



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.12.2021

Coram

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Civil Revision Petition (NPD) (MD) No. 1697 of 2014

and

MP (MD) No.2 of 2014

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1. Kasidarmam Panchayat Union
represented through its President
Kadayanallur Panchayat Union
Tenkasi Taluk
Tirunelveli District

2. Annai Kutti Pandiyan
S/o.Subbiah Thevar
2nd Ward, M.G.R. Nagar
Kasidarmam Village
Tenkasi Taluk
Tirunelveli District

3. Mariappan
S/o.Chelliah Thevar
Clerk
Kasidarmam Village Panchayat
Tenkasi Taluk
Tirunelveli District

4. The Commissioner
Kadayanallur Panchayat Union
Tenkasi Taluk
Tirunelveli District

.. Petitioners/Petitioners/
Respondents/Defendants

Versus

Kasidharmam Ayyavazhi Thirukovil
represented through its Trustee
Chellapandiyan, S/o.Shanmuga Thevar
Kasidharmum Village
Tenkasi Taluk
Tirunelveli District

.. Respondent/Respondent/
Petitioner/Plaintiff

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 09.07.2013 passed in E.A. No. 229 of 2012 in E.P. No. 84 of 2011 in O.S. No. 136 of 2009 on the file of the Principal District



For Petitioners : Mr. T.S. Mohamed Mohideen
For Respondent : Mr. T. Vadivelan
Mrs. Vijaya Rathinam,
Advocate Commissioner

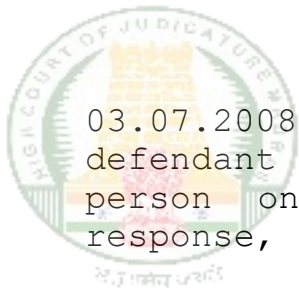
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ORDER

The revision petitioners are the defendants 1, 2, 4 and 5 in the suit in O.S.No.136 of 2009 instituted by the respondent herein. They have come forward with this Civil Revision Petition challenging the Order dated 09.07.2013 passed by the Principal District Munsif, Tenkasi, in E.A. No. 229 of 2012 in E.P. No. 84 of 2011 in O.S. No. 136 of 2009.

2. The respondent herein, in his capacity as a Trustee of the Kasidharmam Ayyavazhi Thirukovil, has instituted the aforesaid suit praying to issue a Mandatory injunction directing the defendants to construct compound wall demolished by them at their own costs; and for a mandatory injunction directing the defendants to remove the water pipe line running across the suit schedule property and to lay the same in Panchayat Union Road.

3. According to the respondent/plaintiff, the suit temple is in existence from time immemorial in which deities such as Sri Adhinarayanar, Aadhilakshmi, Sriraman and Anjaneyar have been installed and are worshipped by the devotees in the locality. The temple is also provided with electricity service connection and the actual electricity consumption charges are being paid to the Electricity Board. Further, there was a compound wall surrounding the temple and on the north side of the temple, there was a water tank installed in the land of the fifth defendant Panchayat Board, through which water is being supplied to the temple by using multiple water pipes embedded beneath the earth. However, one such pipe was laid across the temple and the respondent/plaintiff made representation to the defendants to change the pipeline so that it can pass through the Panchayat road. According to the respondent/plaintiff, his frequent requests made to the revision petitioners / defendants had irked them and therefore, they have demolished the compound wall surrounding the temple, which caused prejudice to the respondent / plaintiff as well as the devotees, who visit the temple. When it was questioned by the respondent/plaintiff, the revision petitioners / defendants justified the demolition so as to facilitate changing the route of the pipeline passing through the temple. It was also stated that they will construct the compound wall at their own costs and will also lay the pipeline in the Panchayat road. However, the revision petitioners / defendants failed to fulfil their promise and therefore, the respondent / plaintiff sent a complaint dated



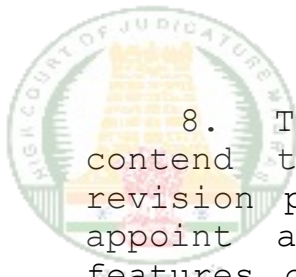
03.07.2008 to the Commissioner of Panchayat Union, the fifth defendant in the suit. Subsequently, he met the fifth defendant in person on 02.01.2009 and reiterated his demand. Finding no response, the respondent / plaintiff has instituted the suit.

4. Upon receipt of the notice, the revision petitioners / defendants 1, 2 and 4 engaged a counsel to contest the suit, but they did not file any written statement. The fourth petitioner / fifth defendant did not even engage any advocate. Therefore, the suit was decreed exparte on 08.04.2010. On the strength of the same, the respondent / plaintiff has filed an Execution Petition in E.P. No. 84 of 2011 under Order XXI Rule 32 of the Code of Civil Procedure seeking arrest of the revision petitioners/defendants for not complying with the decree passed by the trial Court and to confine them in Civil Prison for a period of three months.

5. Pursuant to the initiation of the aforesaid Execution Petition, the revision petitioners/defendants have filed E.A. No. 229 of 2012 under Order 26 Rule 9 r/w Section 151 of the Code of Civil Procedure for appointment of an Advocate commissioner to note down the physical features of the suit schedule property, with the help of a taluk surveyor, stating that there was no compound wall in Survey No.151/7 as alleged by the respondent / plaintiff and that, the compound wall and the water pipeline are situated in some other land and hence, in order to find out the correct position, appointment of an advocate commissioner is necessary.

6. Resisting the aforesaid application, the respondent / plaintiff has filed a counter, stating that the matter was already adjudicated in the suit itself and the trial court found that the compound wall and water pipe line are situated in S.No.151/7 and hence, the revision petitioners / defendants cannot be permitted to re-agitate the same at this stage. It was further stated that since the decree passed by the trial court has not been complied with by the revision petitioners / defendants, it amounts to contempt of the proceedings of the Court; they have not disclosed the so-called survey number, in which the compound wall exists; the Execution Application has been filed only to protract the execution proceedings and therefore, the same may be dismissed, as not maintainable.

7. By order dated 09.07.2013, the trial court, on consideration of the materials available on record, has dismissed the aforesaid Execution Application, observing that there was a decree in favour of the respondent / plaintiff and the subject matter in issue was already decided in the suit and hence, it cannot be allowed to be re-agitated in the execution proceedings. Aggrieved over the same, the revision petitioners / defendants are before this court with this civil revision petition.



8. The learned counsel for the revision petitioners would contend that to find out the correct factual position, the revision petitioners / defendants preferred EA.No.229 of 2012 to appoint an advocate commissioner, to note down the physical features of the suit schedule property with the help of a taluk surveyor. Without considering the same in a proper perspective, the trial court has dismissed the said application, on the ground that the revision petitioners / defendants attempted to re-agitate the issue, which was already decided in the suit in favour of the respondent / plaintiff and that, they did not contest the suit and they allowed the suit decreed as exparte and hence, they have not come to the court with clean hands. The learned counsel would further contend that the suit property has been wrongly described in the plaint as Survey No.151/7 and that, the compound wall and pipeline are situated in some other land and therefore, the exparte decree passed in the suit, is not executable. It is also submitted that unless an Advocate commissioner is appointed to unravel the controversy in issue, the respondent / plaintiff cannot execute the exparte decree passed against the revision petitioners / defendants. Therefore, the learned counsel prayed this Court to allow this Civil Revision Petition and direct the court below to appoint an Advocate commissioner.

9. On the other hand, the learned counsel for the respondent / plaintiff would contend that the suit was decreed exparte in favour of the respondent / plaintiff and hence, the revision petitioners / defendants are bound to execute the said decree. Without complying with the same, they have filed an application for appointment of an Advocate commissioner, with an intent to protract the proceedings and hence, the trial court has dismissed the said application, which does not call for any interference by this court.

10. Heard both sides and perused the records.

11. On 04.11.2020, when the matter was taken up for hearing, considering the nature of the issue involved herein, this court, in order to avoid further delay, has appointed Mrs. M.Vijaya Rathinam, as an Advocate Commissioner, to cause an inspection of the suit property with the assistance of the local surveyor and the Village Administrative Officer and to file a report, as regards the existence of the compound wall and the water pipeline therein.

12. Accordingly, the Advocate commissioner inspected the suit property and filed her report on 26.11.2020, wherein, it is stated as follows:

"1. In pursuance of the commission warrant, I inspected the disputed property on 18.11.2020, after



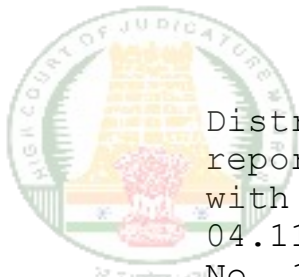
giving notice to the petitioner's counsel and the respondent's counsel. On behalf of the petitioners the Village Officer, Deputy Block Development Officer and the Panchayat Secretary along with their counsel were present. The respondent was residing in the said property. At the time of my visit, the petitioner's counsel gave me a copy of survey sketch of the disputed property. The taluk surveyor measured the entire property in Survey No.151

2. I submit that the schedule in the plaint O.S. No. 136 of 2009 on the file of Principal District Munsif, Tenkasi was wrongly mentioned as Sr.No.151/7 Kasidarmam Village by the plaintiff. The property measuring an extent of 18.5 cent (7.5 ares) in Survey No.151/7 entirely belongs to Mr.Kanthaiya Thevar, Mr. Velaiya Thevar and Mr. Murugan. The disputed property is situated in Sr.No.151/1 Kasidarmam Village. As per the revenue records, the total extent of the property in Survey No.151/1 is 1 Acre 18 Cents (48 ares) and the total extent is in the name of Arulmigu Thiruvaduthurai Adheenam. Therefore, the entire property was not subdivided in the revenue records.

3. I submit that the suit property is a private temple attached with house properties. There are 3 EB service connection (947, 1524 and 1161). In the sketch, I mentioned as EFGH was temple. There are 4 deities in the said temple. The dispute wall is BE wall. The said wall was again constructed by the respondent/plaintiff himself with hollow blocks. In the northern side of the suit property there are 2 water tanks in Sr.No.152. The pipelines running in front of the suit property was not visible. Revenue officials also not aware of the fact. The respondent/plaintiff himself agreed that there are 5 pipe lines in front of his property. But he claims that all the pipelines are running nearly 2 feet away from the compound wall shown in the sketch as BE wall.

4. I submit that the southern boundary of the suit property is a pond (Sr.No.144 Kasidarmam Village) and the North-South thar road is situated in the Pond Purampokku (குளத்தொட்டி). When the surveyor measured the property till GUTK point mentioned in the sketch is in Sr.No.151/1 (i.e.), the kitchen (மடப்பள்ளி). The temple EFGH and the entire stretch towards the northern side till the Cow barn of the neighbour's house is situated in Survey No.144.

5. Therefore, as per the records of the revenue department, the disputed wall and the pipelines were situated in Sr.No.144, Kasidarmam Village, Tenkasi



District. I herewith submitting my detailed commission report, rough sketch and the copy of the warrant along with the survey sketch as per the order dated 04.11.2020 in the present Civil Revision Petition (CRP No. 1697 of 2014) by this Honourable High Court Madurai Bench."

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It is revealed from the report of the Advocate Commissioner that the suit property has been wrongly described in the plaint as if it is situated in S.No.151/7, Kasidarmam village, whereas the same is situated in S.No.151/1 Kasidarmam village; and as per the revenue records, the total extent of property in S.No.151/1 is 1 acre 18 cents and is in the name of Arulmighu Thiruvaduthurai Adheenam. The report further proceeds to state that the suit property is a private temple attached with house properties and the compound wall was again constructed by the respondent / plaintiff himself with hollow blocks; and in the northern side, there are two water tanks in S.No.152 and the pipe lines running in front of the suit property were not visible. It is therefore, stated in the report that the disputed wall and the pipelines were situated in S.No.144 Kasidarmam Village, Tenkasi District.

13. Admittedly, the revision petitioners / defendants did not contest the suit either by filing written statement or through any pleader and the suit was decreed exparte, in favour of the respondent / plaintiff. After coming to know about the exparte decree, they filed an application seeking appointment of an Advocate Commissioner, which was dismissed by the trial court. However, in order to avoid further delay, this court appointed an Advocate Commissioner, who, after a thorough inspection of the suit property with the help of the revenue officials and records, filed her report. In the said report, it is clearly stated that the suit schedule property has been wrongly mentioned in the plaint as S.No.151/7, whereas the same is situated in S.No.151/1, Kasidarmam village, which belongs to Thiruvaduthurai Adheenam. In such circumstances, the respondent / plaintiff has no right or interest over the property in question and the exparte decree obtained by them in the suit filed for construction of compound wall, which was said to have been demolished by the revision petitioners / defendants and removing the water pipeline running across the suit schedule property and relaying the same in the Panchayat Union Road, cannot be enforceable in law. Therefore, the Execution Petition filed by the respondent / plaintiff to execute the suit decree, will have to be dismissed.

14. In such view of the matter, the order dated 09.07.2013 passed by the Principal District Munsif, Tenkasi in E.A. No. 229 of 2012 in E.P. No. 84 of 2011 in O.S. No. 136 of 2009 is set aside. Consequently, EP.No.84 of 2011 filed by the



respondent/plaintiff seeking to execute the decree dated 08.04.2010 passed in O.S.No.136 of 2009, is dismissed.

15. At this juncture, it may not be out of context to point out that pursuant to the report of the Advocate Commissioner, the fourth petitioner / Commissioner, Kadayanallur Panchayat Union, Tenkasi Taluk, Tirunelveli District, filed an affidavit on 22.01.2021, stating that as per the records obtained from the Village Administrative officer, Kadayanallur, several lands belonging to Thiruvaduthurai Adheenam and Panchayat, have been under encroachment; and the persons like the respondent / plaintiff claiming themselves as the holders of Ada-olai (அடைஒலை) have constructed buildings and are in unlawful possession of the said Adheenam lands. Therefore, the fourth petitioner may be permitted to conduct a detailed inspection with the help of the Thiruvaduthurai Adheenam and take action for removal of such encroachment in the manner known to law.

16. As noted earlier, according to the Advocate Commissioner's report, in the revenue records, the property in dispute viz., S.No.151/7 Kasidarmam Village stands in the name of Adheenam. The affidavit of the Commissioner, Kadayanallur Panchayat, Tenkasi, reveals the dismal state with regard to encroachment of the Adheenam and Panchayat lands, which is only the tip of an iceberg and there can be large extent of lands under encroachment. Such being the actual state of affairs, this Court cannot shut its eyes over such rampant encroachments in respect of the Adheenam and Panchayat lands and remain as a mute spectator.

17. In similar circumstances, in W.P(MD)No.14428 of 2017, this Court, by order dated 12.02.2018, had made the following observations:-

" 19. Needless to say, the properties of the religious institutions, more particularly, the temple properties have to be maintained properly in order to derive more income to spend for the betterment of the temples. Statistics reveal that few years ago there was 5.25 lakh acres of land and only 4.78 acres exist now. The balance of nearly 50,000 acres are in the hands of encroachers. It was a practice that a portion of the first yield from the lands would be given to the temple. Now, it is very pertinent to point out that when the properties/lands belonging to the temples in our State are not properly maintained, then the revenue/income could not be derived therefrom and therefore, it would not be in the interest of the temples/religious institutions and the lands are alienated illegally. No doubt, the Hindu Religious and Charitable Endowment Department being the competent authority to regulate



the affairs of the public religious institutions/temples in the entire State, having failed continuously for a considerable time should now initiate appropriate steps to retrieve the properties of the temple/religious institutions in the State. The Joint Commissioners are clothed with the power to retrieve the temple lands from the encroachers by exercising the powers under Sections 78, 79 and 80. In addition to the powers under Sections 23 and 29, the Commissioner is granted with powers to ensure that lands belonging to the temple and endowments are not alienated or leased or encumbered illegally and against the interest of such institution."

18. In the light of the aforesaid observation and acceding to the request made by the Commissioner, Kadayanallur Panchayat, this court, to subserve the interests of justice, is inclined to issue appropriate direction to the authorities concerned by exercising the power conferred under Article 227 of The Constitution of India. Accordingly, the fourth revision petitioner is directed to make a request with regard to removal of encroachments of the lands belonging to Adheenam, to the Commissioner, HR&CE Department, Chennai, who, being the *parens patriae*, in turn, shall issue appropriate instructions to the respective Joint Commissioners of the HR&CE Department to undertake the following exercises:

(a) find out the nature of occupation and/or encroachment, if any, over the lands of Thiruvaduthurai Adheenam and the person(s), who is/are in unlawful occupation of such land(s); and

(b) thereafter, issue notice indicating the extent of encroachment by giving a time frame for removal of the same on their own costs.

(c) If the encroacher(s) fail(s) to remove the encroachment within the given time, then, appropriate action be taken, as per law.

19. With the aforesaid directions, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)



1.The Principal District Munsif
Tenkasi.

2.The Commissioner,
HR & CE Department,
Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034.

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate (SR-39389[F] dated
17/12/2021)

CRP (NPD) (MD) No. 1697 of 2014
16.12.2021

KS(CO)
SB(19.01.2022) 9P 4C