



C.R.P.(MD)Nos.2816 & 2526 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)Nos.2816 & 2526 of 2024
and C.M.P.(MD).No.15993 of 2024

C.R.P.(MD).No.2816 of 2024:

Anna Sorna Bai

... Petitioner/4th Respondent/
12th Defendant

Vs.

Arulmighu Ponnambalam Pillayar Swamy Kovil,
Kadakkannivilai, Poochivilagam, represented by its
Trustees

1.Ayyaswamy

2.Chandra Sekaran

... Respondents 1 & 2/ Petitioners/
Plaintiffs 1 & 6

3.Ganesan

4.Murugan

5.Azhagianayagam

6.Amarnath

7.C.N.Vijayan

8.Palkani

9.Mohana Packya Bai

... Respondents 3 to 9/
Respondents 1 to 3, 5 to 8/
Defendants 4, 6, 7, 14 to 17

PRAYER : Civil Revision Petition is filed under Article 227 of the
Constitution of India, to set aside the fair and decreetal order, dated
22.04.2024 in I.A.No.2 of 2023, in O.S.No.186 of 1978 on the file of the



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Principal Subordinate Judge, Nagercoil.

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For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.M.P.Senthil for R1 & R2

C.R.P.(MD).No.2526 of 2024:

Arulmighu Ponnambala Pillayar Swamy Kovil,
Kadakkannivilai, Poochivilagam, represented by its
Trustees

1.Ayyaswamy

2.Chandra Sekharan

... Petitioners/ Petitioners/
Plaintiffs 1 & 6

Vs.

1.Ganesan

2.Murugan

3.Azhagianayagam

4.Annasornabai

5.Amarnath

6.C.N.Vijayan

7.Palkani

8.Mohana Packya Bai

... Respondents/Respondents/
Defendants 4, 6, 7, 12, 14 to 17

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order, dated 22.04.2024 passed in I.A.No.1 of 2023 in O.S.No.186 of 1978 on the file of the Principal Sub Court, Nagercoil.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.R.J.Karthick for R4 & R5



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COMMON ORDER

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C.R.P.(MD).No.2816 of 2024 is filed to set aside the fair and decreetal order, dated 22.04.2024 in I.A.No.2 of 2023, in O.S.No.186 of 1978 on the file of the Principal Subordinate Judge, Nagercoil.

C.R.P.(MD).No.2526 of 2024 is filed to set aside the fair and decreetal order, dated 22.04.2024 passed in I.A.No.1 of 2023 in O.S.No. 186 of 1978 on the file of the Principal Sub Court, Nagercoil.

2.The facts in brief:

Suit in O.S.No.59 of 1978 was filed by the Arulmigu Ponnambalam Pillaiyar Samy Kovil Trust through its Trustees against the deceased Karunanidhi and others for declaration that to declare them to be the trustees of the temple, to set aside the order passed by the Hindu Religious and charitable Endowment, dated 22.01.1977, for recovery of possession of properties for Management, to frame a scheme for Management of the Trust, rendition of accounts and for costs. Suit was partly decreed. Preliminary decree was passed, whereby, the order passed by the Hindu Religious and charitable Endowment was set aside and declared that the property of the trust must be managed by six family



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legal heirs and for that must frame a scheme. Regarding delivery of possession of the trust properties, it was ordered to be decided in the final decree proceedings. In respect of prayer 'D' it was dismissed.

3.After that during the final decree proceedings in I.A.No.102 of 2024 scheme was framed. As per the scheme, for management, a General Body and Executive Committee was formed and the Executive committee or the Managing Committee must be formed by way of election. How the Electoral roll must be made, detailed procedure is laid down in the scheme, which, we are not very much concerned here. The terms of the committee was fixed as three years. Obligation was imposed upon the Executive Committee existing at the relevant point, to take steps to elect the succeeding Committee, within a month before the expiry of their turn. The out going Committee must submit all the charges to the General body and General Body must hand over the charge to the succeeding Executive Committee. Regarding the management of the properties right was vested upon the Executive Committee and for accounts also Executive Committee is responsible. Terms of the above said scheme is now under the subject consideration



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in these two revisions.

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4.Now the plaintiff through Ayyasamy and Chandrasekaran stating that they are the trustees, filed I.A.No.2 of 2023 to appoint Advocate Commissioner to prepare Voters list from the eligible members of the trust to conduct the election of the trustees for the Executive Committee in terms of the scheme decree framed by the Court, another is filed for recovery of the properties.

5.That was resisted by the revision petitioners herein by filing counter stating that the scheme was not framed as per the terms of the preliminary decree. So it is not enforceable in nature. The members of six families mentioned have not filed the suit and they are not the parties. Apart from that it is also stated that due to the long, exclusive and peaceful possession by the fifth respondent and his predecessor, the right of management of the trust is lost. Apart from that other averments were made, more specifically with regard to the management of the properties, it is stated that no such relief was granted in the suit. So there was no necessity for the 4th and 5th respondents to hand over or deliver



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possession of the administration to the plaintiff. It is stated that against the final decree, he filed A.S.No.42 of 2008 before the trial Court. That was dismissed for default. To restore that they have filed I.A.No.20 of 2023. It is stated to be pending before the Principal District Court.

6.The trial Court after hearing both sides negated the contentions made by the revision petitioners allowed the petition for appointment of commissioner to conduct the election and Advocate was also appointed in this regard. Challenging the above said order, this revision in C.R.P.(MD).No.2816 of 2024 is preferred.

7.Along with I.A.No.2 of 2023, I.A.No.1 of 2023 was preferred by the same parties, seeking delivery of the property, on the very same ground, the very same counter objection was made by the fourth and fifth respondents, who are the revision petitioners in C.R.P.(MD).No.2816 of 2023. The trial court after hearing both sides negated the request made by the plaintiff stating that they must file a proper petition for handing over of possession; There is no executable decree in favour of the plaintiff. By observing so, I.A.No.2 of 2023 was dismissed. Against



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which, C.R.P.(MD).No.2526 of 2024 is filed by the plaintiff.

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8.Heard both sides.

9.Since the issue involved in both the revision petitions are one and the same, though different reliefs, factual aspects are same. So common order is passed.

10.I.A.No.2 of 2023 was taken up for appointment of Commissioner to prepare the voters list and conduct the election. This is the second round of proceedings. Earlier when a similar situation arose, the plaintiff filed E.A.No.45 of 2015 for a similar relief. That was allowed by the Execution Court by the order, dated 19.03.2022.

11.That was challenged by the revision petitioner herein by filing C.R.P.(MD).No.1639 of 2022. After considering the issue, this Court directed the petitioner giving liberty to move proper application before the trial Court for the relief, stating that EA itself is not maintainable and it is without jurisdiction. In pursuance of the above said order the



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present application was moved by the plaintiff, which came to be allowed on the very same terms as passed in E.A.No.45 of 2015.

12.This is the second round now. Since the Civil revision was disposed of by granting liberty to the plaintiff to move proper application, I am of the considered view that the appointment of Commissioner was not found fault by this Court in C.R.P.(MD).No.1639 of 2022. This Court is in full agreement with the view expressed by the Court in E.A.No.45 of 2015. As per the scheme passed in the final decree no authority was nominated for the purpose of conducting the election once in three years for the Executive Committee. As rightly pointed out by the Court, it is the duty of the Court to see that election is conducted to give force to the scheme decree, then only it can be termed as workable decree. The very same analogy will apply to this time also. At the time of argument it appears that there was some controversy between the parties over the religion of the plaintiff. But, that was withdrawn at the course of hearing before this Court. So I am not entering into that issue now. Since final decree has been passed by framing a scheme, unless it is set aside in the manner known to law as



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mentioned above, the decree must be put into execution in a proper manner and that is an attempt made by this plaintiff. Even though it is stated that against the final decree in framing the scheme, appeal was preferred and later it was dismissed for default. Now I.A is filed to restore the same. It is not concluded so far. So pendency of application in I.A.No.20 of 2023 to restore A.S.No.42 of 2008, will not stand in the way of implementing the scheme. So the order passed by the trial Court is perfectly legal and the challenge made by the revision petitioner is not at all maintainable. In view of the fact that they are reiterating the very same ground raised by them not only in the earlier round of proceedings, but, in the suit itself, which was negatived. So the order passed by the trial Court in I.A.No.2 of 2023 stands confirmed. C.R.P.(MD).No.2816 of 2024 is **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

13.C.R.P.(MD).No.2526 of 2024:

The very same problem like that arose in I.A.No.2 of 2023 has arisen in this matter also. It is the contention on the side of the respondent that in the final decree, at the time of framing of the scheme,



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there was no terms in respect of handing over of possession of the properties to the trustee for the purpose of management. That was the point raised by the respondent before the trial Court that got approved. Against which this revision is preferred.

14.The learned counsel for the revision petitioner had raised a logical aversion. According to him, as per the scheme of the decree the management of the properties will vest with the Executive Committee. The Executive Committee is responsible for keeping the accounts and duty bound to produce the same before the General body at the time of meeting. So unless the property is delivered or possession is taken by the appointed trustees they cannot manage the property and derive the income to meet out the object of the trust. So according to him, the elected Executive Committee members is entitled to take possession of the property, for which, the objectors namely 4th and 5th respondents made are bound to hand over the possession and in fact they are squatting on the property from 1978 making the execution of the scheme decree a farce.



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15.Per contra, the learned counsel for the respondent would submit that no doubt that the Executive Committee has to keep the accounts, but the stage has not arisen. Handing over the possession of the property for the purpose of management will arise only when the of elected members assume office. Till then, this petition must be considered only as a pre-matured one.

16.To this counter argument, the learned counsel for the revision petitioner would submit that if this argument is accepted, then the elected Committee will driven to initiate fresh proceedings, which will impair the working of the Executive Committee and it will in turn affect the administration of the trust itself. So according to him, handing over of possession for the purpose of management must be simultaneous with that of the assumption of the office by the elected Executive Committee.

17.These arguments on the side of the revision petitioner sounds to reason, meaning and logic. The apprehension on the part of the revision petitioner that if such sort of initiation of the fresh proceedings are to take place, then it will have no ending. Now in the light of the above said



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submissions, we will go to the scheme decree. Term 13 may be extracted hereunder for better appreciation.

"13.சொத்துக்கள் பராமரித்தல் :

- (i) நமது பொன்னம்பலம் பிள்ளையாருக்கு சொந்தமான அசையா சொத்துக்கள் எ பட்டிகையாகவும், அசையும் சொத்துக்கள் பி பட்டிகையாகவும் இத்துடன் இணைக்கப்பட்டுள்ளது.
- (ii) சொத்துக்கள் அனைத்தும் செயற்குழு உறுப்பினர்களால் சிறப்பாக பராமரிக்கப்படவேண்டும்.
- (iii) சொத்துக்களிலிருந்து வரும் வருமானங்களுக்கு முறைப்படி ரசீது வழங்கி வைத்துக் கொள்ளவேண்டும். மேலும் முறைப்படி நாள்வழி புத்தகத்தில் பதிவு செய்யப்பட்டு வங்கியில் டெப்பாசிட் செய்ய வேண்டும்.
- (iv) வருமானங்கள் எந்த வித சேதாரமும் இல்லாமல் சேமிக்கப்பட வேண்டும். அவ்வாறு ஏதாவது சேதாரம் ஏற்பட்டால் அதை செயற்குழு நிவர்த்தி செய்யவேண்டும்.
- (v) சொத்துக்களுக்கு தேவைப்படும் பராமரிப்பு பணிகள் தேவைப்படும் காலங்களில் செய்யப்பட வேண்டும்.
- (vi) எந்ந சூழ்நிலையிலும் நமது பொன்னம்பலம் பிள்ளையார் குடும்ப வகைக்கு சொந்தமான இந்த சொத்துக்களை விற்பனை செய்தல் கூடாது."



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18. So this term makes the position very clear that the Executive Committee, as mentioned above, is to maintain and manage the properties. Unless the possession is handed over to the elected Executive Committee, they cannot manage the properties and derive income. The only right that is available to the family members, in case of any mismanagement of the property and the poojas of the temple term 18 (viii) will apply.

"18. ...

(viii) சொத்துக்கள் பராமரிப்பதிலோ கோவில் பூஜை சம்பந்தமாகவோ நமது குடும்ப உறுப்பினர்கள் முன்னேற்றம் வளர்ச்சி சம்பந்தமாகவோ பிரச்சினை ஏதும் இருந்தால் பொதுக்குழுவில் தெரிவித்து தகுந்த முடிவு மேற்கொள்ள வேண்டும்."

19. Only such a right has been given to the members of the family and nothing more than that of the same. So the fourth and fifth respondents, who are the revision petitioners in C.R.P.(MD).No.2816 of 2024, are duty bound to hand in possession of the properties. Their objection the right of the management of the property is lost by lapse of time, cannot be taken into account at all now. It is the matter for consideration by the appellate Court at the appropriate time.



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20. In view of the above said discussion the order passed by the trial court, they have to move proper amendment of decree is not proper. That order has been passed without taking into account, the above said terms, in proper perspective. What applies to the appointment of commissioner for the purpose of conducting election squarely applies also to the handing over of the possession for the management. So they are duty bound to hand over the possession to the elected Executive Committee. The matter can be disposed of with a direction to the respondents 4 and 5 to hand over the possession to the newly elected Executive Committee, at the time of assumption of office.

21. With the above said direction, this civil revision petition C.R.P. (MD).No.2526 of 2024 stands **allowed**. The order passed by the trial Court is set aside. No costs.

11.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note: Issue order copy on 13.12.2024.



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To

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- 1.The Principal Sub Judge, Nagercoil.
- 2.The Section Officer, E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

TM

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