

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 311 of 2016
and
C.M.P.No.1709 of 2016

Venkatesan

.. Petitioner

Vs

Arulmighu Veetriruntha Perumal Thirukoil
Kuppan Kuzhi Village,
Kattumannar Koil Taluk
Rep. by its hereditary Trustee,
Srinivasa Narayanan
121, Sannathi Street,
Kattumannar Koil,
Cuddalore District.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders passed in I.A.No.389 of 2014 in O.S.No.136 of 2012 dated 13.04.2015 on the file of the Court of District Munsif cum Judicial Magistrate Court, Kattumannarkoil.

For Petitioner : Mr. A. Muthukumar

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed to set aside the orders dated 13.04.2015 passed by the Court of District Munsif cum Judicial Magistrate Court, Kattumannarkoil in I.A.No.389 of 2014 in O.S.No.136 of 2012.

2. The learned counsel for the petitioner would submit that the respondent has filed the suit in O.S. No. 136 of 2012 seeking for permanent injunction, against the petitioner/ defendant. The petitioner/ defendant filed the written statement stating that he is in possession of the Government poramboke land and not in the respondent's suit property. Hence, the petitioner/ defendant filed I.A. No. 389 of 2014 to appoint an Advocate Commissioner to inspect and submit a report to support the oral and documentary evidence. After hearing both the parties, the trial court had dismissed the said application, holding that the application has been filed, after chief examination of PW-1 and the suit has been posted for cross examination of PW-1 and so the application filed by the petitioner/ defendant is belated, wherein no reasons has been assigned, except raising the plea of identity and location of the property in dispute. According to the

petitioner, the order passed by the trial court is erroneous and without any proper perceptive. If the said application is allowed and an Advocate Commissioner is appointed, it shall minimise the oral and documentary evidences. Hence, the petitioner has filed this revision to set aside the order of the trial court dated 13.04.2015, dismissing the I.A. No.389 of 2014.

3. Though notice was served on the respondent/ plaintiff, there is no representation for the respondent, either in person or through counsel. Perused the material available on record.

4. It is seen from the above submissions that the petitioner/ defendant has filed the Interlocutory Application No.389 of 2014 in the aforesaid suit, for appointment of Advocate Commissioner to note down the physical features, measure the subject properties with the help of qualified surveyor and submit his report. It is an admitted fact that the respondent/ plaintiff has filed the suit for permanent injunction against the petitioner. It is the case of the respondent/ plaintiff that the suit property belongs to him, on which the petitioner was permitted to put up

a hut and reside on rent. When the revision petitioner and his sons attempted to convert the thatched shed into RCC by erecting new building, the respondent/ plaintiff filed the suit. But, the revision petitioner disputed the said fact and submitted that he is not residing in the suit property but residing only in the Government Poramboke land. Therefore, to identify the suit property, he has filed the Interlocutory Application before the court below, for appointment an Advocate Commissioner to identify the property.

5. It is seen from the records that the petitioner/ defendant has filed an application I.A. No. 389 of 2014, after chief examination of PW-1 and posted for cross examination, to note down the physical features of the suit property. Therefore, it is clear that the petitioner/ defendant has filed the application belatedly. On this ground the court below has rightly rejected the said application. Further, the respondent/ plaintiff has filed the suit for permanent injunction and the same can be established before the court below, by producing oral and documentary evidences. If there is any dispute in identifying the locality of the property, it can be decided by producing necessary documents, at

that time. On that ground this court cannot entertain the claim of the petitioner. Therefore, there is no error or illegality in the order passed by the trial court and hence, the prayer of the revision petitioner is liable to be rejected.

6. Accordingly, the Civil Revision Petition is dismissed, with a direction to the District Munsif cum Judicial Magistrate Court, Kattumannarkoil, to dispose of the suit, as expeditiously as possible. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

09.10.2017

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To

The District Munsif-cum-
Judicial Magistrate Court,
Kattumannarkoil.

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D. KRISHNAKUMAR J.,

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