



C.R.P. (PD) No.1765 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 12.11.2021

CORAM:

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

C.R.P.(PD).No.1765 of 2017
and CMP.No.8315 of 2017

- 1.Devaraj
- 2.S.Veerasamy
- 3.Siddhi Vinayagar Temple, Udayampalayam
Rep.by its Managing Trustee
Perumal Koil Street,
Udayampalayam, Chinnavedampatti Post,
Coimbatore Town.

...Petitioners

Versus

- 1.Lingammal
- 2.Velumani
- 3.Saraswathi
- 4.Sulochana
- 5.Sagunthala
- 6.R.Arunachalam

...Respondents

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to prefer the above Civil Revision Petition against the fair and decretal order dated 09.12.2016 in I.A.No.813 of 2016 in O.S.No.1217 of 2013, on the file of II Additional District Munsif Court, Coimbatore.



WEB COPY



C.R.P. (PD) No.1765 of 2017

For Petitioners : Mr.R.Subramanian

For R1 to R6 : Mr.V.Sivakumar

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the fair and decretal order dated 09.12.2016 in I.A.No.813 of 2016 in O.S.No.1217 of 2013, on the file of II Additional District Munsif Court, Coimbatore.

2.Heard the learned counsel for the petitioners and the respondents.

3.The learned counsel for the petitioners would submit that a original suit in O.S.No.1217 of 2013 was filed by the respondents herein for the relief of declaration of title of the suit property and for mandatory injunction with regard to the second item of the suit property and for permanent injunction. At the time of filing the suit, the respondents herein took out an application in I.A.No.986 of 2013 for the appointment of Advocate Commissioner for inspecting the suit property. Pursuant to the ex-parte order made in the said interlocutory application, the Advocate Commissioner inspected the property



and filed his report.

WEB COPY

4.The learned counsel would also submit that the specific case of the petitioner herein is that the second item of the suit property belongs to the petitioners and the respondents herein are not entitled for any declaration as prayed for in respect of the second item of the suit property and also for mandatory injunction for removal of compound wall constructed by the third defendant in the suit which is well within the boundaries and the measurement of the temple property. It is further submitted by the learned counsel for the petitioner that the petitioners temple was found to be in possession and enjoyment to the extent of 750 sq. meter inclusive of the temple building and nandavanam on the Eastern side of the temple and as per the patta, the temple property situate in new S.F.No.717/2. It is further submitted that it is a specific case of the petitioner herein that the respondents herein had opposed the construction of compound wall and in view of the said objections, it is agreed between the parties that the properties of the plaintiffs and the temple should be measured by the surveyor and construction could be proceeded as per survey. Having so agreed, the respondents instead of arranging for survey, hurriedly filed the suit. It is further submitted that the Advocate Commissioner filed the report only with regard to physical features of the property and hence, the



petitioner filed I.A.No.813 of 2016 for appointment of Advocate Commissioner

to measure the properties of both the plaintiffs and the defendants with the assistance of Firca Surveyor since the property of the petitioners in S.F.No.717/2 and the property of the respondents herein in S.F.No.717/7 are to be measured and fix the boundary lines, note down the physical features inclusive of compound wall and other structure and file his report with plan. But, the trial Court erroneously dismissed the said application. The learned counsel for the petitioners would submit that it has to be established that whether the second item of the suit property lies in S.F.No.717/2 belonging to the temple or in S.F.No.717/7 belonging to the respondents.

5.Heard the learned counsel for the respondents. It is submitted that he has no objection to allow this petition. His main objection is that a fresh Advocate Commissioner cannot be appointed in a single case.

6.This Court is of the view that for proper adjudication of the dispute involved in the suit, the trial Court ought to have allowed the I.A.No.813 of 2016 by re-issuing the warrant to the Commissioner directing him to measure the properties of both the petitioner and the respondents with the help of Surveyor and file his report. In view of the submissions made by the learned



C.R.P. (PD) No.1765 of 2017

counsel for the parties and for arriving at a proper adjudication, this Court is inclined to allow this petition.

7.The trial Court is directed to re-issue the warrant to the same Commissioner with a direction to measure the properties with the aid of Firca Surveyor and file his report within the period of one month from the date of receipt of warrant being issued by the trial Court. The trial Court is also at liberty to appoint a fresh Advocate Commissioner in case of non-availability of the earlier Advocate Commissioner.

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

12.11.2021

gbi

Index: Yes/ No
Speaking Order / Non-Speaking Order

To

The II Additional District Munsif Court,
Coimbatore.



WEB COPY



C.R.P. (PD) No.1765 of 2017

S.KANNAMMAL, J.,

gbi

C.R.P.(PD)No.1765 of 2017

12.11.2021