



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.340 of 2017 (PD)

and

C.M.P(MD)No.1693 of 2017

A.Wiselin Jayakumar

....Petitioner/Petitioner/Plaintiff

Vs.

1.Udamoothu Dharmam Vagai
Parvathipuram rep. Through
The Executive Officer,
Sri Subramoniaswamy Devasthanam,
Thiruchendur and Post,
Tuticorin District.

2.The Assistant Commissioner,
HR & CE Department,
Suchindrum and Post,
Kanyakumari District.

3.The Joint Commissioner,
HR & CE Department,
Tirunelveli and post,
Tirunelveli District.

4.The Commissioner,
HR & CE (Admn.)
Nungambakkam,
Chennai.

....

Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.683 of 2014 in O.S.No.299 of 2014, on the file of the Principal District Munsif Court, Nagercoil, Kanyakumari District, dated 24.09.2016 and allow this Civil Revision Petition.

For Petitioner : Mr.T.Selvakumaran

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order made in I.A.No.683 of 2014 in O.S.No.299 of 2014, passed by the Principal District Munsif, Nagercoil, Kanyakumari District, dated 24.09.2016.



2.The petitioner is the plaintiff. The respondents are the defendants. The petitioner filed suit in O.S.No.299 of 2014 before the Principal District Munsif, Nagercoil for permanent injunction restraining the respondents and their men from interfering with his peaceful possession and enjoyment of the plaint schedule property. According to the petitioner, he is absolute owner of the suit property. The respondents are trying to demolish the compound Wall and superstructure in the suit property illegally. Therefore, he filed suit for injunction. The petitioner also filed I.A.No.683 of 2014 for appointment of Advocate Commissioner to note down the physical features of the plaint schedule property and to note the nature of the building existing therein on the date of filing of the suit.

3.The respondents filed written statement and admitted the possession of the suit property by the petitioner. According to the respondents, the petitioner is in possession as a lessee and respondents have right to evict the petitioner and demolish the superstructure as per Section 78 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959.

4.The learned Judge considering the materials on record and relief sought for by the petitioner in the suit and his claim is that he is in possession of the property as owner and the contention of the respondents that the petitioner is in possession of the suit property as lessee, dismissed the application holding that the issue to be decided in the suit as to whether the petitioner is in possession as owner or as lessee and to decide this issue in the suit appointment of Advocate Commissioner is not necessary.

5.Against the said order of dismissal made in I.A.No.683 of 2014, the petitioner has come out with the present Civil Revision Petition.

6.In support of his case, the learned counsel for the petitioner relied on the judgment reported in **2007(1) CTC 611 (Palanisamy Gounder, S. v. N.Palanisamy)** wherein in paragraph 19 it is held as follows:-

"19.It is to be noted here that Order 26, Rule 9, CPC empowers appointment of a Commissioner for local investigation, even if the prayer for such appointment has not come from the parties and in such a case, the Court itself can appoint a Commissioner. The Commissioner, so appointed, has to do local investigation at an early stage of litigation when the controversy is as to identification, location or measurement of the land or premises or object and his report would serve the Court merely for the appraisal of the situation and for a better understanding of the evidence of parties and it

can never be a basis of a judgment. "

<https://hcservices.ecourts.gov.in/hcservices/>



7.I have heard the learned counsel appearing for the petitioner and also perused all the materials available on record.

8.From the materials on record, it is seen that the petitioner is claiming a decree of permanent injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property. The respondents admit the possession of the petitioner but denying the claim of the petitioner that he is in possession of the property as owner. According to the respondents, petitioner is lessee and respondents have right to evict the petitioner as per Section 78 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959. In view of the fact that the petitioner is claiming relief of permanent injunction and respondents admit his possession. The Judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case. The learned Judge has rightly dismissed the application by exercising his jurisdiction conferred on him. There is no illegality or irregularity warranting interference by this Court.

9.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The Principal District Munsif,
Nagercoil, Kanyakumari District.

C.R.P (MD) No.340 of 2017 (PD)
22.2.2017

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