

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (PD) No.1097 of 2006
and
M.P.No.1 of 2006

Arulmighu Senraya Perumal Koil
Narasothipatty, represented by
Hereditary Trustee,
P.Chinnathambi Gounder. Petitioner (Plaintiff)

Vs.

1.Krishnaveni
2.Santhi
3.Indira Kumar
4.Mythili
5.Minor Kousika
6.Minor Kailendharan Respondents (Defendants)
(Minors 5 & 6 are represented by
Court Guardian Mohanmbal)

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India against the fair and final order dated
29.06.2006 made in I.A.No.302 of 2006 in O.S.No.21 of 2004 on the
file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.T.Murugamanickam

For Respondents : No Appearance for R1 to R4
R5 and R6 Not Ready notice

O R D E R

This revision arises out of the order passed by the
Principal District Munsif Court, Salem in I.A.No.302 of 2006 in
O.S.No.21 of 2004.

2. The petitioner originally had instituted the suit
against the respondents for permanent injunction. Thereafter, the
suit was amended and the prayer for permanent injunction was
omitted by the trial Court.

3. The case of the petitioner is that the defendants are the poosaries of the temple and they attempted to put up construction in the land belonging to the petitioner's temple. At the instance of the plaintiff, an Advocate Commissioner was appointed in I.A.No.162 of 2004 and the Commissioner filed his report along with the plan. After the evidence of plaintiff and the defendants was over, the defendants filed an application in I.A.No.302 of 2006 seeking for appointment of another Advocate Commissioner to ascertain the age of the building. The petitioner opposed the application. Despite the objections, the trial Court appointed an Advocate Commissioner. Aggrieved by the order, the present revision is filed.

4. Heard Mr.T.Muruganatham, learned counsel for the petitioner. Despite service of notice, the respondents have not chosen to appear and contest the petition.

5. The learned counsel for the petitioner submitted that the present application filed by the defendants is beyond the scope of the suit. It is further submitted that the application was filed at belated stage to fill up lacuna in the evidence of the defendants.

6. It is seen that the trial Court allowed the application holding that the Court has got power to appoint an Advocate Commissioner at any stage. In the instant case, the suit was filed originally for bare injunction and subsequently for mandatory injunction to demolish the construction put up by the defendants. An Advocate Commissioner was appointed in I.A.No.162 of 2004 and his report and plan were already marked as document in the suit.

7. It is settled law that a second Advocate Commissioner cannot be appointed without scraping the report filed by the first Advocate Commissioner. This Court is of the view that the appointment of Commissioner to ascertain the age of the building at the belated stage cannot be entertained.

8. In view of the above finding, the order passed in I.A.No.302 of 2006 in O.S.No.21 of 2004 is set aside and the revision is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vsm

To

The Principal District Munsif
Salem.

1 cc to Mr.T. Murugamanickam, Advocate, Sr. 13982

C.R.P. (PD) No.1097 of 2006

RJ (CO)
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