

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4428 of 2011
& M.P.No.1 of 2011

1.Chandra
2.Jaganathan

.. Petitioners

Vs.

Sola Vellalar Samugam Trust of
Kitchipalayam
Rep.by its President Duraisamy
Natarajar Bajanai Madam
Bajanai Madam Street
Kitchipalayam
Salem – 15

.. Respondent

PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.06.2011 made in C.M.A.No.35 of 2009 on the file of the Principal Sub Court, Salem, confirming the fair and decretal order dated 30.07.2009, made in I.A.No.690 of 2004 in O.S.No.487 of 2003 on the file of the Principal District Munsif Court, Salem.

For Petitioners : Mr.T.Murugamanickam, Senior Counsel
for Mr.V.Rajesh

For Responent : Mr.T.M.Hariharan

ORDER

This civil revision petition filed against the fair and decretal order dated 22.06.2011 made in C.M.A.No.35 of 2009 on the file of the Principal Sub Court, Salem, confirming the fair and decretal order dated 30.07.2009, made in I.A.No.690 of 2004 in O.S.No.487 of 2003 on the file of the Principal District Munsif Court, Salem.

2. The petitioners are the defendants 2 and 3 and respondent is the plaintiff in O.S.No.487 of 2003 on the file of the Principal District Munsif Court, Salem. Originally the respondent filed the said suit for eviction of one Muthusamy, who is the father of the petitioners. Pending suit, the said Muthusamy died. The petitioners are impleaded as his legal heirs. The said Muthusamy while he was alive, filed an application in I.A.No.690 of 2004 for a direction to the respondent under Section 9 (1) of Tamil Nadu City Tenants Protection Act (herein after referred to as 'the Act') to sell the property to the petitioners for the price fixed by the Court. According to the petitioners, the said Muthusamy was tenant under respondent in respect of vacant land only and a superstructure was

put up by Muthusamy and he was residing in one portion of the building and was carrying on a Barber shop in another portion. As per Section 9(1) of the Act, he is entitled to purchase the land.

3. The respondent filed counter affidavit and submitted that the original defendant Muthusamy was tenant not only for the land, but also for the building. The respondent is a Religious and Charitable Public Trust and therefore, provisions under Section 9(1) of the Act is not applicable to the respondent and petition under such Section is not maintainable. The respondent was declared as Public Trust in scheme decree in O.S.No.3 of 1967 filed under Section 92 C.P.C. The same was confirmed in the first appeal in A.S.No.165 of 1972 on 02.05.1974 as well as this Court in Second Appeal.

4. Before the learned Judge, the first petitioner was examined as PW1 and one S.A.Vikram Asari was examined as PW2 and marked 58 (fifty eight) documents as Exs.P1 to P58. The respondents examined one S.Duraisamy, President of respondent Trust as RW1, S.Madheswaran, Receiver & Commissioner appointed in O.S.No.3 of 1967 on the file of the Principal Sub Court, Salem as

RW2 and P.Ramasamy as RW3 and marked 9 (nine) documents as Exs.R1 to R9.

5. The learned Judge, considering the materials on record, averments in the affidavit, counter affidavit, oral and documentary evidence, the judgments in O.S.No.3 of 1967 and A.S.No.165 of 1972 and arguments on behalf of the parties, held that the respondent is Religious and Charitable Public Trust and said Muthusamy became a tenant in respect of both the land and building with effect from 09.01.1974 as per Rental agreement marked as Ex.R1 and admission of Muthusamy in O.S.No.173 of 2003 filed by him on the file of the District Munsif Court, Salem, dismissed the application. Against the said order, the petitioners filed C.M.A.No.35 of 2009, on the file of the Principal Subordinate Judge, Salem. The learned Principal Subordinate Judge, Salem by the order dated 22.06.2011, dismissed the said C.M.A.

6. Against the order dated 22.06.2011 made in C.M.A.No.35 of 2009, confirming the order dated 30.07.2009, made in I.A.No.690 of 2004 in O.S.No.487 of 2003, the present civil revision petition is filed by the petitioners.

7. The learned Senior Counsel appearing for the petitioners contended that the petitioners are not party to the suit in O.S.No.3 of 1967 and therefore, the said judgment is not binding on them. The judgment is *in personam* and not *in rem*. The Courts below failed to see that the respondent is not a religious institution or religious charity as contemplated under the Explanation to Sec. 1(3) (f) of the Act. The respondent is intended only for a Sola Vellalar Community of Kitchipalayam. The respondent does not have any public religious worship. The Courts below failed to see that as per Ex.P1, only the vacant site was leased out to the father of the petitioners. The Courts below failed to see that the respondent has not discharged its burden that both the land and building were leased out to Muthusamy.

8. Per contra, the learned counsel appearing for the respondent submitted that in O.S.No.3 of 1967, a scheme decree was framed under Section 92 of C.P.C. The same was confirmed by the First Appellate Court in A.S.No.165 of 1972 as well as this Court in Second Appeal. The learned counsel appearing for the respondent also referred to the scheme decree and submitted that

the judgment passed in scheme decree in O.S.No.3 of 1967 is judgment *in rem* and not a judgment *in personam* . The respondent in every case cannot prove that it is a Religious and Charitable Public Trust. Whenever the suit filed against the tenant by the respondent or every proceeding initiated by the tenant, the respondent cannot be called upon to prove that it is a Religious and Charitable Public Trust. The issue has already been decided in O.S.No.3 of 1967, confirmed by the Subordinate Judge, Salem in A.S.No.165 of 1972 by the judgment dated 02.05.1974 as well as this Court in Second Appeal. The judgment in the scheme decree is judgment *in rem* and it is binding on Muthusamy as well as the petitioners. The respondent by producing and marking Rental Agreement dated 01.01.1984 as Ex.R1, has proved that the said Muthusamy, the father of the petitioners has become tenant in respect of the land and building and he is not entitled to the benefit under Section 9(1) of the Act. The said Act is not applicable to the respondent in view of the fact that the respondent is a Religious and Charitable Public Trust.

9. Heard the learned Senior Counsel appearing for the

petitioners and the learned counsel appearing for the respondent and perused all the materials available on record.

10. From the judgment of the scheme suit in O.S.No.3 of 1967 and judgment in A.S.No.165 of 1972, filed in the Additional typed set of paper, it is clear that the issue whether the respondent trust is a Religious and Charitable Public Trust or not was raised and both the trial Court and Appellate Court have held that the respondent is a Religious and Charitable Public Trust. According to the respondent, the same has been confirmed in this Court in the second appeal. A reading of the said judgment in O.S.No.3 of 1967 makes it clear that the said judgment is judgment *in rem* and not a judgment *in personam*. Further the respondent has contended that the petitioners are tenants not only for the land, but also for the building. To substantiate their case, the respondent has marked Rental Agreement dated 01.01.1984 as Ex.R1. The petitioners are relying on Rental Agreement dated 29.07.1958, which is marked as Ex.P1 to contend that their father Muthusamy was tenant only for the land and he has put up the superstructure. They also produced property document receipts. These documents do not advance their

case as the respondent has produced subsequent lease agreement wherein the said Muthusamy has admitted that he is a tenant in respect of building also. In O.S.No.173 of 2003, filed by Muthusamy, he had admitted that he is tenant in respect of the building also.

11. The contention of the learned counsel appearing for the petitioner that in view of the decree passed in scheme Court in O.S.No.3 of 1967, the respondent cannot be called upon to prove that it is a Religious and Charitable Public Trust in every suit filed against the tenant by the respondent or every proceeding initiated by the tenant that respondent is a Religious and Charitable Public Trust, has considerable force and I hold that the respondent need not prove in each and every proceeding that it is a Religious and Charitable Public Trust.

12. The Courts below have considered all these facts in proper perspective and have given cogent and valid reason for dismissing the I.A.No.690 of 2004 and C.M.A.No.35 of 2009. There is no irregularity or illegality, warranting interference by this Court with the orders of the Courts below.

13. I considered this issue in C.R.P.No.2216 of 2012 and held that the respondent is a Religious and Charitable Public Trust and dismissed the civil revision petition, confirming the order of the learned Judge dismissing the application filed by the tenant to decide the issue whether the respondent is a Religious and Charitable Public Trust or not as a preliminary issue. The reasoning given by me in the said order is applicable to the present case also.

14. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2017

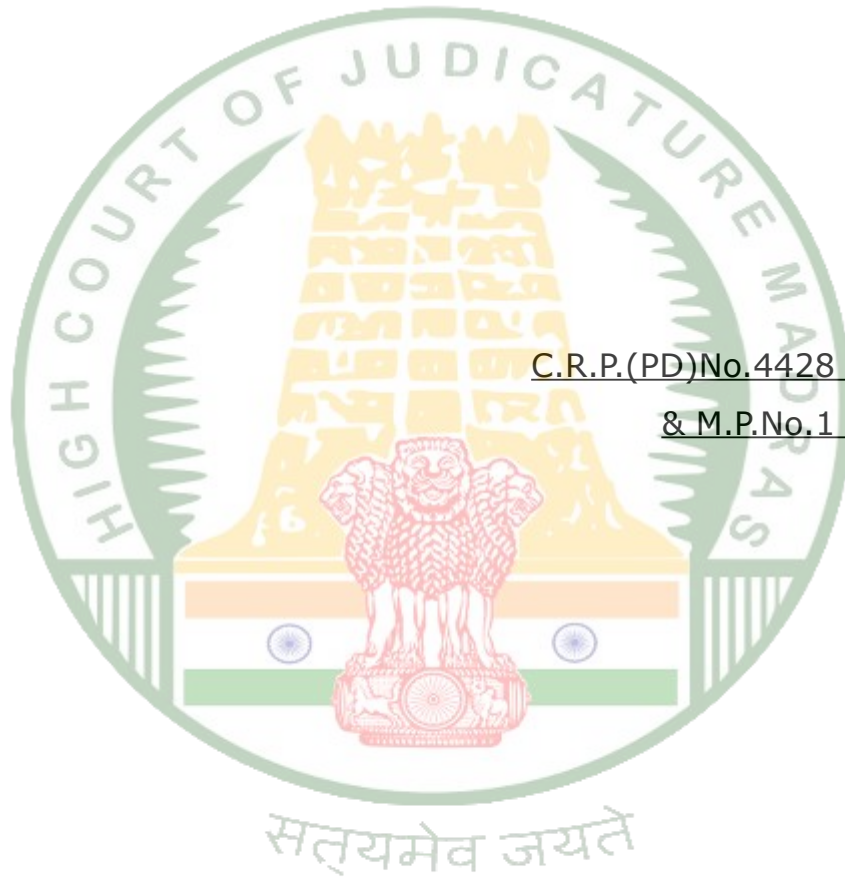
Index : Yes/No
gsa

To

- 1.The Principal District Munsif Court,
Salem.
- 2.Mr. Duraisamy, President
Sola Vellalar Samugam Trust of Kitchipalayam,
Natarajar Bajanai Madam,
Bajanai Madam Street,
Kitchipalayam,
Salem – 15

V.M.VELUMANI, J.

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