

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.3676 OF 2016

K.V.Natesan

... Petitioner

Versus

1.P.Sekar
2.R.E.Kumar
3.A.Elayaraja
4.R.Kasumani
5.Periyasamy
6.Chelladurai
7.M.Kumar
8.Nataraj
9.Loganathan
10.Sengodan
11.Manickam

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned District Munsif, Rasipuram, in I.A.No.210 of 2016 in O.S.No.162 of 2013 dated 15.09.2016.

For Petitioner : Mr.A.K.Kumarasamy

ORDER

The petitioner filed a suit in O.S.No.162 of 2013 for declaration with regard to his exclusive right of management of the suit property for the benefit of West Colony Mariamman Temple, Rasipuram and for a consequential injunction restraining the respondents and their men from interfering with his collection of rents and income from the suit property. The suit was resisted by the respondents by filing written statement.

2. The petitioner long after the initiation of suit, filed an application in I.A.No.210 of 2016 for appointment of Advocate Commissioner to note down the physical features.

3. The application was opposed by the respondents by filing counter, wherein it was contended that they never made any attempt to trespass into the property.

4. The learned Trial Judge having found that the prayer in the interlocutory application would go beyond the prayer made in the suit, dismissed the application. The said order is under challenge in this Civil Revision Petition.

5. The learned counsel for the petitioner contended that there was an attempt made by the respondents to trespass into the property and to put up construction and the same made the petitioner to file application for appointment of Advocate Commissioner.

6. The suit in O.S.No.162 of 2013 is a comprehensive suit for declaration, with regard to the exclusive right of management of the suit property. The petitioner claimed that he is in exclusive management of the suit property for the benefit of West Colony Mariamman Temple, Rasipuram. There is a consequential prayer for injunction restraining the respondents herein from interfering with the collection of rents and income from the suit property by the petitioner.

7. The suit was not filed for injunction restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the suit property.

8. The petitioner filed the application for appointment of Advocate Commissioner to note down the physical features of the building in the suit property. The petitioner in the affidavit filed in support of the interlocutory application contended that the respondents

are always attempting to alter the physical features. The affidavit is bereft of particulars. In case, there is an attempt to dispossess the petitioner, the petitioner should have filed a suit for injunction. However, the fact remains that the suit is not for injunction. The learned Trial Judge was therefore perfectly correct in dismissing the application for the reasons found mentioned in the order impugned in this Civil Revision Petition.

9. In the upshot, I dismiss the Civil Revision Petition. No costs.

24.11.2016

TK

To

The District Munsif
Rasipuram.

K.K.SASIDHARAN, J.

TK

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