



C.R.P(MD)No.2144 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.2144 of 2024
and
C.M.P(MD)No.12213 of 2024

Sivadevan

... Petitioner /
5th Respondent /
5th Defendant

Vs.

1.Sundaram

... 1st Respondent /
Petitioner /
Plaintiff

2.The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Karur.

3.The Executive Engineer (O & M) Rural,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Karur.

4.The Assistant Executive Engineer
(Operation & Maintenance),



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Tamil Nadu Generation and
Distribution Corporation Ltd.,
Pugalur, Karur.

5.The Assistant Engineer
(Operation and Maintenance),
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Thottakuruchi,
Karur Taluk.

... Respondents 2 - 5 /
Respondents 1 - 4/
Defendants 1 - 4

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 28.02.2024 made in I.A.No.2 of 2022 in O.S.No.588 of 2011 on the file of the Additional District Munsif Court, Karur and allow this Civil Revision Petition.

For Petitioner : Mr.P.Rajagopalan

For Respondents : Mr.M.P.Senthil for R.1

ORDER

Heard the learned counsel for the revision petitioner and the learned counsel for the first respondent.

2.The fifth defendant in O.S.No.588 of 2011 on the file of Additional District Munsif Court, Karur is the revision petitioner herein.



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The suit was instituted for the relief of mandatory injunction to remove the electricity service connection and change over facility in the suit well.

The revision petitioner herein had obtained the service connection. According to the plaintiff, the suit well is a common well and that therefore the fifth defendant could not have obtained service connection in his individual name.

3.The case of the fifth respondent is that the suit well is not a common well. Issues have been framed in this regard. Evidence had been adduced on either side. The case is posted for arguments.

4.At this stage, the plaintiff filed I.A.No.2 of 2022 for appointing an Advocate Commissioner to find out the distance between the suit well and Popular Mudaliyar Vaikal. The Court below had allowed the IA vide order dated 28.02.2024. Questioning the same, this Civil Revision Petition has been filed.

5.The learned counsel for the revision petitioner reiterated all the contentions set out in the grounds of revision and called upon this Court to set aside the impugned order and allow the Civil Revision Petition.



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6.The learned counsel for the plaintiff on the other hand submitted that the case of the plaintiff is that grant of service connection was in breach of the electricity service regulations. He pointed out that the suit well is located within the prohibited distance from a water body and that therefore the service connection could not have been granted. He drew my attention to the answers given by DW.1 & DW.2. When specific question was put as to the distance between the suit well and the channel, both the witnesses are said to have answered that the distance would be 20 feet.

7.The learned counsel for the plaintiff emphasized that the report of the Advocate Commissioner would only help to elucidate the facts in this regard. He called upon this Court to sustain the impugned order.

8.I carefully considered the rival contentions and went through the materials on record.

9.The learned counsel for the revision petitioner drew my attention to the ground no.10. It had been specifically contended by the



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revision petitioner that there is no pleading with regard to Popular Mudaliyar Vaikal as projected by the plaintiff in I.A.No.2 of 2022. The case of the plaintiff proceeds on the premise that the suit well is a common well. The case of the revision petitioner is that it is his individual well. The rights of the parties revolve more around their title over the suit well. Since there is no pleading in the plaint, the Court below ought not to have appointed an Advocate Commissioner to find out the distance between the suit well and the channel. In this view of the matter, the impugned order is set aside.

10.This Civil Revision Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.09.2024

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

To
The Additional District Munsif Court,
Karur.

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G.R.SWAMINATHAN, J.

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