

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.1136 OF 2015
AND M.P.NO.1 OF 2015

Arul Anna

... Petitioner

Vs.

Anbazzhagan (Died)

1.Veeramani
2.Senthamilselvi
3.Thirumurugan
4.Thirumeni
5.Thiruveni
6.Nithiya

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order and decree passed by the learned Sub Judge, Mannargudi, in I.A.No.31 of 2014 in A.S.No.27 of 2013 dated 06.01.2015.

For Petitioner : Mr.S.Sathiamurthi

ORDER

This Civil Revision Petition is directed against the order dated 06.01.2015 passed in I.A.No.31 of 2014 in A.S.No.27 of 2013 by the learned Sub Judge, Mannargudi.

2.The respondents had instituted the suit against the petitioner herein before the District Munsif Court, Thiruthuraipoondi, in O.S.No.14 of 2009 for permanent injunction restraining the defendant from interfering with the administration of the plaintiffs' with regard to the temple. After trial, the suit was dismissed on 25.07.2013.

3.Aggrieved by the judgment and decree dated 25.07.2013, the plaintiffs/respondents herein have preferred an appeal before the Sub Court, Mannargudi, in A.S.No.27 of 2013.

4.In the appeal, the petitioner filed an application in I.A.No.31 of 2014 under Order XXVI Rule 9 and Section 151 of the Code of Civil Procedure seeking appointment of an Advocate Commissioner to note down the physical features of the suit properties.

5.The contention of the petitioner is that the suit property belonged to Sellapillaiyar Kovil at Ekkal Vattam, Thiruthuraipoondi Taluk and the father of the petitioner Mr.Thambusamy was acting as a Hereditary Trustee. His father only appointed the petitioner as Hereditary Trustee and executed a will dated 15.10.1996 and as per the will, he has been in possession and administration of the temple. After dismissal of the suit, the plaintiffs trespassed into the suit property and caused damages to the temple.

6.The application was resisted by the respondents by filing a counter affidavit stating that Advocate Commissioner's report is not helpful to decide the appeal and the application was filed only to drag on the proceedings. The Appellate Court rejected the application on 06.01.2015 observing that the appeal has to be decided on the available records as per the pleadings made on the date of filing of the suit and not on the subsequent events. It is further held that even assuming that the respondents have caused damages to the suit property, the petitioner could very well approach the competent Court for appropriate remedy. Challenging the order, the present Civil Revision Petition is filed.

7.Heard the submissions made by Mr.S.Sathiamurthi, learned counsel for the petitioner and perused the materials available on record.

8.In my view, the Appellate Court has rightly dismissed the application. Hence, I do not find any reason to interfere with the order of the Appellate Court.

9.In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.03.2015

Index : Yes/No
Internet : Yes/No
TK

To

The Sub Court
Mannargudi.

K.KALYANASUNDARAM, J.

TK

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