



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P. (MD) No.2522 of 2015

1.Madurai E.M.Gopalakrishna Kone Trust,  
represented by its  
Hereditary Trustee,  
Thiru E.M.G.S.Arun Pothiraj,  
Madurai.

.. Petitioner/1<sup>st</sup> Petitioner/  
1<sup>st</sup> Claimant

2.E.M.G.S.Arun Pothiraj

.. Petitioner/2<sup>nd</sup> Petitioner/  
5<sup>th</sup> Respondent/LRs of the  
6<sup>th</sup> Defendant

-Vs-

1.Arulmigu Meenakshi Sundaraswarar  
Devasthanam Madurai  
through its Executive Officer,  
Arulmigu Meenakshi Sundareswarar,  
Devasthanam, Madurai.

.. Respondent/1<sup>st</sup> Respondent/  
Petitioner/Decree Holder

2.E.M.G.S.Indirani  
3.E.M.G.S.Pothi Gopalakrishnan  
4.E.M.G.S.Pothi Rajan

.. Respondents/Respondents 2 to 4/  
Respondents 2 to 4/LRs of the  
6<sup>th</sup> defendant

5.S.Rajeswari  
6.E.M.G.S.Gopalakrishna Pandian  
7.E.M.G.S.Radhakrishna Pandian  
8.E.M.G.S.Muthumeenakshi  
9.M.Ravisankar  
10.M.Muralisankar

... Respondents/Respondents 5 to 8/  
Respondents 6 to 11/  
Lrs of the 6<sup>th</sup> defendant

Prayer:- Petition filed under Article 227 of the Constitution of India to set aside the order dated 25.06.2015 passed in unnumbered E.A.(SR). No.15644 of 2015 in E.P.No.77 of 2006 in O.S.NO.123 of 1970 on the file of the first Additional Sub Judge of Madurai.

|                 |                                                                                                                                     |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioners | : Mr.G.R.Swaminathan<br>for Mr.T.Antony Arul Raj                                                                                    |
| For Respondents | : Mr.S.Manohar<br>for R.1<br>: Mr.G.Prabhu Rajadurai<br>for R.2 to R.4<br>: Ms.J.Anandhavalli<br>for R.9 to R.10<br>: No Appearance |
| For RR5 & 8     |                                                                                                                                     |

ORDER

Challenge in this revision is made to the order dated 25.06.2015 and made in an unnumbered execution application in E.A.SR.No.15644 of 2015 in E.P.No.77 of 2006 in O.S.No.123/1970 on the file of I Additional Subordinate Judge, Madurai.

2. The first revision petitioner herein is the first claimant in the unnumbered execution application and the second petitioner as well as the respondents 2 to 10 are the legal representatives of the deceased sixth defendant in the suit. The first respondent is the decree holder. The first respondent viz., Arulmigu Meenakshi Sunderaswarar Devasthanam Madurai through its Executive Officer had filed the above suit in O.S.No.123 of 1970 to direct the defendants 1 to 7 to deliver the possession of the property described in the plaint schedule and also for past and future mesne profits. That suit was decreed as prayed for.

3. Challenging the judgment and decree, an appeal in A.S.No.209 of 1979 was filed before this Court by one E.M.G.Soundrarajan who is the sixth defendant in the suit. The above said appeal was dismissed confirming the judgment and decree of the trial Court viz., the Subordinate Court, dated 23.12.1978.

4. Questioning the correctness of the appeal in A.S.NO.209 of 1979, the appellant E.M.G.Soundrarajan had filed a review application. During the pendency of that review application, a joint memorandum of compromise was filed signed by the learned Counsels on either side as well as by the parties concerned. In the joint memorandum of compromise, the parties had requested the Court to dispose the review application in terms of joint memorandum of compromise. Accordingly the above said review application was ordered in terms of joint memorandum of compromise. Since the compromise decree in R.C.M.P.No.3891 of 1986 in appeal No.209 of 1979 was not complied with, the decree holder had filed an execution petition in E.P.NO.111 of 1994 for recovery of possession. The said execution petition was dismissed in view of the order of stay granted by this Court in C.M.P.NO.5991 of 1994 in AAO No.435 of 1994.

5. Thereafter the decree holder had filed another execution petition in E.P.No.77 of 2006 for recovery of possession. The sixth defendant viz., E.M.G.Soundrarajan had resisted this petition by filing his counter affidavit on the ground that the execution petition was barred by time. In the meanwhile, the said E.M.G.Soundrarajan had passed away on 24.03.2007. One E.M.G.S.Indirani had claimed that she is the legally wedded wife of the said E.M.G.Soundrarajan. One S.Rajeswari had also claimed that she alone is the legally wedded wife of E.M.G.Soundrarajan. The children of both the above said persons were impleaded in the above said execution petition. The respondents 2 and 3 in the execution petition had filed an application in E.A.NO.554 of 2009 questioning the maintainability of the execution petition.

6. It is also manifested from the records that in view of the order passed in C.R.P.(MD)Nos.1982 and 1983 of 2009, dated 01.12.2009, the execution petition was directed to dispose the execution petition in E.P.No.77 of 2006 expeditiously.

7. It is also revealed that the respondents 3 and 4 in the execution petition had taken out an application in E.A.No.35 of 2010 to record full satisfaction as they had paid the entire amount. Thereafter the executing Court had heard the execution petition in E.P.No.77 of 2006 along with the application in E.A.No.554 of 2009 and E.A.No.35 of 2010 and disposed of the same by a common order. In the said order, the executing Court had dismissed the execution petition in E.P.No.72 of 2006, while allowing the execution applications in E.A.Nos.554 of 2009 and 35 of 2010, after recording the full satisfaction.

8. Challenging the order of the executing Court, the decree holder/plaintiff had filed three revision petitions in C.R.P.(MD)Nos.987 to 989 of 2010. All the revision petitions were allowed directing the executing Court to appoint a senior member of Bar as an Advocate Commissioner to ascertain the value of the superstructure standing in the suit property and file a report with regard to superstructure. The executing Court was also directed to dispose of the execution petition in E.P.No.77 of 2006 on merits within a period of six months from the date of receipt of a copy of that order.

9. Under these circumstances, the revision petitioner herein being the first claimant had filed an unnumbered execution application in the above said execution petition in E.P.No.77 of 2006 under Section 47 r/w Section 151 of the Code of Civil Procedure to declare that he is the absolute owner and entitled to be in possession of the suit property and consequently to pass an order of permanent injunction by restraining the first respondent/decreed holder, his men, or anyone else claiming under him from in anyway interfering with his peaceful possession and enjoyment of the first petitioner Trust over the schedule mentioned property and also to dismiss the execution petition in E.P.No.77 of 2006.

10. This petition was rejected mainly on the ground that already the rights in respect of the property was decided by the High Court as well as the Honourable Supreme Court and thus there was a direction given by this Court that the execution petition shall have to be disposed of on or before 24.0.2015 and therefore the above said petition was rejected saying that the prayer of the petitioner to decide their right over the property was not acceptable.

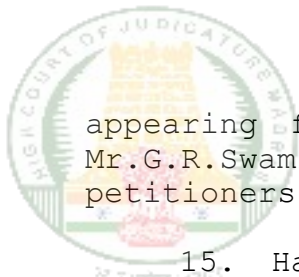
11. Having been aggrieved by this order dated 25.06.2015, the present revision is filed.

12. Heard Mr.G.R.Swaminathan, learned Counsel appearing for Mr.T.Antony Arul Raj, learned Counsel who is on record for the revision petitioners, Mr.S.Manohar, learned Counsel appearing for the first respondent, Mr.G.Prabhu Rajadurai, learned Counsel appearing for the respondents 2 to 4 and Ms.J.Anandhavalli, learned Counsel appearing for the respondents 9 and 10.

13. While advancing his arguments, Mr.G.R.Swaminathan, learned Counsel appearing for the revision petitioners has submitted that the executing Court might be directed to number the unnumbered execution application and dispose the same on merits, after giving opportunities to either side to file their objections.

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14. This suggestion though not admitted by Mr.S.Manohar, learned Counsel appearing for the first respondent, the other learned Counsel



appearing for other respondents have endorsed the submission made by Mr.G.R.Swaminathan, learned Counsel appearing for the revision petitioners.

15. Having been taken into consideration of the submissions of Mr.G.R.Swaminathan, learned Counsel appearing for the revision petitioners, Mr.S.Manohar, learned Counsel appearing for the first respondent and the other learned Counsels appearing for other respondents, this Court finds that let there be a direction to the executing Court to take the unnumbered execution application on file, after numbering the same and dispose the same on merits after inviting the objections from the opposite parties within a prescribed period that may be fixed by this Court.

16. Accordingly, this revision petition is allowed and the impugned order dated 25.06.2015 is set aside. The executing Court is directed to number the unnumbered application which is filed under Section 47 r/w Section 151 of the Code of Civil Procedure and take the same on its file and dispose on merits in the manner known to law, after inviting objections from the opposite side by the end of February 2016, without loss of further time, because the suit is relating to the year 1970. There shall be no order as to costs.

Sd/  
Assistant Registrar

Sub Assistant Registrar

To

The I Additional Subordinate Court, Madurai.

+1CC to Mr.S.Manohar, Advocate, SR.NO. 4738  
+1CC to Mr.G.Prabhu Rajadurai, Advocate, SR.NO. 4512  
+1CC to Mr.T.Antony Arulraj, Advocate, SR.NO. 4864  
+1CC to MR.J.Anandavalli, Advocate, SR.NO. 4430

C.R.P. (MD) No.2522 of 2015  
25.01.2016

AM/SK.SKN/SAR-I/25.02.2016/4P/6C