



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.2524 of 2015

and

M.P. (MD) No.1 of 2015

WEB COPY

Kanagasabapathy

.. Petitioner/Petitioner/
Defendant

-vs-

Sri Meenakshi Sundareswarar,
Sri Meenakshi Sundareswarar Temple,
Pachoor, Kovathakudi Village,
Mannachanallur Taluk,
Trichy District.
A private family Temple,
Rep., by its present
Private Family Hereditary Trustee,
V.Vijayakumar

.. Respondent/Respondent/
Plaintiff

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 15.09.2015 made in I.A.No.896 of 2015 in O.S.No.186 of 2011 on the file of the District Munsif Court, Lalgudi, Trichy District.

For Petitioner	:	Mr.P.Arunjayatram
For Respondent	:	Mr.Vinoth for Mr.R.Subramanian

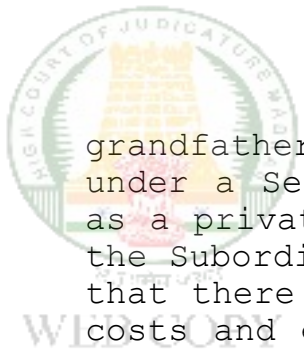
ORDER

The defendant, aggrieved by the dismissal of his application in I.A.No.896 of 2015 to appoint an Advocate Commissioner, is the revision petitioner before this Court.

2.The brief facts, which would help in understanding the dispute between the parties, are hereinbelow narrated:-

2.1.The plaintiff/temple had filed the suit in O.S.No.186 of 2011 on the file of the District Munsif, Lalgudi, against the defendant for recovery of possession of the suit property; for a sum of Rs.3,600/- towards past profits for three years prior to suit to the plaintiff; for an enquiry into future profits from the date of plaint till delivery of possession; and for costs.

3.The case of the plaintiff is that the suit property originally belonged to one Ramasamy Pillai, who was the Trustee of the plaintiff Temple/ the brother of the plaintiff's father's



grandfather. He had settled the property to the plaintiff/temple under a Settlement Deed dated 25.07.1935. The temple was declared as a private temple by judgment and decree in O.S.No.131 of 1959 by the Subordinate Judge, Trichy. The Settlement Deed itself describes that there were two houses built by the said Ramasamy Pillai at his costs and expenses for the temple. One of the buildings was to be used as the residence of the Archaka. The plaintiff is in possession and in effective management of the temple and the houses therein. In fact, the houses are in a dilapidated condition. The defendant, who was appointed as an Archaka, has been serving the temple for over 45 years. In the course of his employment, he was permitted to reside in the house set up for the Archaka. Though he was put in permissible occupation of the property, the defendant got avaricious and wanted to knock off the property as his own for which purpose, he tried to obtain a patta from the Government Authorities and this attempt was futile. Thereafter, he had filed O.S.No.321 of 1998 on the file of the II Additional Subordinate Court, Tiruchirappalli, to declare that he is the absolute owner of D.Nos.2/119 and 2/119A (the suit properties) by adverse possession, for an injunction restraining the plaintiff from interfering with his possession and enjoyment of the property and a mandatory injunction to the State to grant him a patta. After contest, the suit, which was transferred to the file of the District Munsif Court, Lalgudi as O.S.No.186 of 2004, was dismissed. Challenging the dismissal, the defendant had filed an appeal in A.S.No.31 of 2006 on the file of the II Additional Subordinate Court, Trichy. The appeal was dismissed confirming the judgment and decree in O.S.No.186 of 2004. No further appeal has been filed. Therefore, the judgment and decree in O.S.No.186 of 2004 attained finality. The defendant refused to do the Archaka's duties and attempted to squat in the property and therefore, he was asked to vacate the premises as the plaintiff was put in other person. However, though the defendant had initially agreed to vacate the premises, he failed to do so. The legal notice also evoked no favourable results. Consequently, the plaintiff was constrained to file the above suit.

4.The defendant had filed a counter more or less reiterating the contentions raised by him in the earlier suit. He would also contend that the judgment in O.S.No.186 of 2004 by the learned District Munsif, Lalgudi, which was confirmed in the Appeal Suit by the learned Subordinate Judge, Trichy, would not automatically mean that the plaintiff is the owner of the property. Pending the suit, the defendant had come forward with the impugned application to appoint an Advocate Commissioner to note down the physical features and take down its measurements with the assistance of the Surveyor and file a report with plan. The reason for making the application as stated in the affidavit is that the suit property, according to the plaintiff, was part of the temple whereas according to the defendant, it was independent of the temple and the temple is surrounded by the big stoned compound wall and the suit property is



away from it. Noting down this physical feature was essential for the defendant to support his case.

5.The plaintiff had resisted the above application *inter alia* contending that there was no ambiguity or dispute with reference to the identity of property and neither was there any identity crisis and there was no confusion or doubt about the measurement. The suit is one for recovery of possession. The plaintiff had to prove its right to seek the recovery of possession and the defendant had to prove that he was the rightful owner of the property entitled to be protected and there was no necessity to appoint an Advocate Commissioner.

6.The learned District Munsif, Lalgudi by his order dated 15.09.2015, had dismissed the said application stating that the defendant cannot set out on a fishing expedition by seeking appointment of an Advocate Commissioner. The learned Judge had also stated that there was no doubt about the situation of the property or its measurement and therefore, there was no necessity to appoint an Advocate Commissioner. Challenging the same, the petitioner is before this Court.

7.Heard the learned counsel on both sides.

8.As rightly held by the court below, the suit is one for recovery of possession on the basis that the defendant has ceased to carry out the assigned duties of an Archaka and that the house, which was settled on the temple, was to be used as the residence for the Archaka of the plaintiff temple. The defendant was in occupation of the same only on account of his being an Archaka. Therefore, there is no necessity to appoint an Advocate Commissioner to prove title. The learned District Munsif, Lalgudi, has rightly dismissed the said application. Therefore, this Court does not find any ambiguity or grounds to interfere with the order of the learned District Munsif, Lalgudi, dated 15.09.2015 passed in I.A.No.896 of 2015. Consequently, the Civil Revision Petition fails and is dismissed. It is informed that the suit is of the year 2011. Therefore, a direction is issued to the learned District Munsif, Lalgudi to dispose of the suit within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

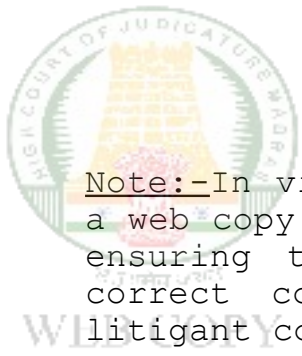
Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar (CS)



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

The District Munsif, Lalgudi, Trichy.

Copy to

The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-
37657[F] dated 07/12/2021)

C.R.P.(NPD) (MD) No.2524 of 2015
Dated: 06.12.2021

NSN(CO)
KB(31.12.2021) 4P 4C