



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P(MD) No. 2601 of 2014

and

M.P.(MD) No.1 of 2014

WEB COPY

Gowthaman

... Petitioner/Respondent/Defendant

Vs.

Arulmigu Viswanatha Swamy Thirukoil,

Pattukkottai Town,

Pattukkottai Taluk and Munsif,

Thanjavur District,

Rep. by its Executive Officer ...Respondent/Petitioner/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 14.10.2014 made in I.A.No.382 of 2014 in O.S.No.214 of 2010 on the file of the District Munsif Court, Pattukkottai, by allowing this Civil Revision Petition.

For Petitioner : Mr.Viji
for Mr.D.Rameshkumar
For Respondent : Mr.V.Chandrasekar

O R D E R

The Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 14.10.2014, made in I.A.No.382 of 2014 in O.S.No.214 of 2010 by the District Munsif, Pattukkottai.

2.The respondent /plaintiff has filed a suit in O.S.No.214 of 2010 on the file of the District Munsif Court, Pattukkottai, seeking for permanent injunction restraining the petitioner/defendant from putting up further constructions in the suit property and to evict him. Pending the suit, the respondent/plaintiff, has also filed a petition in I.A.No.382 of 2014 under Order 26 Rule 9 of the Code of Civil Procedure, seeking for appointment of an Advocate Commissioner to note down as to whether the house situated in the suit land is a newly constructed building or a renovated old building and also to note down its



physical features and to file a detailed report and plan. The Court by order dated 14.10.2014 allowed the petition. Assailing the order the present Civil Revision Petition has been filed by the petitioner / defendant.

3. The learned counsel for the petitioner would submit that the respondent/ plaintiff has filed the suit in O.S.No.214 of 2010 on the file of the District Munsif Court, Pattukkottai, on 03.11.2010 and the petitioner/defendant has filed the written statement, within one month, i.e., December, 2010, whereas, after four years, the respondent-temple/plaintiff has filed a petition for appointment of an Advocate Commissioner. Though the petitioner/defendant had raised a specific objection that Advocate Commissioner cannot be appointed to ascertain factum of possession or gather evidence, the Trial Court, without going into the merits of the case, has passed the impugned order appointing an Advocate Commissioner.

4.The learned counsel for the petitioner would further submit that it is an admitted case of the petitioner /defendant that he is in possession and enjoyment of the property and that the possession is not disputed and in such circumstances, the appointment of an Advocate Commissioner to note down the physical features is not necessary and thereby, he would seek to set aside the order of appointment of an Advocate Commissioner.

5.Per contra, the learned counsel appearing for the respondent/temple would submit that the case of the respondent/plaintiff is that the petitioner/defendant was putting up additional construction in the demised premises during the pendency of the suit. He would further submit that the petitioner/defendant, during cross examination, had deposed that the petitioner/defendant had not constructed any pucca building, however, he had admitted that he had just renovated the house in the suit property and further the petitioner/defendant had also submitted that he has no objection for appointment of an Advocate Commissioner to note down the physical features of the house in the suit land and only based on the admission of the petitioner/defendant, the Court has passed the order, appointing an Advocate Commissioner. He would further submit that after the appointment of the Advocate Commissioner, he had visited the premises and he had also filed his Report and the present Civil Revision Petition has been filed only to delay the progress of trial.

6.Heard, Mr.Viji, for Mr.D.Rameshkumar, learned counsel appearing for the petitioner and Mr.Mr.V.Chandrasekar, learned counsel appearing for the respondent.



7. I have perused the entire materials available on record.

8.It is an admitted case of the petitioner / defendant that he has not constructed any pucca building in the suit land and he has only renovated the house in the suit land. It is the case of the respondent/ plaintiff that additional constructions were put up and thereby, the Advocate Commissioner had to be appointed to file a report with regard to the same. Further, the petitioner / defendant had also admitted that he had no objection for appointment of an Advocate Commissioner to note down the physical features of the house in the suit land. The petitioner, having already expressed no objection for appointment of an Advocate Commissioner, is not entitled to challenge the same now.

9.For the reasons stated above, I do not see any infirmity in the order passed by the Trial Court and hence, the Civil Revision Petition deserves to be dismissed.

10.In the result, the Civil Revision Petition stands dismissed. However, the learned District Munsif, Pattukkottai, is directed to dispose of the suit in O.S.No.214 of 2010 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Munsif Court,
Pattukkottai,

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-29064 [F] dated
15/09/2021)

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-29259 [F] dated
16/09/2021)

**C.R.P (MD) No.2601 of 2014
14.09.2021**

NSN (CO)
SB(28.09.2021) 4P 6C