

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-12-2016

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.3277 of 2016

&

C.M.P.No.16660 of 2016

Arulmigu Karrupanar Thirukovil,
Rep. by its Secretary Periasamy

.. Petitioner

Vs.

Krishnasamy Pillai

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying against the fair and decretal order dated 22.01.2015 in I.A.No.405 of 2014 in O.S.No.212 of 2008 on the file of the Additional District Munsif Court, Thittakudi.

For petitioner : Mr.D.Veerasekaran

For respondent : Mr.T.Dhanasekaran

ORDER

The plaintiff-Temple is the revision petitioner herein. The suit is filed by the Temple for declaration and injunction with respect to the suit pathway. Pending suit, the plaintiff has earlier filed an application in I.A.No.656 of 2008 for appointment of a Commissioner to note down the physical features and furnish

the plan. The said application was allowed on 15.04.2010 and report was also filed by the Commissioner. Objections were called for from the respective parties. Admittedly, the plaintiff has not filed any objections to the report of the Commissioner. After almost five years, the plaintiff has again come up with the present application in I.A.No.405 of 2014 for re-issuing the warrant to the same Commissioner on the ground that the earlier report has not mentioned about the Temple and also about the permanent superstructure belonging to the Temple. As stated earlier, the plaintiff has not filed any objections to the report of the Commissioner pointing out the shortcomings in the report. Now, after 4-3/4 years, the present I.A. is filed. The learned Additional District Munsif has dismissed the said I.A. stating that in the interregnum, many developments could have happened in the suit pathway. Hence, the I.A. was dismissed.

2. Learned counsel for the petitioner endeavoured to convince this Court that the first report of the Commissioner was not comprehensive and hence, he should be again sent for inspection.

3. In the absence of any such objections to the first report of the Commissioner, the application not being taken out within time, it is not permissible to re-issue the same Commission for the sake of asking. The report of the Commissioner in a suit is only a piece of evidence and that may not be the ultimate document to decide the suit. Therefore, it is open for the plaintiff-Temple to establish its case by other evidence.

4. There is no merit in the revision petition, which is accordingly dismissed.

Considering the fact that the suit is of the year 2008, the learned Additional District Munsif, Thittakudi is directed to dispose of the suit on or before 30.04.2017. No costs. Consequently, C.M.P. is closed.

09-12-2016

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Copy to
The Additional District Munsif, Thittakudi.

PUSHPA SATHYANARAYANA, J

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