

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.11.2016

Delivered on: 30.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

C.R.P.(PD) No.2065 of 2013 &
M.P.No.1 of 2013

R.PaneerSelvam

.... Petitioner

Vs

Sri Krishnaswamy Perumal Devasthanam,
Rep. by P.Rajasekhar
Hereditary Trustee

.... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and Decree, dated 22.04.2013 made in E.P.No.348 of 2012 in O.S.No.5940 of 2000, on the file of X Assistant City Civil Judge, Chennai.

For petitioner : Mr.P.Dinesh Kumar for
Mr.D.Ravichander

For respondent : Mr.G.Ramachandran

ORDER

This Civil Revision Petition has been filed against the order and decree dated 22.04.2013 made in E.P.No.348 of 2012 in O.S.No.5940 of 2000, on the file of X Assistant City Civil Judge, Chennai, allowing the E.P.No.348 of 2012 in O.S.No.5940 of 2000.

2. Heard the learned counsels for the parties.

3. The facts, which resulted in filing of the above petition are narrated hereunder:

4. The decree holder is the first respondent herein. The first respondent had approached the Civil Court in O.S.No.5940 of 2000 and 5392 of 2001 seeking for the following prayer:-

O.S.No.5940 of 2000

"Suit for permanent injunction restraining the defendant his men, agents, servants, and all others claiming through him from interfering with the plaintiff's property and the temple which is described in the schedule and for costs."

O.S.No.5392 of 2001

"Suit for permanent injunction restraining the defendant his men, agents, servants, and all others claiming under them from putting up any illegal construction in the schedule property which is the private trust property to the plaintiff and for costs."

against the defendant therein, who is the Revision Petitioner herein. After contest, the trial Court decreed both the suits on 08.03.2005 in favour of the plaintiff. While allowing the suits, the trial Court has found that the right of the plaintiff being hereditary Trustee of the temple in question, was well established by documentary evidence as well as his position of hereditary Trustee was recognized by the competent authority under the Hindu Religious and Charitable Endowments Act and the trial Court, after coming to the conclusion,

rightly allowed the suits in favour of the plaintiff. As against the said findings, the defendants in the suit filed A.S.Nos.244 and 245 of 2005 respectively, on the file of the IV Additional Judge, City Civil Court, Chennai. Both the appeals came to be dismissed vide Judgment dated 27.07.2006. Even in the appeals, the lower Appellate Court had come to the conclusion after perusing the evidence and records available, where the plaintiff namely, the first respondent herein had categorically proved that he was the Hereditary Trustee and was holding such position continuously right from his forefathers and the right of his performing rituals was disturbed by the Revision Petitioner, defendants in the suit and others in the guise of renovating the temple and the respondent/defendant had no right. In such a view of the matter, both the appeals are dismissed.

5. As against the dismissal of the first appeals, the sole defendant in the suits and the appellant in the appeals, the revision petitioner herein filed second appeals in S.A.No.1283 and 1284 of 2006 before this Court. Pending the second appeals, the parties have arrived at a compromise and to that effect, a memo of compromise was filed by both the appellant and respondents therein viz., the revision petitioner and respondent herein. On the basis of memo of compromise, the Second Appeals came to be disposed of vide Judgment dated 14.03.2007. As per the memo of compromise

indicated in para 5, all the temple sanctum sanctorum and other roofs built inside the temple premises shall be locked having two keys, of which, one key shall be retained by the President, who is the Hereditary Trustee, the Judgment /decree holder and another key shall be retained by the Secretary of the Thiruppani Kuzhu, the defendant in the suit as well as in the appellant, who is the revision petitioner herein.

6. The case of the decree holder was that in spite of the memo of compromise, one set of key was not handed over to him and because of the same, being a recognized Hereditary Trustee, which was recognized by the Courts below had been prevented from performing the rituals of temple and the defendant being a stranger, cannot be allowed to retain both the keys with him, contrary to the compromise entered into between the parties, which became a part of the Judgment in the S.A.Nos.1283 and 1284 of 2006 dated 14.03.2007. Since the defendant, the revision petitioner herein, acted against the compromise, the respondent herein was constrained to move this Court by way of Contempt Petition No.640 of 2010. In the contempt petition, it was contended on behalf of the revision petitioner herein, that by virtue of operation of law that the Hereditary Trustee, the decree holder, who was appointed as President of the Society ceased to be the President and having not

attended the meetings of the Society continuously, he was not entitled to have one set of key. This Court, without going into the factual issues, held that there was no contempt, however, gave liberty to the parties to seek remedy in the manner known to law.

7. Thereafter, the first respondent/decreed holder filed the present EP No.348 of 2012 in O.S.No.5940 of 2000, praying for execution of the decree towards handing over the keys to the decreed holder as per the terms of compromise memo filed in S.A.Nos.1283 and 1284 of 2006 dated 28.06.2007. It was the case of the revision petitioner before the EP Court that the Hereditary Trustee was allowed to function as per the terms of the compromise memo and was also given one key in his capacity as President of the Society and resisted the order to be passed in EP No.348 of 2012 as prayed for. After hearing the submissions of the parties, the EP Court allowed the EP vide order dated 22.04.2013, holding that Judgment Debtor was bound to hand over the key to the decreed holder as no proof was filed by the Judgment Debtor that one key was handed over to the decreed holder in furtherance of the compromise memo. The present Civil Revision Petition filed against the order.

8. From a conspectus of the case, it could be seen that the Civil Revision Petitioner had acted contrary to memo of compromise and not handed over the key to the plaintiff, who is the

respondent herein, who succeeded all through and his position as Hereditary Trustee was well established and recognized by the Courts below and the authorities concerned. The dismissal of contempt petition filed nowhere precluded, the first respondent herein from filing EP No.348 of 2012 and seeking directions. Since liberty was given to the parties to workout their remedies in a manner known to law.

9. It should also be seen that being Hereditary Trustee, the respondent herein, cannot be prevented from exercising his function of the office of the Trusteeship, at the instance of the third party, viz., Judgment Debtor, particularly having lost both before the Trial Court as well as in the Appellate Court. In spite of the compromise/decreed passed as early as 2007 from the submission made on behalf of the respondent, it appears that the key has not been handed over to him and thereby, he was prevented from carrying out the duties of the office of the Trusteeship, which he has been enjoying for several years and his family forefathers for several decades. Therefore, it is imperative that the judgment/decreed holder should be allowed to carry out his function as Hereditary Trustee of the Temple and the order passed in EP No.348 of 2012 has to be complied with immediately.

10. In view of the above, this Court does not find any

infirmity in the order and the Civil Revision Petition is therefore dismissed. The Revision Petitioner is directed to hand over one set of key to the respondent forthwith and allow him to perform all the duties and functions of the office of the Hereditary Trustee, without causing any hindrance and impediment.

11. With the above observations, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

30.11.2016

Internet: yes/no
Index: Yes/no

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V.PARTHIBAN, J.

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Pre delivery Order in
CRP PD No.2065 of 2013

30-11-2016