

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. NOS.2498 & 2499 OF 2015
& M.P.NOS.1 AND 1 OF 2015

S.S.Jain Sangh (Mambalam) Trust,
Authorised Representative,
Mr.Dilip Gardia
(amended as per order in I.A.No.
16430/09 dated 13.10.2009)
No.46, Burkit Salai, T.Nagar,
Chennai - 600 017.

... Appellant
[in both C.M.A.s]

Versus

Arulmighu Bashyakara
Adichennakeshava Perumal Thirukoil,
(is a Temple Governed by the Hindu
Religious and Charitable Endowment
Department under the provisions of
H.R.&C.E. Act)
Rep. by Executive Officer at Arulmigu
Kothandaramar Temple,
K.R.Koil Street, West Mambalam,
Chennai - 600 033.

... Respondent
[in both C.M.A.s]

PRAYER in both C.M.A.s : Civil Miscellaneous Appeals filed under Order XLIII Rule 1(u) CPC, against the order of remand passed by the III Additional City Civil Court, Chennai in the judgment and decree dated 11.10.2014 in A.S.Nos.382/2011 and 390/2011 partly allowing the appeal and partly confirming the judgment and decree dated 30.10.2010 passed in O.S.No.5759/2001 on the file of the VI Assistant City Civil Court, Chennai.

For Appellant : Mr.D.Dorairajan
[in both C.M.A.s] for M/s.Surana and Surana

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed against the order of remand made by the lower Appellate Court on the ground that the Court below wrongly held that the opportunity has to be given to the respondent for initiating the proceedings through Hindu Religious and Charitable Endowment Act. When there is no pleading or evidence at all that the defendant purchased lease

hold rights from the plaintiff's erstwhile tenants.

2. The learned counsel for the appellant submits that having found that the suit has been filed with the concurrence of Hindu Religious and Charitable Endowment Department, the lower Appellate Court ought to have dismissed the suit in view of the finding given, instead of remanding the matter. Further, the learned counsel for the appellant would submit that simply because the judgment given by the Trial Court is improper and illegal, remanding the matter back to the Trial Court is also not a good reason.

3. In any event, the lower Appellate Court misread the pleading and the evidence, and wrongly came to the conclusion that the appellant/defendant is the tenant of the respondent/plaintiff and he is occupying the suit property without any lease deed. When it is nobody's case that the appellant/defendant is the tenant of the respondent/plaintiff, this Court is not able to find any merits in the contentions raised by the learned counsel for the appellant. The reason is the respondent /plaintiff herein filed the suit against the appellant herein seeking a decree for delivery of vacant possession of the suit property after removing the superstructure on the sole ground that the vendors of the appellant / defendant themselves have no right or title to sell the suit property in favour of the appellant / defendant. Therefore, the said sale will not confer any title to the appellant / defendant and the possession of the suit property by the appellant / defendant is only that of a trespasser.

4. When the suit was decreed in favour of the respondent / plaintiff, appeal was filed by the appellant / defendant raising various grounds. The lower Appellate Court came to the conclusion that when the suit property and the respondent / plaintiff belongs to the Hindu Religious and Charitable Endowment Department, without the prior permission of the Hindu Religious and Charitable Endowment Department, the suit ought not to have been filed. On this premise, the matter has been remanded to the Trial Court to have an enquiry on this issue. Therefore, this Court is not able to find any reason to interfere with the order of remand. Accordingly, these Civil Miscellaneous Appeals fail and are dismissed. No costs. Consequently, Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

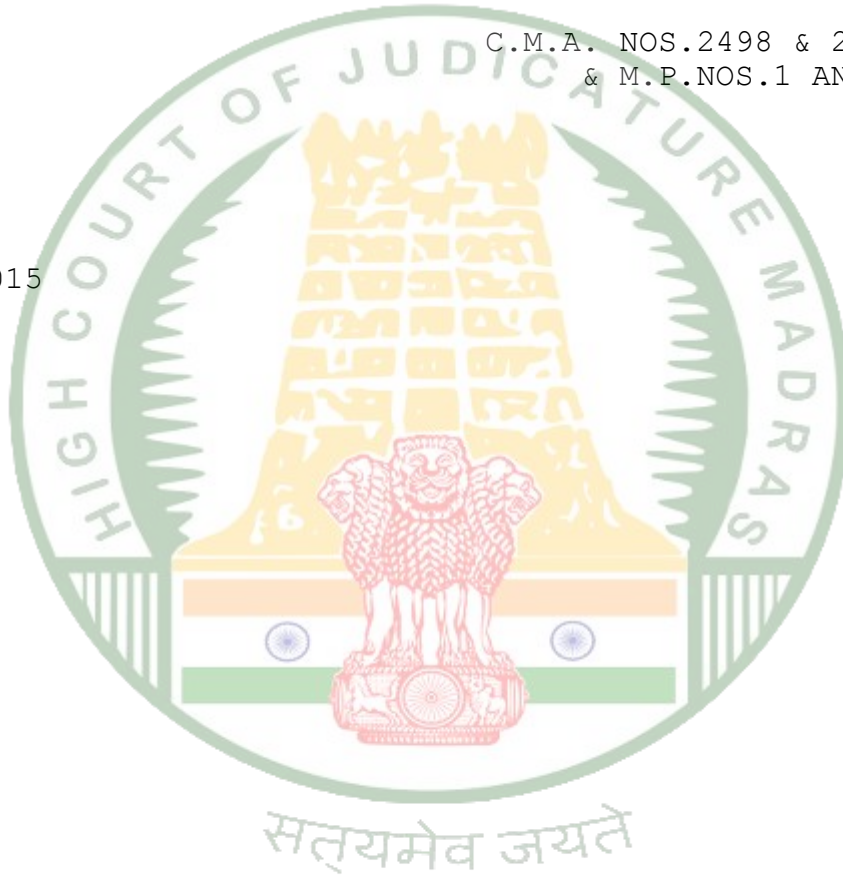
To

1.The Judge, III Additional City Civil Court, Chennai.

2.The Judge,
VI Assistant City Civil Court, Chennai.

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