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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No.1727 of 2023

and

C.M.P(MD)No.8612 of 2023

1. M. Murugan

2. S.Nagarajan

...Petitioners

Vs.

M.Sudalaiyandi

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order dated 28.07.2022 in E.A.No. ___ Of 2022 in E.P. No. 71 of 2022 in O.S.No.21 of 2011 on the file of the District Munsif Court, Alankulam.

For Petitioners : Mr.T.Thirumurugan

For Respondent : Mr.J.Parekh Kumar

ORDER

This Civil Revision Petition is filed by the defendants in the suit to set aside the order dated 28.07.2022 passed in E.A.No. ___ of 2022 in E.P. No.71 of 2022 in O.S.No.21 of 2011 on the file of the District Munsif Court, Alankulam.



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2. The defendants are the revision petitioners herein and the plaintiff is the respondent herein. For the sake of convenience, the parties shall be referred to as plaintiff and the defendants.

3. The plaintiff has filed a suit in O.S.No.21 of 2011 for declaration to declare the second schedule of property exclusively belonging to him and to remove the wall marked as AB, remove pedam marked as E, remove asbestos shed in AG and hand over possession to the plaintiff. The contention of the defendants is that already they had another temple and the deity is Sudalai Madasamy, hence the plaintiff is not entitled to any decree.

4. It is seen that the defendant failed to appear and hence an exparte decree was passed. The defendants have filed an application in I.A.No. 371 of 2017 in O.S.No.21 of 2011 to set aside the exparte decree and the same was dismissed. In the meanwhile, the plaintiff has filed E.P. No.71 of 2022 and in the EP proceedings also the defendants were set exparte. Therefore, to set aside the exparte order E.A.No.1 of 2022 in E.P. No.71 of 2022 in O.S.No.21 of 2011 was filed by the defendants. The revision petitioner had not filed any CRP against the dismissal of I.A. but had filed CRP against the dismissal of EA



alone. Therefore, this Court is of the is of the considered opinion that when the suit I.A. was dismissed and the suit was not restored, the defendants cannot plea to stop the execution proceedings.

5. Further, it is seen from the rough sketch filed by the plaintiff, where a portion marked as 'S' is Sudalaimadan temple and the portion marked as 'T' is Iyyappan temple and the portion marked 'ADH' along with 'S' is the Sudalaimadam temple portion. The portion marked as ABCD is the pathway for the plaintiff's Iyyappan temple and the said temple is situated in the place marked as HDCJNP.

6. Further it is seen from the revenue records wherein it shows S.No.871/21 is the Sudalaimadan temple and it measures 0.00.57 ares. The communication, under RTI, dated 25.01.2010 also clearly states that the S.No. 871/21 belongs to the Sudalaimadan temple. The said communication further clarified S.No.871/20 is natham land and the said property is claimed by the plaintiff. Even though, the survey number of Iyyappan temple is not mentioned in the suit, it is clarified the S.No.871/20 belongs to plaintiff. Therefore, the defendants are not having any case. However, it is made clear that the portion wherever there is an encroachment in S.No.871/20 alone can be removed and



the land belongs to the Sudalaimadan temple in S.No.871/21 cannot be removed.

7. With these observations and directions, this Civil Revision Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

23.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The District Munsif Court,
Alankulam.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Order made in
C.R.P(MD)No. 1727 of 2023

23.10.2024