



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (PD) (MD) No.1410 of 2018
and
C.M.P. (MD) No.6059 of 2018

S.Jawahar Muthuraj

...Petitioner / Petitioner /
3rd Party

-vs-

1.R.Mathialagan

... Respondent/Respondent
/ Petitioner's

2.The Assistant Divisional Engineer,
Highways Department,
Race Course Road,
Madurai-625 002.

3.The State represented through
The District Collector,
Collectorate Buildings,
Gandhi Nagar,
Madurai.

...Respondents/Respondents/
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records pertaining to the impugned order dated 18.01.2018 passed in I.A.No.267 of 2017 in I.A.No.1139 of 2014 in I.A.No.1491 of 2010 in O.S.No.628 of 2010 on the file of the Additional District Munsif, Tirumangalam and to set aside the same.

For Petitioner	: Mr.C.M.Arumugam
For R1	: Mr.K.Viswanathan
For R2 and R3	: Mr.M.Karuppasamy
	Government Advocate

ORDER

The first respondent herein filed O.S.No.628 of 2010 on the file of the learned Additional District Munsif, Tirumangalam seeking relief of declaration and permanent injunction. In the said suit I.A.No.1491 of 2010 was filed for passing an interim order of temporary injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The said application was allowed on 08.12.2010. It is



admitted that this order was questioned by filing Civil Miscellaneous Appeal and that the said CMA was also dismissed.

2. Complaining that the order of temporary injunction made in I.A.No.1491 of 2010 was not obeyed by the defendants, the plaintiff filed I.A.No.1139 of 2014 under Order 39 Rule 2A CPC r/w 151 CPC for punishing the revision petitioner. In the said proceedings, the revision petitioner had taken out I.A.No.267 of 2017 for appointing an Advocate Commissioner. The said I.A. was dismissed by the Court below on 18.01.2018. Challenging the same, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioner reiterated the contentions set out in the memorandum of grounds.

4. The core argument is that the defendants demolished the construction found in Survey No.202/1 and that the injunction order pertains to Survey No.202/5. Since there is a dispute regarding the identity of the property, he wanted the Court below to appoint an Advocate Commissioner. This submission is rebutted by the learned counsel for the plaintiff / first respondent by drawing attention of this Court to paragraph 13 of the order granting temporary injunction.

5. It is true that the contempt proceedings or the proceedings under Order 39 Rule 2A CPC are quasi criminal in nature. But it is to be noted that the evidence is yet to be let in in I.A.No.1139 of 2014. Even before that, the proceedings have been stalled by filing this application. It would not be fair on the part of this Court to foreclose the defence of the revision petitioner at this stage. Therefore, without going into the merits of the matter, this Court is of the view that the Court below was justified in dismissing I.A.No.267 of 2017 at this stage.

6. With these observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS-IV)

To:

1.The Additional District Munsif, Tirumangalam.



2.The Assistant Divisional Engineer,
Highways Department,
Race Course Road,
Madurai-625 002.

3.The State represented through
The District Collector,
Collectorate Buildings,
Gandhi Nagar,
Madurai.

+1 CC To MR.C.M.ARUMUGAM, Advocate SR. NO.84994

+1 CC To MR.K.HEMAKARTHIKEYAN, Advocate SR. NO. 84899

C.R.P. (PD) (MD) No.1410 of 2018

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