



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2018

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THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

C.R.P. (MD) No.1958 of 2017 and
CMP (MD) .No.9958 of 2017

Gopalan Nair .. Petitioner / Petitioner/ plaintiff

Vs.

1.Kollencodu Vattavilai
2.Sukumaran Nair
3.Manikandan Nair
4.Sooryadevan Thampi
5.K.C.Mohanakumar
6.T.Ramachandran Nair
7.Biju
8.Radhakrishnan
9.V. Madhusoodhanan
10.R. Jaya kumaran thampi
11.Vijayakumar
12.Sasidharan Nair
13.V. Ramachandra Nair
14.V.Mohankumar
15.Sanalkumaran Thampi .. Respondents / Respondents/ defendants

PRAYER: This petition is filed under Article 227 of the Constitution of India against the orders in I.A.No. 213 of 2017 in O.S.No. 87 of 2017 on the file of the Sub Judge, Kuzhithurai, dated 02.05.2017.

For Petitioner : Mr. V.M. Balamohan Thampi

ORDER

This Civil Revision Petition is filed against the against the order passed in I.A.No. 213 of 2017 in O.S.No. 87 of 2017 on the file of the Sub Judge, Kuzhithurai, dated 02.05.2017.

2. The revision petitioner, who is the plaintiff, has filed an Interlocutory Application in I.A.No.213 of 2017, under Order 26 Rule 9 r/w Section 151 CPC to appoint an Advocate Commissioner with the following prayer:



1. The Commissioner is hereby requested to visit 1st defendant Devaswom and verify minutes books of the Managing committee and General Body maintained by the first defendant Devaswom for the period from 01.01.2014 to 30.12.2015 and note whether the resolution passed in respect of purchase of property is there are not.

2. The commissioner is hereby requested to verify and note the sale consideration paid by the 1st defendant Devasom for the purpose of property on 28.11.2014 tally with the amount withdrawn from the State Bank of Travancore, Kollemcode Branch by the Secretary of Devaswom and report.

3. The Commissioner is hereby requested to verify and note the sale of Gold and Gold Ornaments for the year 01.01.2012 to 31.12.2015 are carried out by giving public notice and maintaining the proper records or not.

3. Admittedly, the petitioner should have filed an application under Order 26 Rule 11 CPC, but, without filing the same, he has filed an application under Order 26 Rule 9 r/w. Section 151 CPC. Order 26 Rule 11 CPC makes it clear that in any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment. Without considering the same, the learned Judge has dismissed the application filed by the petitioner on 02.05.2017. Challenging the said order, the petitioner has filed the present Civil Revision Petition.

4. Admittedly, the petitioner has filed an application under Order 26 Rule 9 r/w. Section 151 CPC instead of filing the same under Order 26 Rule 11 CPC, this Court is inclined to pass the following order:

(a) This Civil Revision Petition is dismissed confirming the order passed in I.A.No. 213 of 2017 in O.S.No. 87 of 2017, on the file of the Sub Court, Kuzhithurai, dated 02.05.2017.

(b) The petitioner is permitted to file a fresh application under Order 26 Rule 11 CPC before the Court concerned and on filing of such application, the learned Subordinate Judge, Kuzhithurai, is directed to dispose of the same, ~~and in accordance with law, by issuing notice to the other side."~~



No costs.
Petition is closed.

Consequently, the connected Miscellaneous

Sd/-

Assistant Registrar (RTI)

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/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge, Kuzhithurai.

+ 1 cc TO Mr.V.M.Bala Mohan Thampi , Advocate in SR No. 61127

trp

AE/SV MMS/SAR3/22.05.2018/3P/3C

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