



C.R.P(MD).No.1669 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No.2054 of 2023
and
C.M.P(MD)No.10294 of 2023**

Jayanthi

... Petitioner / Petitioner / Plaintiff

Vs

- 1.The Assistant Engineer,
Public Works Department,
Thuckalay Division & Post,
Thuckalay Village,
Kalkulam Taluk,
Kanyakumari District.
- 2.The Executive Engineer,
Public Works Department,
Kothaiyaru Vadinilakottam,
Nagercoil,
Agatheeswaram Taluk,
Kanyakumari District.
- 3.The State of Tamil Nadu represented by
The District Collector,
Kanyakumari District
at Nagercoil.



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4.Thanudhas

5.Hariharan

... Respondents / Respondents / Defendants

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.4 of 2023 in O.S.No.36 of 2017 dated 05.07.2023 on the file of District Munsif Court, Eraniel and allow the above civil revision petition.

For Petitioners : Mr.S.Kumar

For R1 to 3 : Mr.J.Ashok
Additional Government Pleader

For R4 and R5 : Mr.S.C.Herold Singh

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order passed in I.A.No.4 of 2023 in O.S.No.36 of 2017 dated 05.07.2023 on the file of District Munsif Court, Eraniel and allow the above civil revision petition.

2. The suit in O.S.No.36 of 2017 was filed by the petitioner herein seeking the following reliefs: Mandatory injunction directing the



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defendants 4 and 5 to remove the encroachments, obstructions etc, over the B Schedule property. The defendants / private respondents appeared and filed written statement stating that there is no such encroachment or obstruction made by them. The statement was filed by them on 13.07.2022. Later additional statement was filed by the defendants 4 and 5, on 15.02.2023. Later the present application was taken up by the petitioner for appointing a commissioner to make a local visit and find out whether there is any encroachment in the properties. That came to the dismissed by the trial Court, eventhough no objection was made by the respondents, on the ground that it will amount to collection of evidence and the plaintiff cannot be permitted to take up such a step without adducing the evidence. Challenging the same, this Civil Revision Petition is preferred by the plaintiff stating that soon after the filing of the additional written statement by the Government, he filed the present petition.

3. Unless the property is measured, since there is a specific plea in the written statement that the width of the water kal is reduced narrow by making encroachments, those particulars cannot be ascertained. It will



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not amount only collection of evidence. The actual encroachment made in the B schedule can only be brought on record only with the help of the surveyor. According to him, the trial Court has erroneously dismissed the petition by stating that it will amount to collection of evidence.

4. Per contra, learned counsel for the respondent would submit that belated attempt has been made by the petitioner herein since the suit was filed in the year 2017, steps were not taken immediately. After filing of additional statement, the above petition has been filed by the revision petitioner.

5. In the light of the facts and circumstances of the case, unless the property under dispute is measured with the help of the surveyor the actual encroachment made by the parties cannot be brought on record. That cannot be proved by way of evidence. On that account, this Civil Revision Petition is liable to be allowed.

6. Accordingly, this Civil Revision Petition is allowed. There shall be a direction to the trial Court to appoint a commissioner, after payment



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of fee by the petitioner for the same and let the survey process be completed within a period of three months thereafter.

7. With the above said, this Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition stands closed.

04.03.2024

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

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To

- 1.The District Munsif Court, Eraniel.
- 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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