



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (MD) (NPD) No.1651 of 2016

WEB COPY

1. MADURAI E.M.G.GOPALAKRISHNA KONE TRUST,
DOOR NO.6/25, G.GOKULAM,
CHINNACHOKKIKULAM,
MADURAI
REP. BY ITS HETEDITARY TRUSTEE, : 1ST PETITIONER/1ST PETITIONER
E.M.G.S.ARUNPOTHIRAJ : 1ST PETITIONER/1ST CLAIMANT
2. E.M.G.S.ARUNPOTHIRAJ : 2ND PETITIONER/2ND PETITIONER
2ND PETITIONER/5TH RESPONDENT/
LRS OF THE 6TH DEFENDANT

Vs.

1. ARULMIGU MEENAKSHI SUNDARESWAR : 1ST RESPONDENT/1ST RESPONDENT
DEVASTHANAM, : 1ST RESPONDENT/PETITIONER/
MADURAI, DECREE HOLDER
THROUGH ITS EXECUTIVE OFFICER
2. E.M.G.S.INDIRANI
- 3 E.M.G.S.POTHI GOPALAKRISHNAN
- 4 E.M.G.S.POTHIRAJAN
: Respondents 2 to 4/Respondent 2 to 4/Respondent 2 to 4/
Respondent 2 to 4/LRs of the 6th Defendant
- 5 S.RAJESWARI
- 6 DR.E.M.G.GOPALAKRISHNAPANDIAN
- 7 E.M.G.S.RADHAKRISHNA PANDIAN
- 8 E.M.G.MUTHU MEENAKSHI : Respondent 5 to 8/Respondent 5 to 8/
Respondent 5 to 8/Respondent 6 to 9
LRs of the 6th Defendant
- 9 M.RAVISANKAR
- 10 M.MURALISANKAR
: Respondent 9& 10/Respondents 9 & 10
Respondent 9& 10/Respondents 9 & 10
Respondent 9 & 10

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 20.06.2016 passed in E.A.No.70 of 2016 in E.A.No.42 of 2016 in E.P.No.77 of 2016 in C.N.O.123 of 1970 on the file of the 1st Additional Sub Judge, Madurai.



WEB COPY

2

For Petitioners : G.R.Swaminathan for
Mr.T.Antony Arulraj

For Respondents : Mr.S.Manohar, for R1
Mr.G.Prabhu Rajadurai for R2 to 4

For Respondent : R5,7, 8, 9, 10 - Dispensed with.

Orders Reserved : 04.11.2016

Orders pronounced : 23.11.2016

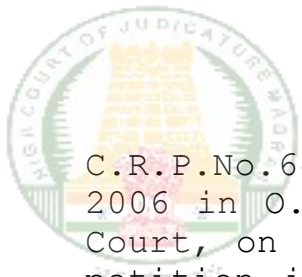
ORDER

This civil revision petition arises against the order dated 20.06.2016 passed in E.A.No.70 of 2016 in E.A.No.42 of 2016 in E.P.No.77 of 2006 in O.S.No.123 of 1970 on the file of the 1st Additional Sub Judge, Madurai.

2.The first respondent temple filed a suit in O.S.No.123 of 1970 before the learned I Additional Subordinate Judge, Madurai, for the relief of delivery of possession and for mesne profits. The said suit was decreed on 23.12.1978. Aggrieved by the said judgment and decree, appeals were filed in A.S.No.209 of 1979 and 9 of 1980 before this Court and the said appeals were also dismissed on 12.02.1986. Sixth defendant in the suit has filed a petition in Review C.M.P.No.3891 of 1986 in A.S.No.209 of 1979 and the same was allowed on 23.04.1990 on certain terms and conditions and on non compliance of the same, liberty was granted to the temple to proceed with the execution proceedings. Thereafter, the temple has filed two execution petitions in E.P.Nos.440 of 1990 and 77 of 2006.

3.According to the petitioners, during the execution proceedings in E.P.No.77 of 2006, the petitioners have filed E.A.No.42 of 2016, for declaration and permanent injunction against the first respondent temple. The first respondent temple has filed its objection. The said E.A.No.42 of 2016 has been dismissed for default on 28.03.2016. Therefore, the petitioner have filed an application in E.A.No.70 of 2016 on 29.03.2016, to set aside the order of dismissal passed in E.A.No.42 of 2016 in E.P.No.77 of 2006 dated 28.03.2016. However, the Court below has dismissed the said application stating that the petitioners are wantonly trying to drag on the proceeding in E.P.No.77 of 2006. Aggrieved against the said order, the petitioners have filed the present civil revision.

4.Per contra, the learned counsel for the respective respondents would submit that during the pendency of the execution proceedings, the first respondent temple filed a revision in



C.R.P.No.643 of 2016 before this Court, to dispose of E.P.No.77 of 2006 in O.S.No.123 of 1970 on the file of the Court below. This Court, on 05.04.2016 considering the fact that since the execution petition is pending from 2006, directed the learned I Additional Subordinate Judge, to dispose of E.P.No.77 of 2006 as expeditiously as possible, in any event, not later than 30th June 2016. However, the petitioners, with an intention the petitioners had allowed to dismiss the application in E.A.No.42 of 2016 for default. The trial Court has given the reasons for dismissing the application in E.A.No.70 of 2016 and the said order does not warrant any interference by this Court and the present civil revision is liable to be dismissed. According to the first respondent, since E.P.No.77 of 2006 is kept pending for a long time, the temple is not in a position to recover the property.

5.Taking into consideration of the said facts and circumstances of the case and the submissions made on either side, since the suit was decreed in the year 1978 and subsequently, the same was confirmed by this Court in the appeals and execution petition has also been filed in the year 2006 and the same has been pending for more than 10 years, I am inclined to pass the following order:

(i)the order dated 20.06.2016 made in E.A.No.70 of 2016 on the file of the learned I Additional Sub Judge, Madurai is set aside and the same is hereby allowed.

(ii)the learned I Additional Sub Judge, Madurai is directed to restore the application in E.A.No.42 of 2016 filed under Section 47 read with 151 of C.P.C. within a period of two weeks from the date of receipt of a copy of this order, and pass appropriate orders thereon, on merits and in accordance with law.

(iii)Thereafter, the learned I Additional Sub Judge, Madurai is directed to dispose of E.P.No.77 of 2006 as expeditiously as possible, preferably, within a period of two months, on merits and in accordance with law. On instructions, both the parties agreed that they will co-operate with the enquiry in the aforesaid applications.

6.With the above direction, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
23.11.2016

Today after pronouncing the orders, it is submitted by the learned counsels for both parties that this Court may direct the Court to dispose of E.A.Nos.45 and 50 of 2016 pending before the Court in E.P.No.77 of 2006 and dispose of the E.P.No.440 of 1990 simultaneously.



2. Therefore, by consent of both parties, the learned I Additional Subordinate Judge, Madurai is directed to dispose of the applications in E.A.Nos.45 and 50 of 2016 pending in E.P.No.77 of 2006 viz., and to dispose of E.P.No.77 of 2006 along with E.P.No.440 of 1990 simultaneously, within the period as stated earlier.

Sd/
Assistant Registrar(Writs)

/TRUE COPY/

Sub Assistant Registrar

To

1. The I Additional Subordinate Judge, Madurai.

2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.S.Manohar, Advocate, in SR No.72034.

+1cc to M/s.T.Antony Arul Raj, Advocate, in SR No.71779.

arul

msm/mpa/24.11.16/p4/5c

order made in
C.R.P. (MD) (NPD) No. 1651 of 2016
23.11.2016