

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(NPD) Nos.1973 and 2432 of 2003
and
CMP Nos.18405 and 20690 of 2003

Varadammal

...Petitioner/
Judgment Debtor in both petitions

Vs

Arulmigu Madava Perumal Temple
rep. by its Executive Officer,
Mylapore, Chennai-4.

...Respondent/
Decree-Holder in both petitions

Prayer in CRP(NPD)No.1973 of 2003: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 27.11.2003 passed in unnumbered SR.No.47405/2003 against E.P.No.2017 of 1997 in O.S.No.6148 of 1989 on the file of the IXth Assistant City Civil Judge, Chennai.

Prayer in CRP(NPD)No.2432 of 2003: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 14.03.2002 passed in E.P.No.2017 of 1997 in O.s.No.6148 of 1989 on the file of the IXth Assistant City Civil Judge, Chennai.

For Petitioner : Mr.N.Rajavadivel

For Respondent : Mr.A.Muthukumar

COMMON ORDER

These revisions have been filled, challenging the orders passed by the IX Assistant City Civil Judge, Chennai in unnumbered SR No.47405 of 2003 in EP No.2017 of 1997, dated 27.11.2003 and in EP No.2017 of 1997 in O.S.No.6148 of 1989, dated 14.03.2002.

2.The respondent temple filed a suit in O.S.No.6148 of 1989 against the petitioner seeking recovery of possession. The suit was decreed ex-parte on 25.03.1991. Based on the ex-parte decree, the respondent temple laid an Execution Petition E.P.No.2017 of 1997 for delivery of possession.

3.The petitioner/tenant resisted the execution petition contending that after the ex-parte decree, the tenant has entered into an agreement with the temple authorities for enhancement of rent and also paid Rs.5,000/- as donation to the temple and in view of the subsequent fresh lease agreement, the decree passed in the suit cannot be executed.

4.The tenant also filed a separate petition under section 47 of CPC praying for dismissal of the execution petition, as it was not maintainable in law. The executing court dismissed the petition filed by the tenant and also directed the tenant to vacate and hand over the possession. Being aggrieved by the orders, the tenant has filed these revisions.

5.Mr.N.Rajavadivelu, learned counsel for the petitioner submitted that the suit was decreed ex-parte on 25.03.1991 and long thereafter, the temple authorities enhanced the rent and also receiving the subsequent rents from the tenant. In view of the subsequent developments, the landlord cannot put in execution the decree obtained ex-parte against the tenant.

6.On the other hand, Mr.A.Muthukumar, learned counsel for the respondent submitted that the tenant has not produced any material before the executing court to substantiate his contention that the temple authorities have entered into a fresh lease agreement and the tenant was inducted in possession based on fresh lease agreement and that the tenant is liable to pay damages/rents, till she delivers possession to the landlord and therefore, collection of rent/damages would not extinguish the right of the decree holder to take delivery of the possession.

7.As rightly contended by the learned counsel for the respondent, the tenant/petitioner herein has not produced the alleged fresh lease agreement. Further, the tenant has statutory obligation to pay rent till he delivers possession and therefore, I do not find any force in the contention of the learned counsel for the petitioner.

8.It is settled law that ex-parte decree is a valid decree and the executing court has rightly ordered delivery of possession and dismissed the petition filed by the tenant filed under section 47

of the CPC.

9. In view of my findings, the revisions fail and they are liable to be dismissed. In the result, both the revisions are dismissed. Consequently connected CMP are closed. However, no order as to costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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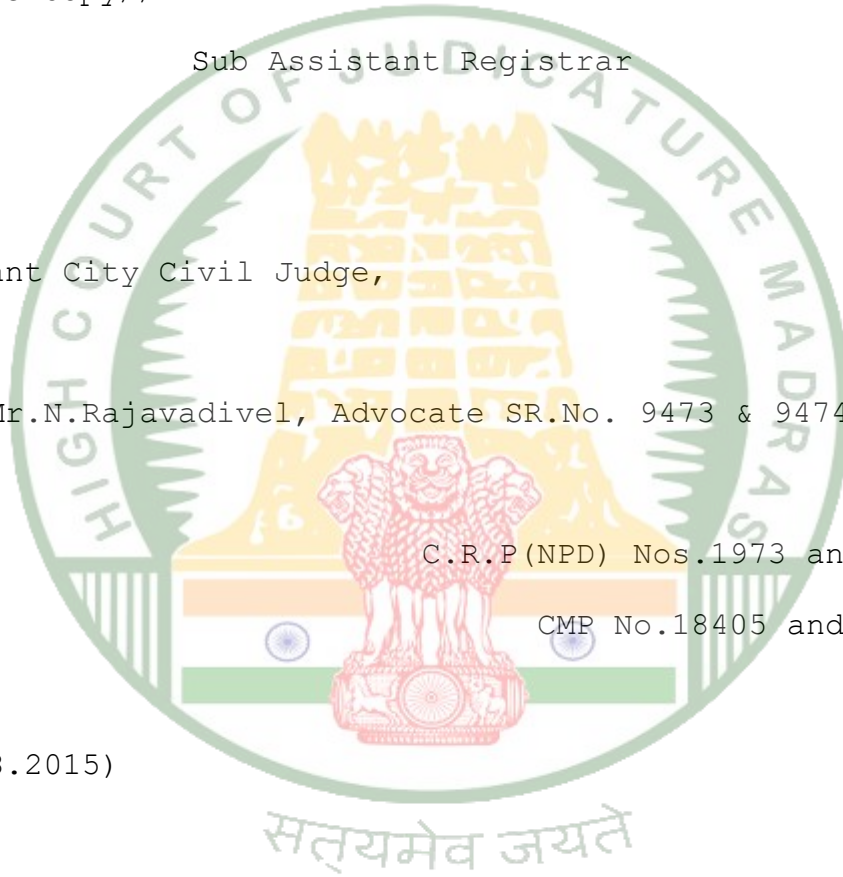
To

IX Assistant City Civil Judge,
Chennai.

2 CCs to Mr.N.Rajavadivel, Advocate SR.No. 9473 & 9474

C.R.P(NPD) Nos.1973 and 2432 of 2003
and
CMP No.18405 and 20690 of 2003

UG (CO)
PSI (11.08.2015)



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