

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1162 of 2015 and
M.P.No.1 of 2015

Peria Sekkadu Girama Narpani
Membaadu Podhu Nala Sangam
By its President
(Registered Society no:341 of 2003)
S.Manoharan
Son of Seeyalan Naicker
Seeyalan Street
Madhavaram
Chennai – 600 051.

.. Petitioner

Vs.

1.Selvam
2.Venkatesan
3.Raja
4.Elumalai
5.Gopal

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.02.2015 made in I.A.No.1157 of 2014 in O.S.No.247 of 2014 on the file of the District Munsif Court, Thiruvotriyur.

For Petitioner : Mr.V.Lakshmi Narayanan

For R1 to R5 : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.02.2015 made in I.A.No.1157 of 2014 in O.S.No.247 of 2014 on the file of the District Munsif Court, Thiruvotriyur.

2. The petitioner is plaintiff and respondents are the defendants in O.S.No.247 of 2014 on the file of the District Munsif Court, Thiruvotriyur. The petitioner filed the said suit for permanent injunction restraining the respondents from interfering with the petitioner's possession in 'B' schedule property along with the temple and not to obstruct renovation work of the temple. The respondents filed written statement on 02.12.2014 and are contesting the suit. Along with the suit, the petitioner filed I.A.No.1157 of 2014 under Order XXVI Rule 9 and Section 151 C.P.C. for appointment of an Advocate Commissioner to inspect the suit schedule property and to file a report.

WEB COPY

3. According to the petitioner, the petitioner's sangam purchased 35 1/4 cents of 'A' schedule property from one Dhanammal by the deed of sale dated 29.01.1959 for the benefit of residents of Periyasekkadu Village. The four vendors of the above said sale deed namely, Ayyavoo Naicker, Perumal Naicker, Bashyam

Naicker and Kathavarayan Naicker of Periyasekkadu village were the Panchayathars in the Periyasekkadu Village Panchayat. The temple was constructed in a portion of the said property and a vacant space was left out in the East for future expansion and development for the benefit of residents of Periyasekkadu village. An extent of 23 cents was handed over to the Government for construction of school and the school has been constructed and it is functioning. A noon meal scheme building and a compound wall were also constructed in and around the school and remaining area is used as children's playground. In the year 2000, the temple was renovated and Kumbabhishekam and other festivals were conducted. Subsequently, village people visited the renovated temple and moneys were collected from the village. All the arrangements were made and advance were paid to Sthapathi. At that time, fifth respondent gave a complaint in Madhavaram Milk Colony Police Station. The petitioner and other Panchayathars attended enquiry and produced document. In order to establish that there is a temple in the suit property, appointment of an Advocate Commissioner is necessary to note down the physical features and existence of the temple.

4. The respondents filed counter affidavit and denied all the allegations made in the affidavit filed by the petitioner. According to

the respondents, suit property was purchased by four persons in their individual capacity and not as Panchayathars. The legal heirs of the four persons are entitled to enjoy the suit property. The suit is bad for non-joinder of legal heirs of the four persons, who are necessary parties to the suit. According to the respondents, there is no temple in the 'B' schedule property. The temple is in north eastern side of 'A' schedule property in the land measuring 200 sq.ft. The petitioner's sangam has not sought for any declaration to challenge the sale deed dated 29.01.1959 and therefore, they are not entitled to any relief in the present suit. The application is filed only to collect the evidence and prayed for dismissal of the application.

5. Before the learned Judge, the petitioner and respondents did not let in oral evidence. On the side of the petitioner, eight documents were marked as Exs.A1 to A8 and on the side of the respondents, two documents were marked as Exs.R1 and R2.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and documents, dismissed the application on the ground that the suit is for permanent injunction and the

Advocate Commissioner cannot be appointed to collect evidence.

7. Against the said order of dismissal dated 03.02.2015 made in I.A.No.1157 of 2014, the present Civil Revision Petition is filed by the petitioner/plaintiff.

8. Heard the learned counsel for the petitioner and perused the materials available on record. Though the respondents entered appearance through counsel, when the matter is taken up for hearing, there is no representation on behalf of the respondents.

9. The contention of the learned counsel for the petitioner is that there is a temple in the suit property for number of decades and constructions were made over a period of time. At present, arrangements were made for renovation of the temple by collecting moneys from the public. The respondents are disputing the existence of the temple in 'B' schedule property. In view of the disputed fact, to decide the issue in the present suit, it is necessary to appoint an Advocate Commissioner to inspect the suit property, note down the physical features and file his report.

10. For the above reason, impugned order of the learned

Judge is liable to be set aside and it is hereby set aside. The learned Judge is directed to appoint the Advocate Commissioner as prayed for by the petitioner. The Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

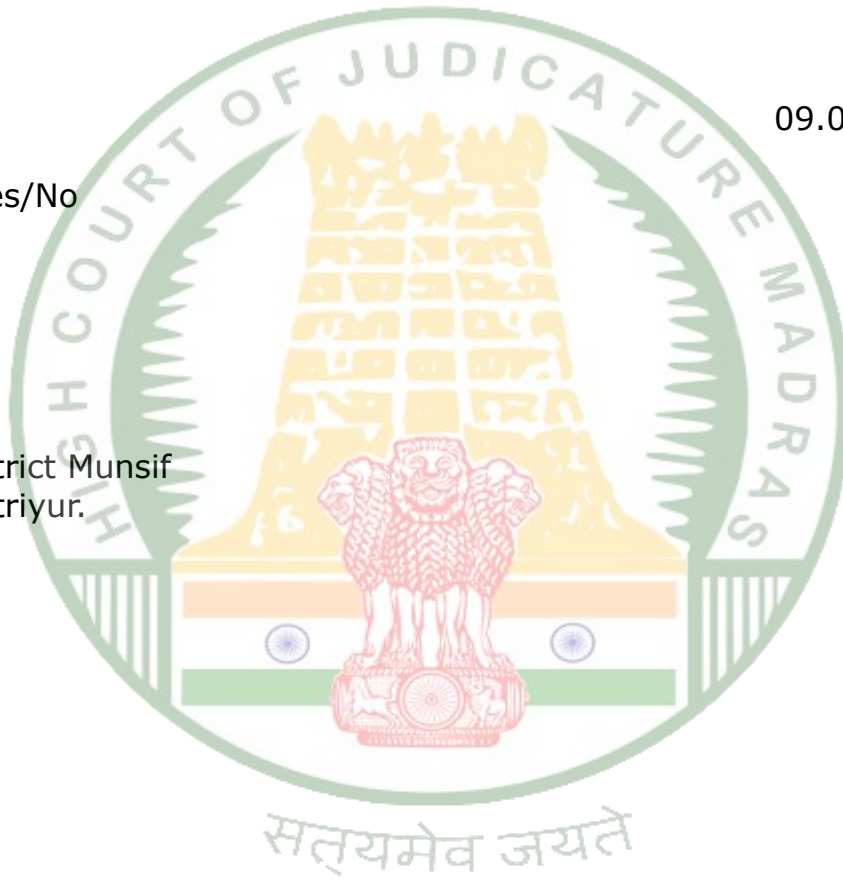
09.02.2018

Index:Yes/No

kj

To

The District Munsif
Thiruvotriyur.



WEB COPY

V.M.VELUMANI,J.

kj



C.R.P.(PD)No.1162 of 2015 and
M.P.No.1 of 2015

09.02.2018

WEB COPY