

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Review Application No.93 of 2007
in
A.S.No.11 of 1995

1.Palanisamy

M.V.Palanisamy Pandaram (Deceased)

2. Arumugam

3.P.Madheswaran

4.P.Kulandaivel

5.P.Subramaniam

... Petitioners

-Vs-

1. Rathinam (Deceased)

2. Commissioner
Hindu Religious and Charitable
Endowment Department
Nungambakkam High Road
Madras – 34

3. The Assistant Commissioner
Hindu Religious and Charitable
Endowments Department
Sooramangalam Junction Main Road

(Near Five Roads)
Salem – 4

4. The Executive Officer
Arulmighu Someswarar and Other temples
Sankagiri and Taluk
Salem District

5.P.Raja Gounder (Deceased)

6.Mrs.Suseela

7.Mrs.Revathi

(Respondents 6 to 9 brought on record as Lrs of deceased R1 vide order of Court dated 24.08.2015 made in M.P.No. 1 to 3 of 2015 in Rev.Appln.No.93 of 2007 in A.S.No.11 of 1995)

8.Mrs.Renuka

9.Sivakumar

10.Pavalai Ammal

11.Manonmani

12.K.R.Mohan

... Respondents

(Respondents 10 to 12 brought on record as LR's of deceased R5 vide order of Court dated 01.09.2015 made in M.P.No.4 to 6 of 2015 in Rev.Appl.No.93 of 2007 in A.S.No.11 of 1995)

Review Application filed under Order 47 Rules 1 r/w. Section 114 of the Code of the Civil Procedure against the order dated 08.06.2007 passed by this Court in A.S.No.11 of 1995.

For Review Applicants : Mr.T.L.Ram Mohan
Senior Counsel
for Mr.K.Jayaraman

For Respondents : Mr.K.V.Dhanapalan
Spl. Govt. Pleader for R2 and R3

Mr.A.V.Arun for R6 to R12

ORDER

Service of notice on respondents 3 and 4 are held to be sufficient. Though the fourth respondent has been served with notice, no one has entered appearance. In fact in the second appeal also, the fourth respondent was not represented by a counsel.

2. The learned Special Government Pleader, who entered appearance for the second respondent, also represents the third respondent, who is the Assistant Commissioner, Hindu Religious and Charitable Endowment Department, Salem.

3. The arguments advanced by Mr.T.L.Ram Mohan, the learned senior counsel appearing on behalf of Mr.K.Jayaraman, counsel for petitioners and by Mr.K.V.Dhanapalan, learned Special Government Pleader appearing for respondents 2 and 3 and Mr.A.V.Arun, learned counsel appearing on behalf of respondents 6 to 12 are heard

4.The judgment, which is sought to be reviewed, is a very short judgment simply dismissing the first appeal as infructuous. The contents of the judgment read as follows:

"Mr.W.C.Thiruvengadam, learned counsel for 5th respondent submitted that although 5th respondent is dead and steps therefor were not taken by the appellants, the appeal itself becomes infructuous in view of the fact that there is a publication made in the Namakkal District Gazette (No.4 dated 21.05.2006) in respect of framing of a Scheme in pursuance of the orders in Original Application No.52 of 1993 dated 30.03.2006, in which these appellants are found as respondents, making them to be bound by the said order in the Original Application and produced copy of the publication of the gazette in respect of framing of the Scheme regarding the same temple, Viz., Athanooramman Thirukoil. According to the Scheme, the claim of the appellants for hereditary trusteeship is lost as some other arrangement has been made in the Scheme, for which the appellants agreed. So, the Appeal is dismissed as infructuous. No costs. Consequently, C.M.P.Nos.269 and 5938 of 1995 are closed."

5. It is the contention of Mr.T.L.Ram Mohan, the learned senior counsel that the said judgment came to be pronounced on an erroneous assumption caused by the misrepresentation that a scheme framed in respect of Arulmighu Athanoor Amman temple would

govern the suit temple viz., Kariyakaliamman Temple also and that such a misrepresentation leading to the misconception ultimately led to the passing of the said judgment dismissing the appeal suit as infructuous. According to the submission made by the learned senior counsel, the same is an error apparent on the face of the record which shall be the ground on which the judgment shall be reviewed.

6. The learned Special Government Pleader representing the official respondents, namely respondents 2 and 3 would contend that Arulmighu Athanoor Amman temple and Arulmighu Kariyakaliamman temple are one and the same and that the Court below had rendered a finding to that effect. Based on the said contention, the learned Special Government Pleader submits that no case for review has been made out.

7. Mr. A.V.Arun, learned counsel appearing for the private respondents, namely respondents 6 to 12, would submit that the contention raised by Mr.T.L.Rammohan, learned senior counsel has got to be countenanced as the said respondents also support his case that Arulmighu Athanoor Amman temple and Arulmighu Kariyakaliamman are different temples situated in the same village. In fact, from the

submissions made by the learned Special Government Pleader, it is quite obvious that one of the main controversies in the suit was whether Arulmighu Athanoor Amman temple and Arulmighu Kariyakaliamman are different temples or one and the same? Under the said circumstances, the mere fact that a scheme governing Arulmighu Athanoor Amman temple came to be published in the official District Gazette could not have been taken as the ground to hold the appeal to have become infructuous and not on merits has got to be reviewed. The same as rightly contended by the learned senior counsel for the petitioners is an error apparent on the face of the record providing a valid ground for review.

Accordingly, the review application is allowed. The appeal in A.S.No.11 of 1995 is directed to be listed for fresh hearing on 28.10.2015.

15.10.2015

Index: Yes/No
Internet: Yes/No
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