

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 20.12.2016****CORAM :****THE HONOURABLE MS.JUSTICE R.MALA****C.R.P(NPD).No.3738 of 2016**
and C.M.P.No.18971 of 2016

Orders reserved on 16.12.2016	Orders pronounced on 20.12.2016
--	--

C.Krishnan

.. Petitioner

Vs.

1.Arulmighu Apparsamy Temple
Rep. by its Hereditary Trustee
Dr.P.V.Rajkumar
No.171,Royapettah high road
Mylapore, Chennai-600 004.

2.M.Balu

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order passed by the learned X Assistant Judge, City Civil Court, Chennai, in E.P.No.1522 of 2014 in O.S.No.2545 of 2007.

For Petitioner : Mr.T.T.Ravichandran
For R1 : Mr.G.Sugumaran

ORDER

Civil Revision Petition is filed against the fair and decreetal order passed by the learned X Assistant Judge, City Civil Court, Chennai, in E.P.No.1522 of 2014 in O.S.No.2545 of 2007.

2.The first respondent as a plaintiff filed a suit in O.S.No.2545 of 2007 for recovery of possession, for permanent injunction and also for damages for illegal use and occupation of the suit property by the second defendant. The suit was decreed, against which, the second defendant/petitioner herein has preferred an appeal in A.S.No.411 of 2009, which was also dismissed. Aggrieved over the same, the petitioner herein has filed a second appeal in S.A.No.39 of 2014 before this Court, which is pending. Since no stay was granted in the second appeal, the trustee of the temple filed E.P.No.1522 of 2014 for delivery of possession. After contesting, delivery of possession has been ordered, against which, the present revision is preferred by the second defendant.

3.Learned counsel for the petitioner would submit that the decree itself is nullity, since both the Courts below have held that the petitioner is an encroacher, they ought to have invoked Section 79 of

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter called as "the Act"). The Commissioner under the HR & CE Department alone is competent to evict the petitioner and that the City Civil Court, Chennai, has no jurisdiction. As per Section 108 of the Act, the civil suit is barred. But the trial Court, without considering the same, has passed an order by holding that the jurisdiction of the Court can be decided at any point of time. For the reason, he has relied upon the decision reported in **(2013) 10 SCC 136 (Jagmittar Sain Bhagat and others v. Director, Health Services, Haryana and others)**. He has further relied upon the decision in **W.P.No.30618 of 2015 (Arulmigu Virudhagiriswarar Temple, rep. by its Executive Officer, Virudhachalam vs. the Commissioner, Municipality Office, Virudhachalam and others)**, wherein it is held that without obtaining authorisation from the Commissioner, the Executive Officer has no locus-standi to file the suit for ejectment. He has also distinguished the decision reported in **2011 (2) LW 1 (A.N.Kumar v. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai, rep. by its Executive Officer (Assistant Commissioner), Thiruvannamalai and others)**. Thus, he prays for setting aside the fair and decreetal order passed by the trial Court.

4. Resisting the same, learned counsel for the first respondent would submit that admittedly, the property belongs to the temple, which is represented by its Hereditary Trustee. The trustee can file the suit without getting authorisation from the Commissioner and the Executive Officer alone has obtained authorisation from the Commissioner, HR & CE Department. Therefore, the suit is maintainable. For the reason, he has relied upon the decision reported in **2003 (1) LW 386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy v. T.M.Muthuswamy Padayachi and others)**. He would also rely upon the decision reported in **2011 (2) LW 1 (A.N.Kumar v. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai, rep. by its Executive Officer (Assistant Commissioner), Thiruvannamalai and others)** and submits that filing of the suit for ejectment before the Civil Court is neither bar under Section 108 nor under Section 78 of the Act, they can elect any one of the forum. That factum was rightly considered by the Executing Court. He would further submit that the property is owned by the temple. The first defendant is a tenant and he handed over the possession in favour of the second defendant/petitioner herein. Both the Courts below concurrently held that the petitioner herein is an encroacher and that they ordered for

eviction and also damages for use and occupation. The amount due as on today is Rs.13,42,063/-, but the petitioner without paying the amount, is enjoying the property by renting out the portion of the property to third party. Hence, he prays for dismissal.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The first respondent, who is the hereditary trustee of the temple, has filed a suit for ejectment and also injunction restraining the defendants for making alteration in the tenancy portion, past and future profits till the date of delivery of possession. The first defendant/tenant is set exparte. The second defendant, who is none other than the revision petitioner herein, has contested the suit. The trial Court, after considering the defence, decreed the suit, against which, the second defendant/petitioner herein has preferred an appeal in A.S.No.411 of 2009 and the same was dismissed, after confirming the decree and judgment passed by the trial Court. Against the dismissal of the appeal, the petitioner has preferred S.A.No.39 of 2014 before this Court, which is pending and no stay has been granted.

7.Furthermore, it is pertinent to note that E.P.No.1522 of 2014 in O.S.No.2545 of 2007 has been filed for delivery. But there is no

evidence to show that the petitioner has paid the admitted rent regularly. In the order dated 21.10.2016 made in E.P.No.1522 of 2014 itself, it was specifically mentioned that the amount due is Rs.12 Lakhs. At the time of argument, it was stated by the learned counsel for the first respondent that he has rented out one portion of the suit property to the third party and enriching himself illegally.

8.Now this Court has to decide whether the delivery order passed by the trial Court is sustainable? Learned counsel for the petitioner would submit that the Civil Court has no jurisdiction to entertain the suit. Both the Courts below have held that the petitioner is an encroacher. As per Section 79 of the Act, Assistant Commissioner, HR & CE Department alone is a competent person to decide the matter and at any stage, the jurisdiction can be questioned. For the reason, he has relied upon the decision reported in **(2013) 10 SCC 136 (Jagmittar Sain Bhagat and others v. Director, Health Services, Haryana and others)**. It is well settled dictum of the Apex Court that question of jurisdiction can be raised at any stage of the proceedings. It is appropriate to extract para-9, which reads as follows:

“9.Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function

and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: *United Commercial Bank Ltd. v. Workmen*, AIR 1951 SC 230; *Smt. Nai Bahu v. Lala Ramnarayan & Ors.*, AIR 1978 SC 22; *Natraj Studios (P) Ltd. v. Navrang Studios & Anr.*, AIR 1981 1 SCC 523; and *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors.*, AIR 1999 3 SCC 722)."

There is no quarrel over the above proposition. The petitioner has raised a point that the plea of jurisdiction can be raised at any point of time.

9. Now this Court has to decide as to whether filing of the civil suit is barred under Sections 79 and 108 of the Act? At this juncture, it

is appropriate to consider the unreported judgment of this Court relied upon by the learned counsel for the petitioner in ***W.P.No.30618 of 2015, dated 29.03.2015 in (Arulmigu Virudhagiriswarar Temple, rep. by its Executive Officer, Virudhachalam vs. the Commissioner, Municipality Office, Virudhachalam and others)***, para-19 it is held as follows:

“19.As far as the present case is concerned, in the affidavit of the Executive Officer of the Petitioner/Temple is conspicuously silent as to whether the Petitioner/Temple has filed the present Writ Petition, after obtaining requisite permission, concurrence or any authorisation in writing from the higher officials of the H.R. & C.E. Department. In fact, without resorting to the same, the Executive Officer of the Temple has straightaway filed the present Writ Petition before this Court.”

The said writ petition has been dismissed on the above ground. But the above decision is not applicable to the facts of the present case.

10.Now this Court has to consider the decision relied upon by the learned counsel for the respondent reported in ***2003 (1) LW 386 (Sri Arthanareeswarar of Tiruchengode by its present Executive***

Officer, Sri Sabapathy v. T.M.Muthuswamy Padayachi and others), in para-20 and 21, it is held as follows:

“20. Insofar as the Executive Officer's suit is concerned, it is seen that 'Executive Officer' has been defined under Section 6(2) of the H.R. & C.E. Act. According to this definition, Executive Officer is a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under the Act or the Rules framed thereunder. 'Trustee' has been defined under Section 6(22) of the Act as any person or body in whom the administration of a religious institution is vested. Section 45 of the Act deals with the appointment and the duties of an Executive Officer. Sub-section (2) to Section 45 says that the Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. The proviso says that only such powers and duties as appertaining to the administration of the properties of the religious institution shall be assigned to the Executive Officer. The powers and duties of the Executive Officer shall be defined by the Commissioner. Section 28 of the Act empowers the trustee of every religious institution to administer its affairs and to apply the funds and properties of the

institution. He shall be entitled to exercise all powers incidental to the provident and beneficial administration of the religious institution.

21. In this case, the Executive Officer, in his chief-examination as P.W.1, has stated that for the purpose of filing the suit, he sought permission from the Commissioner and got the order under Ex.A.12. On a perusal of Ex.A.12 dated 24.6.1970, it is seen that instructions were issued to the Executive Officer and the Board of Trustees to obtain legal opinion to enforce the charges mentioned in the settlement deed dated 1.11.1897 executed by one Thiru Venkatachala Gounder and his wife. A copy of these instructions was issued to the Executive Officer as well as to the Chairman, Board of Trustees. The above instructions did not authorise the Executive Officer to file a suit. As a matter of fact, the instructions were addressed to both the Executive Officer as well as to the Chairman, Board of Trustees in order to obtain legal opinion in reference to the enforcement of the settlement deed. Thereafter, the Inspector, H.R. & C.E. Department held an enquiry on 1.10.1971 on the petition by T.P. Ardhanari Padayachi (the first plaintiff in the Community's suit). Ex.B.107 is the report of the Inspector dated 24.1.1972 wherein he has stated that he found on his enquiry, that from the date of the gift/settlement deed dated 1.11.1897, no such

Nandavanam and its performance was conducted. It was further noted that in reference to this property, there was already an enquiry by the Commissioner on 26.5.1970 and an order dated 24.6.1970 had been passed directing the concerned to take legal opinion. From the above, it is clear that the Executive Officer is not the authority competent to initiate legal proceedings and that he had not been assigned with the power of filing a suit. It is only the Board of Trustees in existence at that time which was competent to initiate the legal proceedings. The trustees are not made parties to the suit and therefore, the finding insofar as the Executive Officer's suit is concerned, that it is filed without authority has to be upheld."

In the above decision, it was specifically held that the suit filed by the Hereditary trustee alone is maintainable. But the Executive Officer can institute the suit, after obtaining concurrence or authorisation from the Commissioner, H.R. & C.E. Department. So I am of the view that the Hereditary trustee need not obtain any concurrence or authorisation from the temple authority. So the suit is maintainable.

11. Now this Court has to decide whether the jurisdiction of the Civil Court is barred? For this, it would be appropriate to extract

Sections 79 and 108 of the Act, which run as follows:

"79.Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner.__Where within the period specified

in the order under sub-section (4) of Section 78, the encroacher has not removed the encroachment and has not vacated the property, the Assistant Commissioner having jurisdiction over the division may remove the encroachment and obtain possession of the property encroached upon, taking such police assistance as may be necessary. Any police officer whose help is required for this purpose shall render necessary help to the Assistant Commissioner.

(2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Joint Commissioner under sub-section (4) of Section 78 from instituting a suit in a Court to establish that the religious institution or endowment has no title to the property:

Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under sub-section (4) of Section 78:

Provided further that no such suit shall be instituted by a person who is let into possession of the property, or who is a lessee, licensee or mortgagee, of the religious institution or endowment.

(3) No injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by the Joint Commissioner under Section 78.

108.Bar of suits in respect of administration or management of religious institutions, etc.—No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act.”

12.At this juncture, this Court has to consider the decision relied upon by both sides counsel reported in **2011 (2) LW 1 (A.N.Kumar v. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai, rep. by its Executive Officer (Assistant Commissioner), Thiruvannamalai and others)**, wherein in para-39 and 49, it is held as follows:

39. As discussed earlier, under proviso to Section 79, there is express bar for the suits instituted by licensees/lessees or mortgagees, who are in possession of the temple property. There is no such

express bar for the ejectment suits instituted by the temple. As discussed earlier, since there is no adequate remedy provided under the H.R. & C.E. Act for eviction of tenants, licensees, lessees or mortgagees, in our considered view, Section 108 is not a bar for the ejectment suits instituted by the temple notwithstanding the provisions contained in Chapter VII.

.. ..

.. ..

.. ..

49. We summarise our conclusions as under:
So far as the suits filed by the temple for eviction of tenants/licensees/lessees/mortgagees for filing of the ejectment suit, the Civil Court's jurisdiction is not barred. The decision to approach Civil Court or invoke the provisions of H.R. & C.E. Act vests with the Temple. In cases of encroachers, temple authorities can either resort to the provisions under Sections 78, 79, 79-A, 79-B or to approach the Civil Court. The decision to elect a particular procedure lies with the owner of the property, being the Temple. In view of the express bar under 2nd proviso to Section 79, in so far as the suits by the encroachers/lessees/licensees/mortgagees, the bar under Section 108 will get attracted excepting in instances specifically stated

in the 1st proviso to Section 79.”

So the suit filed by the temple was for eviction of the tenant and the Civil suit jurisdiction is not barred. In cases of encroachers, temple authorities can either resort to the provisions under Sections 78, 79, 79-A, 79-B or to approach the Civil Court. The decision to elect a particular procedure lies with the owner of the property, being the Temple.

13.Considering the aforestated facts and circumstances of the case along with the above decision, I am of the view that the suit is maintainable and the Civil Court has jurisdiction to decide the case. Hence, the decree and judgment is not nullity for want of jurisdiction. The Executing Court has considered all the aspects in proper perspective and came to the correct conclusion that the decree is not nullified by want of jurisdiction. As on today, the decree and judgment passed by the trial Court is not stayed in the second appeal stage. If the petitioner will succeed in the second appeal, he can very well file the petition under Section 144 C.P.C. to restore his possession. Therefore, the decree and judgment passed by the Executing Court does not suffer any infirmity or illegality and that it is hereby confirmed. Consequently, the Civil Revision Petition stands dismissed.

14. In the result, the Civil Revision Petition stands dismissed by confirming the decree and judgment passed by the trial Court. No costs. Consequently, connected Miscellaneous Petition is closed.

20.12.2016

kj

Index: Yes/No

To

X Assistant Judge, City Civil Court, Chennai.

R.MALA,J.

kj

Pre-delivery order in
C.R.P(NPD).No.3738 of 2016
and C.M.P.No.18971 of 2016

20.12.2016