

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.571 of 2017  
& C.M.P.No.2838 of 2017

M.Srinivasan

... Petitioner

Vs.

1. The Commissioner,  
Corporation of Chennai,  
Ripon Buildings,  
Chennai-600 003.
2. S.Manohar Chettiar,  
Managing Trustee of Sri  
Prasanna Venkata Narasimha Perumal Koil,  
Perumal Koil,  
Perumal Koil Street,  
Saidapet,  
Chennai-600 015.

(The 2<sup>nd</sup> respondent added as per order  
dated 20.10.2008 in I.A.No.6656/2007)

(The name of 2<sup>nd</sup> defendant is substituted  
as per order of the amendment petitioner  
in I.A.No.6820 of 2016 dated 08.06.2016)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.01.2017 in I.A.No.15281 of 2016 in O.S.No.3721 of 2003 on the file of the XIV Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Jayaprakash

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 11.01.2017 in I.A.No.15281 of 2016 in O.S.No.3721 of 2003 on the file of the XIV Assistant City Civil Court, Chennai.

2.The petitioner is the plaintiff and the respondents are the defendants in O.S.No.3721 of 2003. The petitioner filed a suit for declaration that the notice issued by the 1<sup>st</sup> respondent to the plaintiff under Section 256(3) of Chennai City Municipal Corporation Act (IV of 1919) dated 19.05.2003, on 04.07.2003, is null and void and for permanent injunction against the 1<sup>st</sup> respondent, their men, agent, servants, representatives, or any one acting under them from demolishing the suit property bearing door No.16, Rangabashyam Street, Saidapet, Chennai-15, is morefully described in the schedule mentioned property.

3. The first respondent filed written statement on 17.10.2003 and the second respondent filed written statement during November, 2013 and are contesting the suit and the trial commenced.

4.The petitioner examined himself as PW1 and he was cross-examined in part. At that stage, the petitioner filed I.A.No.15281 of 2016 for appointment of an Advocate Commissioner to inspect the suit property bearing door No.16, Rangabashyam Street, Saidapet, Chennai-15 and to note down the physical features by measuring the same.

5.According to the petitioner, the suit property is not owned by the first respondent and the suit land belonging to the second respondent. In order to find out whether the petitioner constructed the petty shop by encroaching the land belonging to the temple and also the public road and whether there is any construction on the pavement or not, appointment of Advocate Commissioner is necessary.

6.The first respondent remained ex parte in I.A.No.15281 of 2016. The second respondent filed counter affidavit and opposed the said application and submitted that the first respondent has issued notice as per the order of this Court dated 21.01.2003 in W.P.No.42583 of 2002. The suit is dismissed for default twice and subsequently restored on file and after commencement of trial, when it is posted for cross-examination, the petitioner has come out with the present application is only for protracting the proceedings.

7.The Trial Court, after considering the averments made in the affidavit, counter affidavit and arguments advanced by the counsel for the parties, dismissed the application holding that the suit was posted for cross-examination of PW1 and as such only the second respondent is contesting the suit but no relief has been sought for as against the second respondent.

8. As against the order dated 11.01.2017 in I.A.No.15281 of 2016 in O.S.No.3721 of 2003 on the file of the XIV Assistant City Civil Court, Chennai, the present Civil Revision Petition is filed by the petitioner.

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

10. The contention of the learned counsel for the petitioner is that whether building constructed in pavement on not is essential to decide the issue in the suit and sought for appointment of Advocate Commissioner at the stage of cross examination of PW1 which is belated one. The suit is of the year 2003 and on two occasions, the suit was dismissed for default and subsequently restored to file. From the materials, it is clear that the intention of the petitioner is only to drag on the proceeding. In view of the above facts, the order of the learned Judge does not warrant any interference by this Court.

11. From the order of the learned Trial Judge, it is seen that the first respondent/Corporation of Chennai, remained ex parte in the present application for appointment of Advocate Commissioner. The suit itself is challenging the notice issued by the first respondent. In view of the relief sought for in the suit, it is for the first respondent to take effective steps to defend the case filed against them. After filing the written statement, the first respondent has not contested the application for appointment of Advocate Commissioner. In the said circumstances, the Registry is directed to send a copy of this order to the Commissioner, Corporation of Chennai. The Commissioner, Corporation of Chennai, is directed to file a report as to why their officials are not taking steps to defend the case, within a period of six weeks from the date of receipt of a copy of this order.

12. With the above direction, the Civil Revision Petition is dismissed as devoid of merits. Consequently, connected miscellaneous petition is dismissed. No costs.

For reporting compliance, post the matter on 05.07.2017.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The XIV Assistant City Civil Court,  
Chennai.

Copy to

1.The Commissioner,  
Corporation of Chennai,  
Chennai.

2.The Section Officer,  
Judicial Section,  
High Court, Madras.  
(For posting the matter on 05/07/2017 for reporting Compliance)

+1cc to M/S.R.Jayaprakash, Advocate Sr.24145

C.R.P. (PD) No.571 of 2017  
& C.M.P.No.2838 of 2017

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srg 14/06/2017



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