



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2018  
(Reserved on 28.03.2018)

WEB COPY

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

CRP (PD) (MD) No.2382 of 2016  
and  
CMP (MD) No.11237 of 2016

Muthuramman Mutheeswaran Temple,  
Rep. by its present President,  
T.Murugesan,  
Elanthavilai, Puthalam Village,  
Agasteeswaram Taluk,  
Kanyakumari District.

... Petitioner/Petitioner/Plaintiff

vs.

1) A.T.Marthandan @ A.T.Rajasekar  
2) A.Somasundaram  
3) A.Madhusoothanan  
4) A.Thankasamy  
5) A.Thangakrishnan  
6) A.Azhagesan  
7) A.Balakrishnan  
8) A.Gopal  
9) A.Radhakrishnan

... Respondents/Respondents/Defendants

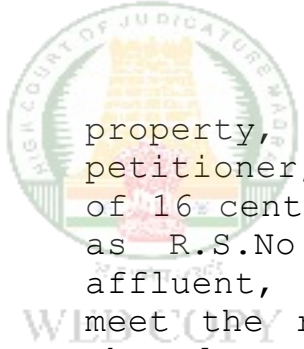
Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.09.2016 passed in I.A.No.284 of 2015 in O.S.No.85 of 2015 on the file of the Principal District Munsif, Nagercoil.

For Petitioner : Mr.R.Subramanian  
For Respondents : Mr.K.Pasupathy

ORDER

This revision petition has been filed against the fair and decreetal order dated 20.09.2016 passed in I.A.No.284 of 2015 in O.S.No.85 of 2015 on the file of the Principal District Munsif, Nagercoil.

2.Learned counsel for the petitioner would submit that the petitioner temple filed the suit in O.S.No.85 of 2015 for declaration of title, demarcation of boundaries of the suit



property, injunction and other reliefs. According to the petitioner, the temple was originally built in and around the area of 16 cents in old S.No.4247 and the survey number was renumbered as R.S.No.438/5 during resurvey. When the villagers became affluent, they felt that the space available is insufficient to meet the requirements during kodai festival and other festivals when large numbers of villagers gather. One Deivanayaga Perumal Nadar was a staunch devotee of the temple and he owned lands abutting the temple in R.S.No.438/5 and the lands were allotted to him in a partition decree passed in O.S.No.112 of 1107(M.E). The said Deivanayaga Perumal has gifted the above lands measuring 56.667 cents bearing R.S.No.438/5 to the petitioner temple by way of a registered deed dated 12.09.1978. Therefore, the temple got title over 72.667 cents in S.No.438/5.

3.It is further submitted that the respondents who are in occupation of the lesser extent in adjoining land situated on the north side of the suit property in the same survey number, on misconception claimed right over the suit property and made attempts to dismantle the drip irrigation pipes laid underground. Since the respondents are also having lesser extent in the same survey number, they are frequently trying to enter into the suit property and therefore, the petitioner filed the present suit for the prayer of demarcation.

4.Learned counsel for the petitioner would further submit that in the suit, the respondents filed their written statement disputing the title of the plaintiff over the suit property and contended that the temple is only entitled to 16 cents and also disputed the remaining area. They have also disputed the drip irrigation system, identity, extent and therefore, the petitioner filed application for appointment of advocate commissioner to find out the physical features of the suit property. However, the Court below has dismissed the above application and therefore, the petitioner has filed the present revision petition and would rely on various judgments.

5.Learned counsel for the respondents would contend that the property comprised in S.No.4247/1(R.S.No.438/5), Agasteeswaram Talulk, Kanyakumari District, belonged to the respondents herein. The said property was purchased by their father Krishna Perumal Nadar @ Harikrishnaperumal Nadar from one Thomas Fernandez who purchased the same in court auction. According to the respondents, the temple situated therein is the family temple of the defendants exclusively owned and maintained by them and in the course of time, they have permitted the villagers also to worship in the said temple. The temple is constructed on the plinth area of 16 cents and not 72 cents as averred by the petitioner. The petitioner has got no right over any other land adjoining the same. According to the respondents, the commissioner application



has been filed by the petitioner only to protract the proceedings and the appointment of advocate commissioner will not in any way help the court to decide the title of the plaintiff over. Further, in a suit for declaration and injunction, title cannot be established by way of appointing advocate commissioner. In support of his contention, learned counsel for the respondents relied on certain judgments.

6. Heard the learned counsel appearing for the petitioner as well as the respondents and perused the materials available on record.

7. The only point for consideration is whether the appointment of advocate commissioner is necessary in this matter. While appointing the advocate commissioner, the Courts in various judgments held that appointment of advocate commissioner should not be for collecting evidence. The contention of the petitioner is that they are in possession of the 72.667 cents. Whereas, the respondents have stated that the entire property is in their possession and as to the identification of the property, there is no dispute. As far as this case is concerned, it is in respect of the suit property as to who is in possession of the same that can be proved only by way of letting in evidence and therefore, the learned Judge has rightly dismissed the commissioner application and the interference of this Court is not necessary. Therefore, the judgments relied on by the counsel for petitioner are not applicable to the present case.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

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To

The Principal District Munsif, Nagercoil.

+1cc to Mr.R.Subramanian, Advocate in SR.No.61823

GJM/DD/SAR-2-4.6.18-2p-3c

Order made in  
CRP(PD) (MD) No.2382 of 2016  
17.04.2018