



C.R.P(MD)No.867 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.867 of 2019

and

C.M.P(MD)No.5092 of 2019

Abisheka Nathar Church,
Through its Secretary,
Pastorate Committee,
Chidambara Nagar,
Thoothukudi,
Thoothukudi District.

... Petitioner /Petitioner/
Petitioner/2nd Defendant

Vs.

1.Jamia Mosque Executive Committee,
Through its President,
Office at Jamia Mosque,
345, WGC Road,
Tuticorin.

... Respondent/Respondent/
Respondent/Plaintiff

2.Parish Priest

3.Church of South India,
Tuticorin Nazareth Diocese,
Through its Treasurer,
Office at Caldwell High School Compound,
115, Beach Road, Turicorin.

Pitchiah Chettiar (Died)



C.R.P(MD)No.867 of 2019

4.Tuticorin Municipal Council,
Through its Commissioner,
Office at WGC Road,
Tuticorin.

5.Pappu Ammal

6.P.Kalidasan

7.Kogila Rani

8.P.Krishnaraja

...Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 06.03.2019 passed in I.A.No.13 of 2018 in I.A.No.196 of 2017 in O.S.No.144 of 2006 on the file of the Additional District Munsif Court, Thoothukudi.

For Petitioner : Mr.R.Pon Karthikeyan

For R1 & R8 : Mr.David Ganesan
for Mr.J.Ashok

For R4 : Mr.N.Anand Kumar

For R2,R3,R6 & R7 : No Appearance

ORDER

The present revision petition has been filed by the 2nd defendant in O.S.No.144 of 2006 on the file of Additional District Munsif Court, Tuticorin.



C.R.P(MD)No.867 of 2019

2. The said suit has been filed by the 1st respondent herein as plaintiff for the relief of mandatory injunction as against the defendants 1 to 3 to remove the encroached construction made in the 1st schedule property as shown as 2nd schedule property. Pending suit, an application was filed by the plaintiff herein for appointment of Advocate Commissioner in I.A.No.467 of 2011. The Commissioner has submitted his report on 27.01.2017. For the said Commissioner's report, the 2nd defendant had filed two objections on 15.02.2017 and 20.03.2017.

3. The 2nd defendant had filed I.A.No.196 of 2017 to scrap the Commissioner's report. The said application was dismissed by the trial Court on 14.06.2017. The said order has become final. When I.A.No.196 of 2017 was pending, the 2nd defendant had filed I.A.No.13 of 2018 for re-issuance of Commissioner's warrant either to the same Commissioner or to appoint a fresh Commissioner. The said application has been dismissed on various grounds by the trial Court. Challenging the same, the present revision petition came to be filed.

4. According to the learned counsel appearing for the revision petitioner, the Commissioner has exceeded his warrant and he has noted that there is an encroachment over the suit schedule property. The



C.R.P(MD)No.867 of 2019

Commissioner ought not to have referred to about any encroachment. He has further contended that the Commissioner has not properly measured the suit schedule properties and therefore, re-issuance of Commissioner is necessary.

5. Per contra, the learned counsel for the respondents had contended that the 2nd defendant is dragging the suit from the year 2006 onwards by filing several petitions and therefore, the trial Court was right in rejecting the present application.

6. I have carefully considered the submissions made on either side and perused the material records.

7. It could be seen that the suit is of the year 2006. Though a Commissioner was appointed in the year 2011, his report was filed only in the year 2017. Two objections have been filed by the 2nd defendant herein. Thereafter, the 2nd defendant has chosen to file an application in I.A.No.196 of 2017 to scrap the Commissioner's report. When the said application is pending, he has filed I.A.No.13 of 2018 to re-issuance of Commissioner's report. After I.A.No.196 of 2017 is disposed of, nothing survives in I.A.No.13 of 2018. However, the trial Court has given



C.R.P(MD)No.867 of 2019

various reasons to point out that the 2nd defendant has been continuously filing application after application only to drag on the suit. The grievance of the 2nd defendant is that the Commissioner has exceeded his warrant and he has made some comments about the encroachment. It is settled position of law that the Commissioner's report is an opinion that is placed before the Court. It is for the Court to decide the Commissioner's report in the light of the objections filed by the defendants. Therefore, this Court does not find any reason to interfere in the revision petition.

8. Hence, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
gbg

To

- 1.The Additional District Munsif Court,
Thoothukudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.867 of 2019

R.VIJAYAKUMAR ,J.

gbg

Order made in
C.R.P(MD)No.867 of 2019

15.04.2024