

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(NPD)Nos.1738 & 1739 of 2012

1.R.Srinivas

2.Usha Nandhini

..Petitioners

Vs.

1.Selva Vinayagar Koil Devasthanam

Rep. by its Trustees

B.Bushnam and G.Lakshmipathy

2.R.Nagaraj

3.N.Parthasarathi

4.N.Manivannan

5.N.Kanagavalli

6.R.Kanagavalli

..Respondents

Prayer in CRP(NPD)No.1738 of 2012 :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.10392 of 2007 in I.A.No.8149 of 2006 in O.S.No.1115 of 2001 dated 06.07.2011 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

Prayer in CRP(NPD)No.1739 of 2012 :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.10393 of 2007 in O.S.No.1115 of 2001 dated 06.07.2011 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

For Petitioners in
both CRPs.

: Mr.K.Mohanamurali

For Respondents 3 to 5
in both CRPs

:Mr.V.Bhiman
for M/s.Sampath Kumar

For Respondents 1,2 &6
in both CRPs.

:No appearance

COMMON ORDER

These Civil Revision Petitions arise against the fair and decreetal orders passed in I.A.Nos.10392 & 10393 of 2007 in I.A.No.8149 of 2006 in O.S.No.1115 of 2001 dated 06.07.2011 respectively by the learned XI Assistant Judge, City Civil Court, Chennai.

2. The revision petitioners/plaintiffs filed a suit in O.S.No.1115 of 2001 under Order VII Rule 1 of Civil Procedure Code, praying for

(i) directing partition of the suit schedule item 1 into 3 shares and allocate 1 share to each of the plaintiffs and 1st defendant properties by metes and bounds,

(ii) directing partition of the suit schedule item 2 to 6 into 5 shares and allocate 1 share to each of the plaintiffs and defendant,

(iii) a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through or under them from in any manner disturbing the peaceful possession and enjoyment of the plaintiffs and their tenants in respect of the suit properties set forth in the schedule hereunder till the disposal of this suit,

(iv) appointing an Advocate-Commissioner to divide the properties by metes and bounds and put the plaintiff in possession of their respective shares, and

(v) directing the defendants to pay the costs of the suit.

3. In the said suit, the Selva Vinayagar Koil Devasthanam filed I.A.Nos.10392 of 2007 praying to implead itself as respondent in I.A.No.8149 of 2006 in the suit and I.A.No.10393 of 2007 to implead itself as sixth defendant in the suit.

4. According to the learned counsel for the revision petitioners/plaintiffs, the suit in O.S.No.1115 of 2001 has been filed by the revision petitioners / plaintiffs before the City Civil Court, Chennai, praying for partition and separate possession of the suit property and in the suit, a preliminary decree was passed on 27.04.2005. At this stage, I.A.Nos.10392 & 10393 of 2007 were filed by Selva Vinayagar Koil Devasthanam, represented by its Trustees, B.Bushnam and G.Lakshmipathy to implead itself as 6th defendant and respondent in I.A.No.8149 of 2006 and 6th defendant in the said suit and the said petitions were allowed by separate orders dated 06.07.2011.

5. Pending the said Interlocutory Applications, the revision petitioners/plaintiffs filed a petition in I.A.No.5906/2009 in I.A.Nos.10392 of 2006 in I.A.No.8148/2006 in O.S.No.1115/2001 praying to expunge Item No.6 from I.A.No.8148 of 2006 with the liberty to file a separate petition for final decree proceedings in Item No.6 in O.S.No.1115 of 2001 after the disposal of I.A.No.10392 of 2007. However, the same was not disposed of till now. But orders were passed in I.A.Nos.10392 & 10393/2006. Therefore, the present Civil Revision Petitions have been filed by revisions petitioners/plaintiffs before this court.

6. Mr.V.Bhiman, learned counsel for respondents 3 to 5 submitted that he has no objection for disposing of I.A.No.5906/2009 and in order to provide an opportunity to the parties concerned, notice was served to the first respondent. But, none appeared for the first respondent.

7. During the course of argument, both the learned counsel have requested this Court that a direction may be issued to the trial Court to dispose of the I.A.No. 5906/2009 in I.A.No.10392/2007 in I.A.No.8149 of 2006 in O.S.No.1115/2001. The trial court has already allowed the I.A.Nos.10392 & 10393 of 2007 to implead the Selva Vinayagar Koil Devasthanam in the suit as well as in I.A.No.8149/2006 and the same is not disputed. Therefore, in the interest of justice, this court is inclined to pass the following orders:

(a) The trial court is directed to dispose of I.A.No.5906/2009 in O.S.No.1115/2001 on the file of the XI Assistant City Civil Court, Chennai, after affording an opportunity to the parties concerned, as expeditiously as possible, but not later than six months, from the date of receipt of copy of this order.

(b) As far as I.A.Nos.10392 & 10393 of 2007 are concerned, as the Trial Court has already allowed the application, therefore, order passed by the trial court is hereby confirmed.

In the result, the Civil Revision Petitions are disposed of. No order as to costs.

Gv

29.04.2016

Index :Yes/No

Internet:yes/No

To

The learned XI Assistant Judge,
City Civil Court,
Chennai.

D.KRISHNAKUMAR,J.

gv

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