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C.R.P(NPD).No.936 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.936 of 2022
and C.M.P.No.4764 of 2022

Boopathy

... Petitioner

..Vs..

Arulmigu Balasarathuleeswarar Temple,
Gudiyatham Town by its Executive Officer,
Nellorpet,
Gudiyatham Taluk,
Vellore District.

... Respondent

Prayer:- Civil Revision Petition is filed under Section 115 of CPC, against the order and decretal order dated 11.01.2022 made in I.A.No.1 of 2019 in A.S.No.22 of 2018 on the file of the Subordinate Court, Gudiyatham, Vellore District.

For Petitioner : Mr.V.M.G.Ramakkannan

For Respondent : M/s.E.Indumathi
Government Advocate

ORDER



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This civil revision petition has been preferred challenging the order of the learned Subordinate Judge, Gudiyatham, Vellore District, dated 11.01.2022 made in I.A.No.1 of 2019 in A.S.No.22 of 2018.

2.The revision petitioner is the appellant/plaintiff who has filed the first appeal in A.S.No.22 of 2018. The suit has been filed for the relief of permanent injunction and it was dismissed. Challenging the same, the appeal was filed and pending the appeal, an Interlocutory petition in I.A.No.1 of 2019 was filed to produce the schedule documents for deciding the appeal and the same was dismissed. Aggrieved over that, the petitioner has preferred this revision petition.

3.The learned counsel for the petitioner submitted that the learned First Appellate Judge has chosen to dismiss the petition on the ground of custodial entitlement; the documents are said to be in the custody of the respondent/defendant, even after his admission in his evidence, but the learned trial Judge has omitted to appreciate the same. Since the evidence of D.W.1 would reveal that the documents are said to be in the custody of



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the respondent/defendant, the learned trial Judge ought to have passed an order to produce the same.

4. Supposing if, the documents are not produced, despite being in the custody of the respondent/defendant, it is up to the Court to take any adverse presumption depending on the evidentiary importance of the documents called to be produced.

5. In view of the above reasons, the Civil Revision Petition is allowed and the order of the learned Subordinate Judge, Gudiyatham, Vellore District, dated 11.01.2022 made in I.A.No.1 of 2019 in A.S.No.22 of 2018, is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

23.06.2022

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Index: Yes No

Speaking Order: Yes/No



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R.N.MANJULA,J.

Vkr

To

- 1.The Subordinate Judge,
Gudiyatham, Vellore District.
- 2.The Section Officer,
VR Section, Madras High Court,
Chennai.

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