

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1376 of 2016 &
C.M.P.No.7667 of 2016

Sri Venkateswara Educational Trust
Kurinjipadi
Rep. By its President
V.Arumugam
S/o.Velmurugan
Having office at the Registered office of the Trust
at No.42, Reddiar Colony
Kurunjipadi
Cuddalore Taluk

... Petitioner

v.

1.Arulmigu Puthumariamman Deity
Rep. By its Executive Officer
Having Office at Arulmigu Puthumariamman Temple
Kurunjipadi

2.Appar Mudaliar

3.Velayudham

4.Sivaprakasam

5.Kanagasabhai

6.Rajendiran

... Respondents

Civil Revision Petition filed under section 115 of the Code of Civil

Procedure, against the order and decretal order dated 05.03.2016 passed in E.A.No.221/2009 in E.A.No.939/2003 in E.P.No.750/1987 in O.S.No.2026/1974 on the file of Principal District Munsif, Cuddalore.

For Petitioner : Mr.Srinath Sridevan

For Respondents : Mr.S.Sethuraman

ORDER

Challenging the fair and final order passed in E.A.No.221 of 2009 in E.A.No.939 of 2003 in E.P.No.750 of 1987 in O.S.No.2026 of 1974 on the file of Principal District Munsif Court, Cuddalore, the third party petitioner has filed the above Civil Revision Petition.

2. Pursuant to the decree passed in O.S.No.2026 of 1974, the first respondent-plaintiff filed an Execution Petition in E.P.No.750 of 1987. In the said Execution Petition, the revision petitioner, who is a third party to the proceedings, filed an application in E.A.No.939 of 2003, under Order 21, Rule 97 & 98 of CPC. In the said application, the revision petitioner filed another application in E.A.No.221 of 2009, seeking for appointment of an Advocate Commissioner to note down the physical feature and to assess the age of the superstructure. The said application was contested by the first respondent-decree holder. The Execution Court, taking into

consideration the case of both the parties, dismissed the application. Against which, the above revision petition has been filed by the petitioner.

3. It is settled position that an Advocate commission cannot assess the age of the building and that can be done only by an expert in the said field. That apart, the Advocate Commissioner cannot give a finding with regard to possession of the property and it is for the petitioner to establish the possession by oral and documentary evidences. The petitioner cannot collect evidence through Advocate Commissioner and it is for the petitioner to establish his case by adducing proper evidence.

4. In the case on hand, the revision petitioner is a third party. Unless the application filed by him under Order 21, Rule 97 & 98 of CPC is decided in his favour, he cannot seek for other reliefs such as, seeking for appointment of Advocate Commissioner, etc. The Execution Court, taking into consideration all these aspects, rightly dismissed the application.

5. In these circumstances, I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Since the application filed by the revision petitioner in E.A.No.939/2003, under Order 21, Rule 97 & 98 of CPC is pending for more than a decade, I direct the Principal District Munsif Court, Cuddalore, to dispose of the application in E.A.No.939/2003, on

merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

14.06.2016

Index : Yes/No

Rj

To

The Principal District Munsif Court,
Cuddalore,

M. DURAISWAMY,J.,

Rj

C.R.P.(NPD)No.1376 of 2016 &
C.M.P.No.7667 of 2016

14.06.2016