



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 28.01.2015

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.(MD)No.978 of 2014
and
M.P.(MD).No.1 of 2014

1. Ayyavu
2. L.Ayyanar
3.A.Murugan

... Petitioners/Petitioners/
Plaintiffs

Vs.

B.Gopi

... Respondent/Respondent/
Defendant

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 31.01.2014 made in I.A.No.433 of 2013 in O.S.No.53 of 2013 on the file of Additional District Court, Dindigul.

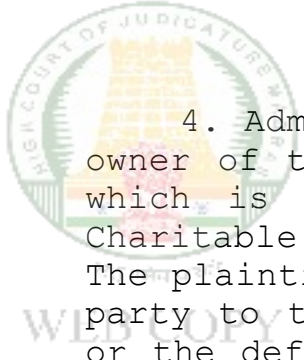
For petitioners : Mr.R.G.Shankar Ganesh
For respondent : Mr.D.Venkatesh

O R D E R

The Civil Revision Petition is filed against the order refusing to appoint the Commissioner in the suit filed by the plaintiffs for declaration that the suit property belongs to the Narasingaperumal Temple and for injunction restraining the defendant from putting up a compound wall in the suit property and also injunction to remove the basement constructed already.

2. Admittedly, the plaintiffs have filed the application to appoint a Commissioner to survey the suit property with the help of firka surveyor and Village Administrative Officer to measure the suit property as well as the compound wall which is in dispute. It is contested by the defendant on the ground that the plaintiffs are not the owner of the suit property and they cannot maintain such application. The trial Judge dismissed the application on the ground that the original owner of the property is not added as a party. Hence, the application is not maintainable.

<https://hcservices.courts.gov.in/hcservices/> The learned counsel for the petitioners and the learned counsel for the respondent.



4. Admittedly, neither the plaintiffs nor the defendant is the owner of the suit property. The aforesaid Narasingaperumal Temple which is coming under the purview of the Hindu Religious and Charitable Endowments Department, is the owner of the property. The plaintiffs are not the original owner of the property and as a party to the suit, there is also no evidence that the plaintiffs or the defendant is the lessee of the suit property. The original owner of the property is not made a party, the said question cannot be decided. While so, the petition filed by the plaintiffs for appointing of Commissioner to measure the suit property along with the help of the surveyor is only to gather evidence and the relief itself is not maintainable. The plaintiffs cannot be permitted to gather evidence by appointing a Commissioner and also the Surveyor for the relief of mandatory injunction. There is no irregularity in the order of the trial Judge and the same is confirmed and the Civil Revision petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy./

Sub-Assistant Registrar

To

The Additional District Judge,
Dindigul.

+One cc to Mr.R.G.Shankar Ganesh, Advocate, SR.No.3709

+One cc to Mr.D.Venkatesh, Advocate, SR.No.3877

akv

RL/4 c- 13/2/2015

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