

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.1434 of 2007
and
M.P.No.2 of 2007**

A/m Ekambaranather Thirukkoil,
Ekambaranathar Temple,
Kancheepuram.

.. Petitioner

Vs.

Padmasaliar Community by Trust,
Kancheepuram, rep. by its Trustees
Boojja Sect. By
1.V.Govindasamy
2.B.Govindasamy Chettiar
3.P.K.Dayalan
4.Lakshmi ammal
5.V.Paramasivam
6.B.Pappathi
7.C.Sankari
8.V.Karthikeyan
9.U.Sarvamangalammal
10.Gajalakshmi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the Docket Order in Unnumbered I.A.No.
of 2006 in O.S.No.719 of 1990, dated 08.03.2007, on the file of the

Principal District Munsif Court, Kancheepuram.

For Petitioner : Mrs.A.Sumathi

For Respondents : Mr.N.Ramanujam (for R1 to R3)

Mr.A.V.Munusamy

ORDER

Arulmigu Ekambaranathar Thirukovil Temple at Kancheepuram, who is the petitioner in unnumbered I.A. of 2006 in O.S.No.719 of 1990 is the civil revision petitioner before this Court, challenging the docket order passed by the learned Principal District Munsif, Kancheepuram, dated 08.03.2007.

2.The case of the plaintiffs is that the plaintiff has filed a suit in O.S.No.719 of 1990, on the file of the District Munsif Court, Kancheepuram, against Lakshmiammal and others, who are the respondents 4 to 10 in this civil revision petition, directing the defendants to vacate and surrender vacant possession of the suit schedule mentioned property, after removal of the superstructure and directing the defendants to pay a sum of Rs.1,260/- being the arrears of rent and damages for use and occupation of the suit property to the plaintiff.

3.The plaintiffs further states that the suit schedule property is absolutely belongs to the plaintiff Padmasaliar community at Kancheepuram. The plaintiffs are the trustees of the trust. The property is being managed by the plaintiff's trust consisting of two sects viz. Bojja and Pandari as trustees. This trust is called Padmasaliar community Trust, Kancheepuram. The respondents 4 to 10 are the legal heirs of one deceased Vajjiravelu mudaliar and they are the lessees of the suit schedule of property.

4.The petitioners also come forward by saying that the said Vajjiravelu Mudaliar was a lessee of the suit property, inducted into possession of the property 3 years ago by the plaintiff community, on the basis of monthly tenancy and the monthly rent was fixed at Rs.35/- per month. The said tenancy is oral and as per English calendar month and the said Vajjiravelu Mudaliar died and the respondents 4 to 10 were impleaded as legal heirs of the deceased in the suit.

5.The petitioner further states that earlier the suit was filed before the learned District Munsif Court, Kancheepuram in O.S.No.203

of 1973 by Bojja Section on 16.12.1972 and for possession of the suit property on the basis of a registered lease deed dated 19.02.1962 to set aside the lease granted by Pandari Sect to Vajjiravel Mudaliar, on 16.12.1972 and for possession of the suit property, from the defendant' s father. Both the documents were marked as Exhibits A2 and A4 in that suit and thereafter, the suit was dismissed by the trial Court, in the Appellate Court in A.S.No.213 of 1978 on the file of the Sub-Judge, Kancheepuram, the suit was decreed, but in the Second Appeal in S.A.No.1360 of 1982 the suit again dismissed by this Court.

6. Due to the above said dismissal of the suit, the plaintiffs were determined the tenancy ending with the year of the tenancy viz. 31.12.1989 and calling upon the defendants, who are the respondents 4 to 10 to surrender the possession of the property on 01.01.1990 and six months notice has been given by way of abundant caution as the defendants are running Iron fabrication works in the suit property and as per the agreement dated 19.02.1962 the 1st defendant alone issued a reply notice dated 24.02.1989 containing false allegations, which are denied by the plaintiffs and others did not reply to the said notice. Therefore, the defendants in the suit have not vacated and surrender the possession of the suit property to the plaintiff.

7. On receipt of the summon, the defendants in the suit, who are the respondents 4 to 10 herein are filed their written statement denying the entire allegations and stated that the suit itself is not maintainable either in law and facts.

8. The respondents 4 to 10 who are the defendants in the suit are admitted in the plaint in para 4 and 5 that the deceased Vajjiravel Mudaliar and after his death being the legal heirs of the deceased Vajiravel, these defendants are the tenants of the suit property and these defendants have been paid the rents regularly, but the plaintiffs, who are the respondents 1 to 10, who are refused to receive the rent.

9. The purpose and intention of letting was to put up iron and steel workshop and in pursuance thereof, the deceased Vajiravel Mudaliar put up superstructure 30 years ago. When the defendants were put up superstructure with brick wall with zinc sheet roof are entitled to the benefits of Section 9 of City Tenants Protection Act and they are entitled to purchase the property, since the defendants are doing iron and steel fabrication works in the suit property. They are paying property tax for the superstructure. The six months notice was

given on the basis that the lease is for the manufacturing purpose itself shows that the defendants are in possession by way of putting up superstructure for more than 30 years ago and entitled to the benefits under Section 9 of City Tenants Protection Act. Therefore, the defendants have already filed petition under Section 9 of City Tenants Protection Act for dismissal of the suit, since the defendants in the suit are entitled to the benefits of the City Tenants Protection Act and hence the plaintiffs have no right to recover the possession as per the prayer.

10.While pendency of the suit, the defendants were filed the I.A. under Section 9 of the City Tenants Protection Act and the same was dismissed by the trial Court. Therefore, the defendants were filed the civil revision petition before this Court and this Court was pleased to direct the trial Court to decide the facts whether the plaintiff Trust is public trust or not?

11.Considering the petition in I.A.No.1558 of 1997, the learned Principal District Munsif, Kancheepuram, by order dated 14.07.2004 declaring that the petition filed in I.A.No.744 of 1990 by the defendant is not maintainable and not entitled and allow the I.A.No.1558 of 1997.

After disposal of the said I.A. and pendency of the suit, the present petitioner namely Sri Ekambaranathar Thirukovil represented by Executive Officer, Kancheepuram has filed unnumbered I.A. of 2006 for impleading the temple in the above case as 8th defendant.

12.The case of the impleading petitioner is that though the plaintiffs have filed the suit for recovery of the possession in unnumbered I.A.No. Of 2006, the suit property is originally belongs to Sri Ekambaranathar Temple, Kancheepuram and patta is also stands in the name of temple since 1963. Therefore, the 2nd respondent, who is the plaintiff in the suit are unauthorised occupants of the said property and the plaintiffs trust have wrongly receive the rent from the defendants 1 to 7 till 1999.

13.In the said circumstances, the previous Executive Officer has issued notice to the 2nd respondent viz., the plaintiff in the suit on 13.03.1998 and the 2nd respondent has given a reply to the temple on 19.03.1998 by admitting the ownership and accept to pay the rent to the temple and hence, the defendants have paying the rent to the temple from 1999 to till the date of filing of the said petition in unnumbered I.A. of 2006.

14.It is the case of this Civil Revision Petitioner is that Sri Ekambaranathar Temple, Kancheepuram, alone is entitled to the said property and revenue records are prove the ownership of the said temple. Therefore, in these circumstances, the impleadment of Ekambaranathar Temple in the above case is necessary one and hence they filed the petition to implead the said temple as proper and necessary party to the said case.

15.The learned Principal District Munsif Court, Kancheepuram, without numbering the I.A., has rejected the petition on the ground that though the plaintiffs have filed the suit for recovery of the possession from the defendants in the suit, but, these proposed defendants, who are the petitioners herein are prayed the Court that the Ekambaranathar Temple is the owner of the property and patta also stands in the temple name. But, the temple has not produced any original patta and other documents, since the register of extract issued by the Kancheepuram Municipality in the name of the proposed petitioner namely Sri Ekambaranathar Temple is not at all shown any survey number stand in the name of proposed party. Therefore, the learned Judge without numbered the I.A. Had rejected the petition

filed by the petitioner. Challenging the said order, the present Civil Revision Petition has been filed.

16.I heard Mrs.A.Sumathi, learned counsel appearing for the petitioner and Mr.N.Ramanujam, learned counsel appearing for the respondents 1 to 3 and Mr.A.V.Munusamy, learned counsel appearing for the 5th respondent. No representation on behalf of the respondents 4, 8, 9 and 10.

17.Admittedly, the suit has been filed by the plaintiff trust for recovery of possession against the defendants, who are the respondents 4 to 10 in this civil revision petition stating that they are the owners of the property and this Court has already decided in the Second Appeal in S.A.No.1360 of 1982 that the defendants in the suit are tenants occupied the suit property, but this Court has not decided whether these plaintiffs are the owners of the suit schedule of property or not? The plaintiffs in the suit stated in para-3 of the plaint that the suit property is absolutely belongs to the plaintiff Padmasaliar community at Kancheepuram, whereas the present petitioner, who are the proposed 8th defendant in the suit has claimed that the temple viz., Sri Ekambaranathar Temple is the absolute owner of the property,

since the patta issued in the name of Ekambaranathar Temple, Kancheepuram right from 1963 onwards.

18. In fact, when the petitioner Sri Ekambaranathar Temple came to know that the plaintiffs were receiving the rent amount from the defendants, the previous Executive Officer of the temple has issued notice dated 13.03.1998 to the 2nd defendant Govindasamy chettiar, and for that he has given a reply dated 19.03.1998 admitting that the temple is the owner of the suit property and accept to pay the rent to the temple. Accordingly from 1999 onwards these defendants who are the respondents 4 to 10 plaintiffs are paying the rent to the temple till date. Therefore, whether the petitioner Ekambaranathar temple is entitled to the said property or the plaintiff trustee or any other trustees of the temple are entitled to the suit property are all to be decided only in the trial after impleading this petitioner temple as the 8th defendant in the suit.

19. Thus being the case, how the learned District Munsif, Kancheepuram, even without numbering the said petition and issuing notice to the other parties and attempting to know whether the allegations set out by the petitioner temple is true or false, had simply

rejected the application on 08.03.2007, which is totally wrong. The learned Principal District Munsif, Kancheepuram, failed in considering the petition on merits, what is the hurry had passed the present impugned order dated 08.03.2007 by rejecting the petition.

20. Time and again, this Court and the Hon'ble Apex Court directing the trial Courts and the appellate Courts while considering the impleading application under Order 8 Rule 1 of CPC, they must have decided the application with the judicial view and circumstances and legal entitlement of the impleading parties.

21. The learned District Munsif, Kancheepuram, ought to have seen that this is a suit filed by the trust for recovery of possession. The documents filed under Order 14 Rule 1 CPC along with the plaint, these plaintiffs have not to show that the plaintiff is the owner of the property or not?

22. Thus being the case, how the learned Principal District Munsif without even gone through the documents and averment made by the plaintiffs in the suit and without getting the correct patta, he simply said that the petitioner temple is not the owner of the property and the

impleading petitioner have not produced any documents to prove that the property belongs to the temple. When the learned Principal District Munsif has decided the temple not to show any documents to prove that the owner of the property, how the learned Judge has come to the conclusion that the plaintiffs, who has not produced any single piece of document even in the plaint to show that the suit property is belongs to the trust and how the plaintiff has acquire the property and what are all the documents to show that they are the owner of the property, but, except the averments made in para-3 in the plaint that the suit schedule property is absolutely belongs to the trust, there is no other documents to prove the ownership of the property.

23. During the course of arguments, the learned counsel appearing for the respondents/plaintiffs trust has produced a judgment passed by this Court in ***G. Mani v. Jejigan @ Ariappan and others*** reported in **2013 (4) CTC 466** in which this Court held that the plaintiffs have not filed any suit against the impleading petitioner in the said case and they are not claiming any relief against the impleading petitioner. Therefore, there is no necessity for permitting impleading petitioner to file separate suit. When this Court has gone through the above judgment to impleading the petitioner states that they are the

owner of one item of the property. Therefore, they want to implead in the said property and therefore, this Court permitted the petitioner to implead themselves as party in the proceedings.

24.I have also gone through the said judgment and noted that the suit filed for claiming ownership by both the parties namely the plaintiff and the defendants, but the case in hand, the plaintiff said that whether he is the owner of the property or not? There is no piece of document to show that the trustee is the owner of the property.

25.It is the case of the petitioner/Ekambaranathar Temple that they only let out the property to the plaintiff/trust and thereafter, the plaintiff trust has maintained the property and leased out the said property to the defendant in the suit. Therefore, they cancelled the lease and they want to recover the property from the defendant.

26.In fact, when the petitioner temple's previous Executive Officer has issued notice on 13.03.1998 to the plaintiff trust and reply has been given by one of the trustee Mr.Govindasamy chettiar on 19.03.1998, admitting that the petitioner/Ekambaranathar temple is the owner of the property and also accept to pay the rent to the

temple, accordingly, they also paid the rent from 1999 to till filing of the petition, then why the learned Judge has not consider the impleading petition in a proper manner.

27.Apart from this, this impleading petitioner also filed a patta and the register of extract issued by the Kancheepuram Municipality in the name of the proposed petitioner namely Sri Ekambaranathar Temple and all these documents are shows that the property in survey number stands in the name of the proposed petitioner/ Ekambaranathar Temple. When the civil revision petition has taken up for hearing, Mrs.A.Sumathi, the learned counsel appearing for the petitioner has filed the additional documents in which page No.1, the Extract of Village Field Register, which shows that a house was belongs to Chengalvaraya Chetty's son Gopal Chetty's house, Kancheepuram and Sri Ekambaranathar Koil Dharmakartha's name were found in the said documents. In page No.2 a copy of SLR (Survey Land Register) has been produced by the petitioner in which the Ekambaranathar Swamy Koil Dharmakartha name was shown. Page No.3 is the Town Survey Field Register issued by the Special Tahsildar, Kancheepuram, in which the petitioner/Sri Ekambaranathar Swamy Temle was in possession dated 31.12.2013.

28. When this Court has gone through the documents filed in page Nos. 1 to 3 and the other documents will clearly show that the petitioner Ekambaranathar Temple name was shown and proceedings issued by the H.R. and C.E. authorities all show that the petitioner Ekambaranathar Temple is in possession. It is settled law that there is no relief against the proposed parties, there is no necessity to implead them as a party defendant in the suit. But, in the present case in hand, which claim made by the plaintiff trust that the entire property is belongs to Ekambaranathar Samy Temple, but, there was no averment in the plaint, that the suit schedule of property is leased out by the petitioner temple in the name of the plaintiffs.

29. Thus being the case, it is made clear that pursuant to the order passed by this Court in S.A.No.1360 of 1982, the plaintiff trust has made the claim that they are the owners of the property and the defendants in the suit are the tenant under the plaintiff and they want to recover the suit property from the tenant. But, either in the plaint or the document produced along with the plaint have not shown the ownership of the property by the plaintiff. Therefore, the claim made by the plaintiff trust is on the basis of the judgment and decree passed

by this Court in S.A.No.1360 of 1982 only and no other documents to show that they are the owner of the property.

30.In the said circumstances, when the claim made by the petitioner/Ekambaranathar Temple that they are the owner of the temple and produced the document to show in the revenue records that the petitioner temple has shown as the owner of the property, it should be decided in the trial only.

31.This Court has already held in several cases that the Courts below must shown their judicial view when the application filed under Order 1 Rule 10(ii) of CPC should be decided without permitting the parties to go with multiplicity proceedings. But, admittedly, the order passed by the learned Principal District Munsif, without numbering the petition has directly rejected the petition on the ground that there is no prayer against this petitioner/proposed defendant.

32.It is my absolute view, the petitioner Temple is the necessary party in the suit since the petitioner temple claiming the ownership of the suit schedule of property and hence they must permit to implead themselves as party defendant in the suit. Hence, this Court

warranting interference in the order passed by the learned Judge in unnumbered I.A. dated 08.03.2007 and the same is liable to be set aside.

33.In the result:

(a)this civil revision petition is allowed by setting aside the Docket order in Unnumbered I.A. of 2006 in O.S.No.719 of 1990, dated 08.03.2007, on the file of the learned Principal District Munsif, Kancheepuram;

(b)the learned Principal District Munsif, Kancheepuram, is hereby directed to number the impleading petition and issue notice to all the parties and to decide the same within one month from the date of numbering the petition;

(c)after deciding the impleading petition, the trial Court viz., the Principal District Munsif, Kancheepuram, is hereby directed to take up the suit without giving any unnecessary adjournments to either parties and to dispose of the same by giving fair opportunity to all the parties

concerned in the suit within a period of six months. All the parties are hereby directed to give their fullest cooperation for early disposal of the impleading petition as well as the suit. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2017

Speaking Order
Index:Yes

vs

To

The Principal District Munsif,
Kancheepuram.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(PD)No.1434 of 2007
and
M.P.No.2 of 2007**

20.06.2017