as the property situated in S.No.294/7. So it shows that the disputed property measuring about 870 sq.ft lies on the North portion of S.No.294/ 7.

6. When go into the plaint schedule in the suit filed by this petitioner in O.S.No.300 of 2021, wherein, II-schedule of the property is mentioned as S.No.294/12 which is 10 feet North-South and 180 feet at East-West. The I-item is mentioned as property in S.No.294/7 and 294/9. This, according to the first respondent shows that both the schedule of properties are different. Only on that point, the petition of the petitioner was dismissed by the trial Court. But reading of the plaint averments as well as the petitioner's averments in the impugned petition does indicate that it is an issue with regard to the pathway. The confusion with regard to the survey number is a matter for trial.



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7. Since all the defendants remained ex-parte in the matter, if the petitioner is not brought on record, then the suit in O.S.No.300 of 2021 will be seriously prejudiced. It is better that both the suits are tried together. Eventhough, O.S.No.262 of 2016 is earlier in point of time, but now all the defendants remained ex parte, both the matters can be taken up together for joint trial.

8. With the above direction, this Civil Revision Petition is allowed by setting aside the fair and executable order dated 07.12.2021 passed in the application in I.A.No.2 of 2021 in O.S.No.262 of 2016 by the Principal District Munsif Court, Tenkasi. No costs. Consequently, connected miscellaneous petition stands closed.

11.03.2024

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

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To

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- 1.The Principal District Munsif Court, Tenkasi.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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