



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2015

CORAM:

WEB COPY

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P (NPD) (MD) .NOs.4 to 6 of 2015

and

M.P. (MD) .Nos.1 to 4 of 2015

C.R.P. (MD) .Nos.4 & 6 of 2015

1.V.Manimekalai

2.N.Nagavalli

3.R.Sushila

... Revision Petitioners

vs.

1.Shri Ellai Amman @ Dhrowpthi Amman Temple,
Through its trustee,
M.V.Ramamoorthi
S/o.Venkatachalam
Thirumalainabi Street,
Kumbakonam Town,
Thanjavur District.

Elizabeth Arockiyasamy (died)

2.Josphine

3.Rexilina

4.Paulin Eruthaya Mary

5.Rani

6.Yagappa

7.Anne Nirmala

... Respondents

C.R.P. (MD) .No.5 of 2015

1.V.Manimekalai

2.N.Nagavalli

3.R.Sushila

... Revision Petitioners

vs.

1.Shri Ellai Amman @ Dhrowpthi Amman Temple,
Through its trustee,
M.V.Ramamoorthi
S/o.Venkatachalam
Thirumalainabi Street,
Kumbakonam Town,
Thanjavur District.



2.Elizabeth Arockiyasamy(died)

3.Josphine

4.Rexilina

5.Paulin Eruthaya Mary

6.Rani

7.Yagappa

8.Anne Nirmala

... Respondents

COMMON PRAYER: The Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the petition and docket order dated 20.10.2014, 20.10.2014 and 21.11.2014 respectively, in I.A.Nos.57, 55 and 68 of 2014 in A.S.Nos.50, 49 and 58 of 2014 on the file of the learned Principal Subordinate Judge, Kumbakonam against E.A.Nos.11 of 2012, 37 of 2010 and 49 of 2013 in E.P.No.24 of 2008 in O.S.No.600 of 2004 on the file of the Additional District Munsif Court, Kumbakonam by allowing this civil revision petition.

For Petitioners in

all C.R.Ps : Mr.K.Mahendran

For Respondents in

all C.R.Ps : Mr.M.V.Santharaman

COMMON ORDER

The revision petitioners, claim to be the owners of the property which is subject-matter in the suit in O.S.No.600 of 2004.

2.It is the contention of the revision petitioners that they were not made as parties to the suit. The suit was decreed, earlier and brought on appeal to this Court on an earlier round of litigation and the same was remanded back to the trial Court. Again, the suit was decreed. The petitioners herein, who are not parties to suit had filed three appeals in A.S.Nos.50, 49 and 58 of 2014 on the file of the learned Principal Subordinate Judge, Kumbakonam, after obtaining leave of the Court. Along with the appeals, the petitioners also had filed I.A.Nos.57, 55 and 68 of 2014 for stay of further proceedings under Order 41 Rule 5 of C.P.C. In the said applications, notice was ordered by the first appellate Court. In the mean while, Execution Petition was levied by the decree-holder and according to him, delivery was effected. He has also produced delivery account dated 05.01.2015 and perusal of the said document, shows that the possession is handed over to the Manager of the Arulmigu Ellai Amman @ Dhrowpthi Amman Temple. However, this factum is disputed by the learned counsel for the petitioners that it is a forged document and no such delivery was effected.



3. In the counter filed by the respondents, it is submitted that though he had filed caveat petition before the lower Appellate Court, without serving notice, the petitioners herein have moved the application. The respondents cannot have any grievance at this point of time because according to him, he has taken possession of the property. Admittedly, no order has been passed in the said application, in which, the respondents had filed a caveat petition. Therefore, no prejudice is caused to the respondent as on date, though the action of the petitioners herein in not serving notice on the caveators is to be condemned.

3a. Heard both counsels.

4. Both the counsels for the petitioners and the respondents disputed the factum of delivery of possession. The learned counsel for the petitioners points out that even on an earlier occasion, it was contended before the Court that the delivery was effected on 31.07.2008, whereas, actually he had not taken the delivery of possession. If earlier the delivery was taken, according to the learned counsel for the petitioners, the delivery Athatchi dated 05.01.2015 cannot be true. Therefore, this Court leaves open the question of possession to be decided by the lower appellate Court.

5. Be that as it may, the lower appellate Court is directed to dispose of I.A.Nos.57, 55 and 68 of 2014 after serving the notice to all the respondents and to dispose of the same on merits and in accordance with law on or before 30th April 2015.

6. In the mean while, the parties are directed to maintain the status-quo as on today. If the delivery is not actually effected, the order of status-quo will continue. As per the findings of the appellate Court if the delivery is already effected, it is open to the parties to file an appropriate application for restoration of possession of the property subject to the order that may be passed by the lower appellate Court.

With the above observation, the civil revision petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge, Kumbakonam.

2. The Additional District Munsif, Kumbakonam.

+3ccs to Mr.Santharaman, Advocate, in SR. No.7529.

+2ccs to Mr.K.Mahendran, Advocate, in SR. No.7712 & 88.

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