

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2015

CORAM

THE HONOURABLE **Mr. JUSTICE K.KALYANASUNDARAM**

CRP.(NPD).No.56 of 2015

and

M.P.No.1 of 2015

V.Poongothai

..

Petitioner

/vs/

1. Ramkumar

2. The Assistant Commissioner/
Executive Officer,
Arulmighu Sugavaneswarar
Swami Thirukoil, Salem – 1.

..

Respondents

PRAYER This Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the order and decretal order dated 27.10.2014 passed in R.E.A.No.223 of 2014 in R.E.P.No.274 of 2012 on the file of Principal District Munsif Court, Salem.

For Petitioner : Mr.R.Neelakandan

For Caveator : Mr.S.M.Muralidharan

ORDER

This civil revision petition is directed against the order dated 27.10.2014 passed by the Principal District Munsif, Salem in R.E.A.No.223 of 2014 in R.E.P.No.274 of 2012.

2. The first respondent initiated the eviction proceedings against the father of the petitioner viz., P.Vijayakumar in RCOP No.62 of 2002. The eviction order was confirmed by this Court in CRP NPD No.1452 of 2006 by order dated 18.06.2007. Based on the eviction order, the first respondent filed the execution petition in REP No.274 of 2012. In the execution petition, the petitioner filed REA No.233 of 2014 to implead the Assistant Commissioner / Executive Officer, Arulmigu Sugavaneswarar Swami Thirukoil, Salem-1 contending that the temple is the owner of the property. That application was resisted by the first respondent by filing a counter. The proposed party / second respondent filed a counter stating that the property in Ward AF, Block – 7, T.S.No.8/2A, in Salem Town, in Car Street, Salem Town, Salem – 1 belongs to the temple. The Executing Court dismissed the application. Challenging that order, the present civil revision is filed.

3. Mr.R.Neelakandan, learned counsel for the petitioner submitted that the first respondent is not a owner of the property and the temple is necessary party to decide the issue involved in the petition. The learned counsel further submitted that the first respondent has obtained eviction order by playing fraud on the court, that has to be decided under Section 47 of the Civil Procedure Code.

4. Per contra, Mr.S.M.Muralidharan, learned counsel for the caveator submitted that the petitioner is the legal heir of the original tenant and the original tenant has not disputed the title of the first respondent. Further, in CRP NPD.No.1452 of 2006, this Court held that the petitioner is a tenant under the first respondent and he was not doing business in the petition premises for more than a year.

5. Section 116 of the Indian Evidence Act reads as follows;-

“ 116. Estoppel of tenant; and of licensee of person in possession.- No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

6. A plain reading of the provision would make it clear that the tenant is estopped from denying the title of the 1st respondent during the continuance of the tenancy. In this case, the father of the petitioner was inducted as tenant by the 1st respondent and he has not

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sms

disputed the title of the 1st respondent. In view of the factual position and as per Section 116 of the Indian Evidence Act, the petitioner cannot now dispute the title of the 1st respondent.

7. Further, the proposed party has not claimed any right over the petition property. In my considered opinion, the proposed party is not a necessary party to the eviction proceedings and the impugned order passed by the Executing Court does not suffer from any illegality or irregularity. In fine, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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19.01.2015

To

1. The Principal District Munsif Court, Salem.

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