

(2009) 01 MAD CK 0122

In the Madras High Court

Case No : C.R.P. PD. 1908 of 2008 and M.P. No. 1 of 2008

V.S. Ranganayaki, V.S. Shanmugasundaram, V.S. Elango and Ponnathal APPELLANT

Vs

The Joint Director, Hindu Religious and Endowment Department and Others RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

Citation : (2009) 01 MAD CK 0122

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; P.T. Asha, for Sarvabhauman Associates for R4, R5 and R6 and R. Revathy, Spl. G.P. for R1 to R3, for the Respondent

Final Decision : Allowed

Judgement

G. Rajasuria, J.—Anim-adverting upon the order dated 22.4.2008 passed in I.A. No. 859 of 2007 in O.S. No. 415 of 2005 by the

Principal Sub Court, Erode, this civil revision petition is filed.

2. A "resume" of facts, which are absolutely necessary and germane for the disposal of the civil revision petition, could be portrayed thus:

The revision petitioners/plaintiffs filed the suit O.S. No. 415 of 2005 seeking the following reliefs:

a) to declare that the plaintiffs are entitled to use the suit cart track which runs in R.S. No. 129 of Nanjai Kilambadi Village to reach their land

situate on the east in R.S.No.91 and 91/1

b) to grant a consequential injunction restraining the defendants and their men, agents and officials from obstructing the plaintiffs from using the suit

cart track or interfering any manner with the peaceful user of the same by them;

c) to direct the defendants to remove the projections made by them in the portico of the Kalyana Mandapam within a stipulated time fixed by this

Honourable Court and in case they failed to do so, an officer of this Honourable Court may be appointed to carry out the same at the cost of the defendants.

d) to direct the defendants to pay the cost of the suit to the plaintiffs.

Even before the respondents 4 to 6/defendants entering appearance in the suit, the petitioners/plaintiffs got appointed an ex-parte Commission and

got the physical features of the suit property noted by the said Commissioner. After the respondents/defendants entered appearance, they filed I.A.

No. 140 of 2006 seeking appointment of an Advocate Commissioner to visit the suit property and measure the same with the help of a qualified

surveyor. The actual prayer in the said I.A. is extracted hereunder:

5. ...Hence, this Honourable Court made a direction to the Commissioner to take measurements with regarding the old S.F. No. 191 and R.S.

No. 129 of Nanjai Kilambadi Village with a qualified surveyor with reference to the old and resurveys FMB and filed a report in totally, if this

Honourable Court incline to allow the petition for re-issue the Commissioner warrant to the same commissioner. The Commissioner with qualified

surveyor who measured the properties and file a detailed report with regarding the suit property and the temple properties, it conclusively

determines the fact in issue. Hence, in the present petition an order has been made by this Honourable Court to measure the suit properties and the

temple properties in Old S.F. No. 191 and R.S. No. 129 of Nanjai Kilambadi Village with the qualified surveyor and file a report with plan before

this Honourable Court. Otherwise, the present petition will not serve any purpose to solve the fact. Hence, this petition has to be dismissed.

It appears, the lower Court also ordered that petition, appointing Commissioner. However, respondents 4 to 6/defendants did not press the said

petition itself with liberty to file a fresh application at a later point of time. But, the petitioners/plaintiffs thought it fit to file one another application

I.A. No. 859 of 2007 with the following prayer:

4. It is therefore just and necessary that this Honourable Court may be pleased to reissue the Commissioner warrant to the same Commissioner to

fix the "F" line between the suit property, temple property, my property and the 4th petitioner's property with a qualified surveyor and file a report with plan and render justice.

Whereupon the lower Court dismissed the said petition. Being dissatisfied with and aggrieved by the order, this revision is focussed on various grounds.

3. The learned Counsel for the revision petitioners/plaintiffs would develop his argument based on the grounds of revision to the effect that even

though the petitioners/plaintiffs got appointed an ex-parte Commission to visit the suit properties and note down the physical features, at that time,

the suit properties were not got measured with the help of a qualified surveyor; during the pendency of the suit, the respondents/defendants raised

construction obstructing the suit cart track and hence, I.A. No. 859 of 2007 was filed, but it was unjustifiably dismissed.

4. The learned Counsel for the respondents/defendants would submit that the trial Court correctly dismissed the I.A for the reason that the

petitioners/plaintiffs have not approached the Court with clear facts detailing and delineating the suit properties; the vague description about some

cart track would not in any way enable the Commissioner to locate such alleged cart track, which according to respondents 4 to 6/defendants is

non-est; the Commissioner, as requested by the petitioners/plaintiffs cannot be asked to demarcate the "F" line.

5. In this factual matrix, I am of the considered opinion that the prayer for revisit by the earlier Commissioner, at the instance of the

petitioners/plaintiffs, cannot ex facie and prima facie be dismissed as untenable. As per the earlier ex-parte Commission order, the Commissioner

noted the physical features and submitted the plan also along with his report; now the petitioners/plaintiffs want to get located the cart track as well

as the constructions effected by the respondents/defendants with the help of a surveyor, after measuring the relevant areas. As has been correctly

pointed out by the learned Counsel for the respondents/defendants, the Commissioner cannot be asked to demarcate the alleged "F" line as

prayed for in the petition filed by the petitioners/plaintiffs. But what the trial Court could have ordered was only that the Commissioner should visit

the suit property and measure it purely for the purpose of enlightening more, the

physical features, including the location of the buildings.

Whereupon it is for the Court to compare those details with the plaint averments as well as the plaint plan and arrive at a conclusion.

6. In this factual matrix of the case, I am of the view that the revision could be ordered as under:

The order passed by the lower Court is set aside with a direction to the lower Court to issue a warrant of Commission on the following lines:

The same Commissioner shall revisit the suit property with the help of a surveyor and measure the same and note down the physical features with

reference to the plaint averments as well as the plaint plan and the survey records and submit his report. The Commissioner, before carrying out the

mission, shall issue notice to both sides.

No costs. Consequently, connected miscellaneous petition is closed.