

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2017

CORAM

THE HONOURABLE MR.JUSTICE Dr.P.DEVADASS

Civil Revision Petition (PD) No.1208 of 2013

and M.P.No.1 of 2013

1.T.Varadharajan
2.P.Shanmugam
3.T.Eswaran
4.A.Sundararajan
5.P.M.Raj

... Petitioners

VS

Shree Mayavar Perumal Thirukovil
rep. by its President of Thirupani Committee,
Dharmakarthi and Oor Pattakkarar,
S.Marimuthu,
Periya Molapalayam,
Jambai Post,
Bhavani Taluk,
Erode District.

... Respondent

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.01.2013 made in I.A.No.7 of 2013 in O.S.No.1 of 2013 on the file of the Principal District Munsif, Bhavani.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.P.Valliappan

ORDER

This civil revision petition arises out of the order passed in I.A.No.7 of 2013 in O.S.No.1 of 2013 on the file of the learned Principal District Munsif, Bhavani.

2.The plaintiff is a Perumal Temple. It is being administered by the Dharmakarthas/Trustees. The Temple committee carried out renovation work. It involves construction of some additional portions in the Temple campus. The defendants/revision petitioners, who are ad-joining owners objected to this. In the circumstances, the Temple filed the suit seeking permanent injunction as against the defendants.

3.In the suit in I.A.No.7 of 2013 has been filed by the plaintiff for appointment of an Advocate/ Commissioner alongwith a Surveyor to inspect the suit property and file his report alongwith a sketch.

4.After hearing both sides, the trial court appointed an Advocate/ Commissioner and directed for filing of report.

5.Aggrieved, the defendants have directed this revision. In this

connection, the learned counsel for the revision petitioners cited ***R.Justin Arulappa Vs. R.Xavier Arulappa and another(2010 (1) MWN (Civil) 840)***.

6.The learned counsel for the revision petitioners/defendants reiterated the very same contentions, which were placed before the trial Court. Further, he would contend that actually what is to be sought for in a declaratory suit, is being sought for in the I.A. Further, already there is a report by a Taluk Surveyor. In such circumstances, appointment of an Advocate/Commissioner will not arise.

7.On the other hand, the learned counsel for the plaintiff /respondent would contend that there is a dispute with regard to the physical features involving measurement of the property. In such circumstances, this aspect could not be established or visualized by the trial Court by oral evidence. The trial Court has appointed the Advocate/ Commissioner to enable the trial Court to render correct findings with regard to the measurement and physical features and boundaries of the suit property. The decision cited is not applicable to the facts of the case.

8.I have anxiously considered the rival submissions, perused the impugned order, the materials on record and the decision cited.

9. When factual matrix are such that it cannot be established before the Court through oral evidence, an Advocate / Commissioner can be appointed to inspect the property and submit a report to the Court. The report can also contain boundaries and the extent as mentioned in the title deeds.

10. The Advocate/ Commissioner will have the Assistant Taluk Surveyor or Town Surveyor. To the Commissioner's report, both sides can file their objections. Thereafter, the Commissioner's report and sketch will be read in evidence. The trial court records findings on the controverted aspects, more particularly, when the physical features and connected aspects are involved. In the case before us, such aspects are involved. In such circumstances, the decision cited is not applicable to the facts of this case. In the impugned order passed by the trial court, court cannot faulted.

11. The impugned order passed by the trial court cannot be faulted. In view of the foregoings, ordered as under:

(1) this revision fails.

(2) the trial court will request the learned Advocate/ Commissioner to complete the commission expeditiously and file his report.

(3)The trial court will also give reasonable time to both sides to file their objections, if any, to the Advocate/Commissioner's report.

(4)The trial court will dispose of the suit in O.S.No.1 of 2013 expeditiously, preferrably within a period of four months from the date of receipt of a copy of this order.

(5)In the facts and circumstances, no order as to costs.

(4)Consequently, connected miscellaneous petition is closed.

12.Accordingly, this revision is disposed of.

21.04.2017

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Index:yes/no

Internet:yes

To

1.The Principal District Judge,
Erode

2.The District Munsif,
Bhavani

Copy to:

1.The Registrar (Judicial).
2.The Assistant Registrar,(A.S),
High Court, Madras.

Dr.P.DEVADASS,J.

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