



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)Nos.2659 & 2660 of 2016 (PD)

and

C.M.P(MD)No.12511 & 12512 of 2016

1.Mathew Moses

2.Christy Moses

.. Petitioners/Respondents/Defendants
in both C.R.Ps

Vs.

Sri Muthumariamman Temple
Trust represented through its
Managing Trustees

1.A.Rajangam (President)

2.A.Kandhan(Secretary)

3.P.Loganathan(Treasurer) .. Respondents/Petitioners/Plaintiffs
in both C.R.Ps.

PRAYER: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, against the petitions and order, dated 09.09.2016 rendered in I.A.No.750 & 752 of 2014 in O.S.No.99 of 2014 by the Learned Principal District Munsif (I.A.No.16 of 2014 and I.A.No.40 of 2014 -II Additional District Munsif, Madurai) Madurai Town.

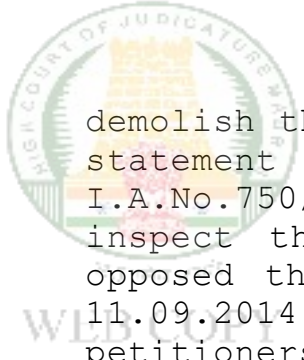
For Petitioners : Mr.S.Subbiah

COMMON ORDER

The issue involved in both the CRPs are interlinked and hence, both CRPs are disposed of by common order.

2.The petitioners have filed these Civil Revision Petitions against the petitions and order, dated 09.09.2016 passed in I.A.No.750 & 752 of 2014 of 2014 in O.S.No.99 of 2014 by the Learned Principal District Munsif (I.A.No.40 of 2014 -II Additional District Munsif, Madurai) Madurai Town.

3.The petitioners are the defendants in O.S.No.99 of 2014. The respondents filed suit in O.S.No.99 of 2014 for declaration to declare the compound Wall as a common compound Wall as per the common wall agreement, dated 03.12.1969 bearing documents No.2455/1969 and for injunction restraining the petitioners not to



demolish the common compound wall. The petitioners filed a written statement and additional written statement. The respondents filed I.A.No.750/2014 for appointment of Advocate Commissioner to inspect the suit property and to file report. The petitioners opposed the said application. The petitioners filed counter on 11.09.2014 and after taking number of adjournments, the petitioners argued the matter on 09.09.2016. The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record appointed an Advocate Commissioner holding that the inspection by Advocate Commissioner is necessary for the suit claim.

4.The petitioners filed I.A.No.752 of 2014 to reject the plaint on the ground that the respondents, who are to be the President, Secretary, Treasurer have not filed any document to substantiate their case and they have no locus-standi to file the suit. The respondents filed counter affidavit on 06.01.2015. From 06.01.2015 the petitioners were not ready for arguments and at their request, the matter was adjourned on number of occasions. On 09.09.2016 after hearing the parties, the learned Judge, dismissed the application holding that the objections raised by the petitioners are question of facts which can be decided only in the trial.

5.Against the said two orders passed in I.A.No.750 and 752 of 2014, the petitioners have come out with the present Civil Revision Petitions.

6.The learned counsel for the petitioners submitted that the reason given by the learned Judge for appointment of Advocate Commissioner is not valid. The learned judge failed to see that there is no averments in the plaint about the registration of plaintiffs' society and there is no documents filed by the respondents to substantiate their claim that they are the office bearers of the plaintiffs temple. The learned Judge failed to see that the respondents have no locus-standi to represent the plaintiffs temple. The learned Judge erred in holding that the objection raised by the petitioners are question of fact which can be decided only in the trial and prayed for allowing the Civil Revision Petitions.

7.The learned counsel for the petitioners submitted that they filed written statement in the year, 2014 and filed additional written statement also.

8.I have heard the learned counsel appearing for the petitioners and also perused the entire materials on record.

<https://hcservices.equib.com/hcservices/> 9.From the materials on record, it is seen that the respondents filed suit for declaration and injunction. In the plaint they have stated that they are the President, Secretary and



Treasurer of plaintiffs temple. The petitioners are disputing the said averments in the affidavit and filed petition to reject the plaint on the ground that the respondents have no locus-standi to represent the plaintiffs temple. When considering the application for rejection of the plaint, the Court has to consider only the averments mentioned in the plaint. The Court cannot look into the averments in the written statements in the affidavit or averments filed in support of the petition to reject the plaint. The learned Judge has considered this preposition as settled by judicial pronouncement and dismissed the application filed by the petitioners to reject the plaint. The learned Judge has correctly held the objection raised by the petitioners are question of fact, which can be decided only in the trial. Similarly, in the facts and circumstances of the case and nature of the suit, the learned Judge has held that appointment of Advocate Commissioner is necessary to inspect the suit property and file report by giving cogent and valid reason and there is no illegality or irregularity warranting interference by this Court.

10. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. It is open to the petitioners to raise the issue before the trial Court.

11. The learned District Munsif (Principal) Madurai Town is directed to dispose the suit in O.S.No.99 of 2014, as expeditiously as possible, in any event, not later than 31st August, 2017.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The District Munsif (Principal),
Madurai Town.
+1cc to Mr.S.SUBBIAH, Advocate in SR. NO.1343
am
js/mr/ub/1.02.2017/3p-3c

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04.01.2017