



C.R.P.(MD)No.2031 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.02.2024

Pronounced on : 05.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2031 of 2019
and
C.M.P.(MD)No.10425 of 2019

Venkatesan

... Petitioner/
Petitioner/
Appellant

Vs.

Balasubramanian

... Respondent/
Respondent/
Respondent

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the decretal order and fair order dated 01.08.2019 in I.A.No.384 of 2019 in A.S.No.13 of 2018 on the file of the Sub Court, Thuraiyur.

For Petitioner : Mr.P.Prabhakaran
for Mr.N.Sudhagar Nagaraj

For Respondent : Mr.H.Lakshmi Shankar



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.384 of 2019 in A.S.No.13 of 2018 dated 01.08.2019 on the file of the Subordinate Court, Thuraiyur, dismissing the application filed under Order 26 Rule 9 of the Code of Civil Procedure.

2. The revision petitioner is the appellant/plaintiff and the respondent is the respondent/defendant.

3. The revision petitioner has filed a suit in O.S.No.26 of 2008 against the respondent claiming permanent injunction restraining the respondent from irrigating the lands not shown in the suit property from the suit well. The respondent has filed a counter claim claiming declaration that the respondent is entitled to irrigate the lands shown in the counter claim from the suit well and for permanent injunction restraining the revision petitioner and his men from damaging the pipelines and interfering with the respondent taking water through pipelines. After full-trial, the revision petitioner's suit was dismissed and the respondent's counter claim was allowed vide judgment and decree dated 22.01.2018.



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Aggrieved by the decree granted in the counter claim, the revision petitioner has preferred an appeal and the same is pending in A.S.No.13 of 2018 on the file of the Subordinate Court, Thuraiyur. Pending appeal, the revision petitioner has filed the present application in I.A.No.384 of 2019 under Order 26 Rule 9 C.P.C. seeking appointment of Advocate Commissioner to inspect the suit property and file a report regarding the non-existence of pipelines in and across and through the lands of the revision petitioner shown in the suit. The respondent has filed a counter statement raising serious objections. During enquiry, the respondent has filed a legal notice sent by him and a reply notice sent by the revision petitioner as Ex.R1 and Ex.R2 respectively. The learned appellate Judge, upon considering the pleadings and other materials available on record and on hearing both the sides, has passed the impugned order dated 01.08.2019 dismissing the commission application. Aggrieved by the order of dismissal, the appellant has preferred the present revision.

4. The case of the revision petitioner, in the affidavit filed in support of the commission application, is that after the passing of judgment and decree by the trial Court, the respondent has been trying to innovate a



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right by cutting across and planting pipelines through and across the revision petitioner's lands for the purpose of irrigating his lands, which do not form Ayacut under the suit well, that the respondent himself has made an admission in the course of his evidence that there is no pipeline across the revision petitioner's property, that the respondent has now approached the police at Uppiliyapuram and with their help has been trying to plant pipelines in and across the revision petitioner's property, that the very purpose of filing the appeal will be defeated, if the respondent is permitted to lay pipelines, that the trial Court's approach in granting a decree is opposed to all canons of law, that the revision petitioner was advised that he has a fair chance of success in appeal with a good arguable case before the appellate Court and that the appointment of Advocate Commissioner is very much necessary to inspect the suit property and file a report with regard to non-existence of pipelines.

5. The defence of the respondent is that the suit well was owned by one Thasi naidu and after his demise, by his two sons, namely, Bangarusamy naidu and Muralidharan, that both of them have executed a sale deed dated 16.07.1997 giving common half share in the well and in



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5HP motor pump set and electricity connection and also right to take water by laying pipelines under the lands in Survey Nos.434/5, 6, 8, 10 and 12 and through Survey No.434/14 and take water to the lands situated in Survey Nos.412/4, 7, 8, 9, 13, 14, 15A, 15B and 16, that immediately after the purchase, pipelines has been laid and irrigation was going on through the pipelines, that the revision petitioner was not having any right in the suit well at that point of time, that the respondent's brother has purchased in 1997 only after laying of the pipelines, but the revision petitioner has purchased half share in the suit well from the said Bangarusamy naidu and Muralidharan only on 11.01.2001, that the revision petitioner has absolutely no right to question the rights given under Ex.A.3-sale deed dated 16.07.1997 after purchasing half share in 2001, that since the revision petitioner has been interfering with the respondent's possession, the respondent was constrained to file the counter claim, that since the revision petitioner has caused crop loss for the period between 2008 and 2018, the respondent has sent the legal notice dated 11.05.2018 claiming compensation, for which, the revision petitioner has sent the reply notice dated 12.06.2018 with false and untenable allegations, that the present application has been filed only to drag on the appeal proceedings and that



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the present application has been filed only to cause loss and hardship to the respondent and as such, the same is liable to be dismissed.

6. As already pointed out, the revision petitioner's suit for bare injunction was dismissed, whereas, the respondent's counter claim with regard to reliefs of declaration and permanent injunction was allowed.

7. The main contention of the revision petitioner is that after the passing of the judgment and decree by the trial Court, the respondent has been attempting to lay pipelines across the revision petitioner's lands for the purpose of irrigating the respondent's lands, which do not form Ayacut under the suit well. As rightly contended out by the learned counsel appearing for the respondent, even in the counter claim they have claimed that the respondent's brother has purchased the property, after laying of the pipelines in the year 1997, but whereas, the revision petitioner has purchased the half share only in the year 2001 and that the trial Court has already gone into those facts and passed the judgment.

8. The learned appellate Judge, after going through the judgment and decree of the trial Court, has specifically observed that the trial Court



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has granted permanent injunction restraining the revision petitioner and his men from interfering or disturbing the respondent from taking water from the suit well in Survey No.434/3 but his land situated in Survey Nos. 412/4, 7, 8, 9, 13, 14, 15A, 15B and 16 and also granted permanent injunction restraining the revision petitioner and his men from causing damages or from causing interference in any other manner for the revision petitioner using the pipelines in the lands situated in Survey Nos.412/4, 7, 8, 9, 13, 14, 15A, 15B and 16 and has come to a finding that underground pipelines were already there and if the revision petitioner is having a definite case that there were no pipelines, he should have claimed before the trial Court for appointment of Advocate Commissioner at that time itself, but admittedly, he has not taken any such steps. Though the revision petitioner has alleged that the respondent himself in his evidence has admitted that there was no pipelines, the appellate Court, after going through the evidence, has observed that the respondent has not made any such admission. The revision petitioner has not canvassed any acceptable reason or ground for appointment of Advocate Commissioner at the appellate stage. Considering the above facts and circumstances, the impugned order of the appellate Court dismissing the commission



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application cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

9. In the result, this Civil Revision Petition is dismissed and the impugned order passed in I.A.No.384 of 2019 in A.S.No.13 of 2018, dated 01.08.2019 on the file of the Subordinate Court, Thuraiyur, stands confirmed. Since the appeal is pending from 2018 onwards, the learned Subordinate Judge, Thuraiyur, is directed to hear the appeal in A.S.No.13 of 2018 and dispose of the same within a period of two months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

05.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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1. The Subordinate Judge,
Thuraiyur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.R.P.(MD)No.2031 of 2019
and
C.M.P.(MD)No.10425 of 2019

Dated :05.04.2024