

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) Nos.1888 of 2017
and CMP.No.9076 of 2017

A.M.P.A.Valliammal Achi ...Petitioner

Vs

1.The Commissioner
HR & CE Department,
Nungambakkam High Road,
Chennai - 600 034.

2.The Assistant Commissioner
HR & CE Department,
Nungambakkam High Road,
Chennai - 600 034.

3.The Executive Officer /Fit Person
Sri Agatheeswara and Prasanna,
Venkatesa Perumal Temple,
Nungambakkam High Road,
Chennai - 600 034.

...Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 04.4.2017 in I.A.No.682 of 2017 in O.S.No.8606 of 2008 on the file of the VIII Assistant City Civil Court, Chennai and consequently allow the I.A.682 of 2017 in O.S.No.8606 of 2008.

For Petitioner : Mr. PL.Narayanan

ORDER

The petitioner is the plaintiff and the respondents are the defendants in the suit in O.S.No.8606 of 2008 on the file of the VIII Assistant City Civil Court, Chennai. The petitioner filed the suit for declaration to declare that the suit temple viz., Bala Kailasa Vinayagar Temple, is the private temple of the petitioner, and for the consequential declaration passed by the second respondent appointing the third respondent as Fit Person vide order No.Na.Ka.No.6490/85 dated 04.11.1989, as confirmed by the first respondent in AP.No.47 of 1995 dated 26.6.2008, as null and void and for a permanent injunction.

2. According to the petitioner, her father-in-law commenced the construction of temple and was completed by her husband out of family funds, and the said temple is intended for the worship of the family members of the petitioner alone. The temple is surrounded by a grill gate, and there is no access to the public, and the general public are not allowed to enter into the temple, as a matter of right. However, the second respondent issued a show cause notice as to why non-hereditary trustees should not be appointed in the said private temple. Thereafter, the petitioner filed an application in O.A.No.48 of 1985 on the file of Deputy Commissioner, HR&CE Department, Chennai, seeking declaration to declare that the suit temple is not a public religious

institution. The said application was dismissed, challenging which, the petitioner filed an appeal in AP.No.91 of 1989 on the file of the first respondent. It is contended by the petitioner that pending appeal before the first respondent, the second respondent appointed the third respondent as a Fit Person to the suit temple vide proceedings dated 04.11.1989, which is illegal and against the principles of natural justice. Thus, the petitioner has instituted the suit for declaration and permanent injunction in O.S.No.8606 of 2008.

3. The respondents, claiming the temple to be a public temple and that the general public are freely worshipping the shrines in the temple daily, the third respondent is appointed as a Fit Person to maintain the temple. The third respondent filed written statement and prayed for dismissal of the said suit.

4. Challenging the stand taken by the respondents in connection with appointment of Fit Person, the petitioner filed an application in I.A.No.682 of 2017 for appointment of Advocate Commissioner to inspect the suit temple, and file a report as to the status of the temple, more particularly with regard to the ingress and egress of the temple and whether the public can have access to the temple pending disposal of the suit.

5. The third respondent filed counter and opposed the said application. It is contended that the temple has nothing to do with the petitioner's residence as it is situated abutting the road with the gate in front of the temple. It is also contended that Advocate Commissioner cannot be appointed to collect evidence on behalf of the petitioner/plaintiff. Hence, the third respondent prayed for dismissal of the application in I.A.No.682 of 2017.

6. The learned Judge dismissed the application in I.A.No.682 of 2017 vide order dated 04.4.2017, holding that the suit is of the year 2008, in which, the trial has commenced, and both the petitioner and respondents have let in evidence and their evidence was closed and the suit is also posted for arguments, and now at this belated stage, the petitioner filing the application for appointment of Advocate Commissioner to inspect the suit temple, only proves the intention of the petitioner to prolong the litigation, which is an abuse of process of law and has no merits. It is also held in the order that there was a direction of this Court dated 23.04.2015 in CRP.(PD) No.2886 of 2011, directing the learned trial Judge to dispose of the proceedings within a specified period. Since this case appears to be a time bound case, in which, there was a direction of this Court to dispose of the case within a stipulated time, this application filed seeking appointment of Advocate Commissioner cannot be allowed, as it would prolong the case further.

7. Challenging the said order of dismissal, the petitioner has filed the present Civil Revision Petition. The learned counsel appearing for the petitioner submitted that even in the appeal stage, the Advocate Commissioner can be appointed.

8. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

9. From the materials available on record, it is seen that the petitioner has already let in evidence with regard to her claim in the suit, and the same was closed. In the said circumstances, it is for the petitioner to establish that the suit temple is a private temple, and that the general public have no free access to the temple, and the general public have no right to worship the shrines in the temple, instead the petitioner is seeking appointment of Advocate Commissioner to collect evidence, that too when the suit is posted for arguments, which cannot be allowed, and the application is liable to be dismissed, and the learned trial Judge has rightly dismissed the said application. There is no illegality or infirmity in the order dated 04.4.2017 passed by the learned VIII Assistant Judge, City Civil Court, Chennai, warranting interference by this Court.

7. In the result, the civil revision petition is dismissed. The judgment relied on by the learned counsel for the petitioner is not applicable to the present case. No costs. Consequently, connected miscellaneous petition is closed.

15.06.2017

ds

Speaking order / Non Speaking
Index : Yes / No
Internet : Yes / No

To:

The VIII Assistant Judge,
City Civil Court,
Chennai.



WEB COPY

V.M.VELUMANI,J

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