

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2293 OF 2017
AND CMP NO.10789 OF 2017

Giridharlal

... Petitioner

Vs.

1.T.Mani

2.Sri Muthukumaraswamy Devasthanam

@ Sri Kandaswamy Temple

Represented by its fit person

No.44, Rasappa Chetty Street,

Park Town,

Chennai - 600 003.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the decree and order of the learned XV Judge, Court of Small Causes at Chennai in M.P.No.498 of 2016 in R.C.O.P.No.432 of 2013 dated 15.03.2017.

For Petitioner : Mr.P.K.Sivasubramaniam
For Respondents : Mr.M.A.Lakshmpathi

ORDER

This Civil Revision Petition is directed against the dismissal of the petition filed under Rule 11 of the Tamil Nadu Act 18 of 1960 to implead the proposed respondent.

2. The revision petitioner is the tenant. The first respondent / landlord has filed a petition for eviction under Section 14(i)(b) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, for demolition and reconstruction. The petitioner has filed a counter affidavit admitting his tenancy.

3. It is the contention of the petitioner / tenant that he was in occupation of the portion for the past 40 years and more and the property has been endowed for a religious charity in Arulmighu Kandasamy Temple @ Sri Muthukumaraswamy Devasthanam and therefore, the property absolutely belongs to a Public Religious Temple and is exempted from the purview of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, in view of G.O.Ms.No.2000, dated 16.08.1976 and therefore, the petition for eviction is not maintainable and further, Sri

Muthukumaraswamy Devasthanam shall be impleaded as a party, as the property belongs to the public temple.

4. Per contra, the first respondent / landlord would contest that the property does not belong to Sri Muthukumaraswamy Devasthanam @ Sri Kandaswamy Temple. One Amarambedu Gurunatham Chetty has executed a deed of settlement dated 29.07.1915, registered as document No.1976/1915, at the Office of the Sub Registrar - II, appointing Amarambedu Chengalvaroya Chetty, Thenneri Parthasarathy Chetty and Thenneri Singaravelu Chetty as Trustees. As per the said deed, the Trustees and heirs shall have possession of the said house and ground and from the balance of the rental income thereof, after deducting the amounts required for payment of all taxes and repairing charges, the Trustees shall continue to perform Shasti Utsavam in the said temple every month. Sri Muthukumaraswamy Devasthanam has issued a public notice as per the decree passed in C.S.No.341 of 1890 dated 19.10.1910 and as per the said decree, the Trustees were appointed from 24.10.1910. In the said public notice, at para 11, it was stated that the properties mentioned in Appendix "B", there are stone inscriptions in respect of some properties

which are not in the Management of Sri Muthukumaraswamy Devasthanam and it is under the Management of the Successors of the Founders mentioned in the Silasasanam and in the said notice, property mentioned in Appendix - B is in respect of the petition premises and as per the inscription in the Silasasanam, it has been granted to Amarambedu Veeraswamy Chettiar to perform Shasti Utsavam every month in the said temple from the rental income of the petition premises. Therefore, the contention of the first respondent / landlord is that the petition property belongs to the landlord and the building is in a very old and dilapidated condition and therefore, the requirement of the first respondent / landlord is *bonafide* and prayed for dismissal of the petition.

5. The learned counsel for the petitioner would rely on a judgment of the Hon'ble Supreme Court in ***A.V.G.P. CHETTIAR AND SONS AND OTHERS VS. T.PALANISAMY GOUNDER [AIR 2002 SC 2171]*** wherein it is held that property of religious endowment or religious charity, within the meaning of the Endowments Act, is outside the jurisdiction of the Rent Controller.

6. Yet another judgment of the Hon'ble Supreme Court in

MULLA GULAM ALI AND SAFIABAI D. TRUST VS. M/S. DEELIP KUMAR & CO. [2001 (1) LW 652] it is held that the control in respect of the administration of the Trust vested in a group of people will not itself take away the public character of the Trust.

7. The contention of the petitioner is that the nature of the Trust is a Religious Trust and the property is dedicated for doing a public charity and therefore, the first respondent / landlord is not entitled to claim ownership. In fact, Sri Muthukumaraswamy Devasthanam is the owner of the property and it being a Religious Institution, is exempted from the purview of the Tamil Nadu Buildings (Lease and Rent) Control Act, as per Section 29 of the Act. Therefore, the finding of the Rent Controller that Sri Muthukumaraswamy Devasthanam is not the owner of the property and subsequent dismissal of the petition is illegal.

8. Per contra, the learned counsel appearing for the first respondent / landlord would submit that the settlement deed executed by the forefathers would clearly reveal that the possession of the property completely vests with the respondents and the heirs of the Amarambedu

Veeraswamy Chettiar. The relevant portion in the deed of settlement dated 29.07.1915, registered as document no.1976/1915 is extracted hereunder:

"..... The said Trustees and heirs shall have possession of the said house and ground and from the balance of the rental income thereof after deducting the amounts required for payment of all taxes and repairing charges as hereto fore shall continue to perform in each and every month regularly the said charity called Shastri Vutchavam in the said temple of Muthukumaraswami situate in Rasappa Chetty street known as Periakadai Street George Town Madras as directed in the said stone inscription. But they shall not at any time and under any circumstances whatsoever shall mortgage gift or otherwise alienate the said house and ground to anybody and the said Trustees and each of them do hereby agree to bind themselves accordingly....."

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9. A reading of the settlement deed clearly shows that the possession of the said house is vested with the first respondent / landlord.

Secondly, the Charity called Shasti Utsavam was done from the rental income after deducting the amounts required for payment of all taxes and repairing charges. The condition in the settlement deed is that the Trustees shall not at any time and under any circumstances whatsoever, sell, mortgage, gift or otherwise alienating the said house and ground to anybody. If the property belongs to the temple, the possession will not be with the Trustees and there will not be any restriction on them not to mortgage, sell or gift or otherwise alienate will not be there.

10. The learned counsel for the first respondent / landlord would also produced the extract of Permanent Land Register wherein it is shows that the property belongs to Ratna Sabapathy for the purpose of doing charities for Sri Muthukumaraswamy Devasthanam @ Sri Kandaswamy Temple. The property is also assessed to the tax in the name of one T.Mani, the first respondent herein and the tax is being paid by him. Therefore, it is clear that the charity is done from and out of the rental income of the demised premises by the person, who is having possession.

11. The learned counsel appearing for the first respondent would rely on a judgment of this Court **V.KANNADASAN AND OTHERS VS. K.SWAMINATHA PATHAR (DIED) AND OTHERS [2007 (2) CTC 127]** wherein, following the judgment of this Court in **ANGAMJUTHU VS. K.PUGAZHENDI AND OTHERS [1991 (1) LW 415]** it has been held that charity is to be performed from out of the income of the properties and the grant is personal to the Grantee and their family. In the instant case, there is no dedication of the demised premises. In yet another judgment of this Court in **DHARMA RAJA VS. RAMA AMMAL [1978 (1) MLJ 492]** a similar document was put to test. In this regard, paragraph 12 of the judgment of this Court in **V.KANNADASAN's case (cited supra)** is extracted hereunder:

"12. That the grant is personal is also clear from another aspect. If any of the sharers fail to perform the charity / Kattalai another family member can perform the same and can recover the expense from the defaulter's share. Absolutely no charge has been created for the performance of Kattalai. No fixed grant has also been specified for the purpose of Kattalai. A reading of the document makes it

clear that charity has to be performed only from out of the income and there is no dedication."

In the very same judgment, it was further observed that the title always vested with the testator and he has provided a line of succession as to who shall hold it and regarding the transfer of ownership, to the Trust, there is no statement anywhere in the document. Considering the factual background that the property was not dedicated to the temple, it was found that it is not a Public Charitable Trust.

12. The case on hand is also of the similar nature, wherein, the forefathers of the first respondent / landlord has held the property for doing charity from and out of the rental income, after deducting the payment of taxes and required expenses. In the present case, it is clearly admitted by the petitioner / tenant that he himself is a tenant for the past forty years. There is further statement that the building is in a very dilapidated condition. Once a tenant admits his tenancy under the first respondent / landlord, he cannot turn around and question the title of the landlord. In the absence of any document to prove that the property was

dedicated to Arulmighu Kandasamy Temple @ Sri Muthukumaraswamy Devasthanam and in the absence of any document to show that the property belongs to any Public Charitable Trust, the impleading petition is not maintainable and the said Arulmighu Kandasamy Temple @ Sri Muthukumaraswamy Devasthanam, cannot and need not be impleaded as a party.

13. Section 116 of the Indian Evidence Act, 1872, reads as under:

"116. Estoppel of tenant; and of licensee of person in possession. - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

Therefore also, the petitioner / tenant is precluded from taking the issue

and in fine, it is very clear that the building is not exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act as well as G.O.Ms.No.2000, dated 16.08.1976

14. For the foregoing discussions, this Court has no hesitation to hold that the property does not belong to Sri Muthukumaraswamy Devasthanam @ Sri Kandaswamy Temple as they are not the title holder of the property and therefore, they need not be impleaded as a party. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

13.09.2017

Index : Yes/No

Internet : Yes/No

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To

The XV Judge
Court of Small Causes
Chennai.

M.GOVINDARAJ, J.

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