

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANIC.R.P.(NPD) No.1266 of 2009

The Executive Officer (Fit Person)
A/M.Thirowbathy Ammal Koil
Sri Prasanna Mariamman Koil
No.2 Road, Mayiladuthurai
Nagapattinam District. .. Petitioner

Vs.

1. Purushothaman
2. Rajan
3. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam High Road,
Chennai.
4. The District Collector,
District Collectorate,
Nagapattinam. .. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil
Revision Petition, to set aside the fair and decretal order of the
Additional District Munsif Court, Mayiladuthurai dated 30.03.2009
made in E.P.No.175/2008 in O.S.No.112/96.

For Petitioner	: Mr.S.Sounthar
For RR1 & 2	: Mr.S.L.Sundarsanam
For RR3 & 4	: M/s.M.Jayashree
	Government Advocate (CS)

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order of the Additional District Munsif Court, Mayiladuthurai dated 30.03.2009 made in E.P.No.175/2008 in O.S.No.112/96.

2. The petitioner is third defendant in O.S.No.112 of 1996 and third respondent in E.P.No.178 of 2008 on the file of the Additional District Munsif Court, Mayiladuthurai. First respondent is the plaintiff, respondents 2 to 4 are the defendants 4, 1 and 2 respectively in O.S.No.112 of 1996. The first respondent along with others filed the suit for recovery of possession and obtained decree on 12.12.2002 stating that suit temple and idol belongs to them. After decree, the petitioner and respondents 2 to 4 did not hand over the temple and idol as per the decree dated 12.12.2002. In the circumstances, the first respondent along with other plaintiffs filed E.P.No.175 of 2008 to execute the decree dated 12.12.2002.

3. The petitioner and respondents 3 and 4 filed counter and

opposed the same on the ground that the temple and idol are under the administration of Hindu Religious and Charitable Endowment Department, and Civil Court has no jurisdiction and civil suit is barred under Section 108 read with Section 63 B Hindu Religious and Charitable Endowment Department, Act. They also contended that the plaintiffs 1 and 4 died and their legal heirs are not impleaded. Therefore, E.P.No.175 of 2008 is not maintainable.

4. The learned Judge by the order dated 30.03.2009, considering the fact that the petitioner and respondents 3 and 4 did not take a plea that the civil Court has no jurisdiction before the trial Court and Execution Court cannot go beyond the decree, allowed the Execution Petition.

5. Against the order dated 30.03.2009 made in E.P.No.175/2008 in O.S.No.112/96, the present Civil Revision Petition has been filed by the petitioner.

6. Heard both sides and perused the materials on record.

7. The learned counsel appearing for the petitioner submitted that the plea of nullity and civil Court has no jurisdiction can be raised, at any point of time, including in E.P. This contention of the learned counsel for the petitioner has no merits. Having failed to plead before the trial Court or having failed to challenge the judgment and decree dated 12.12.2002 of the trial Court, it is not open to the petitioner and respondents 3 and 4 to contend that decree is nullity before the Execution Court. There is nothing on record to show that they filed the application as per the provisions of CPC to get an order that decree is nullity and cannot be executed. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 30.03.2009.

8. In view of the same, the Civil Revision Petition is dismissed as devoid of merits. It is made clear that it is open to the petitioner and respondents 3 and 4 to take appropriate proceedings as per the

provisions of the Hindu Religious and Charitable Endowment Act with regard to the temple and its idol.

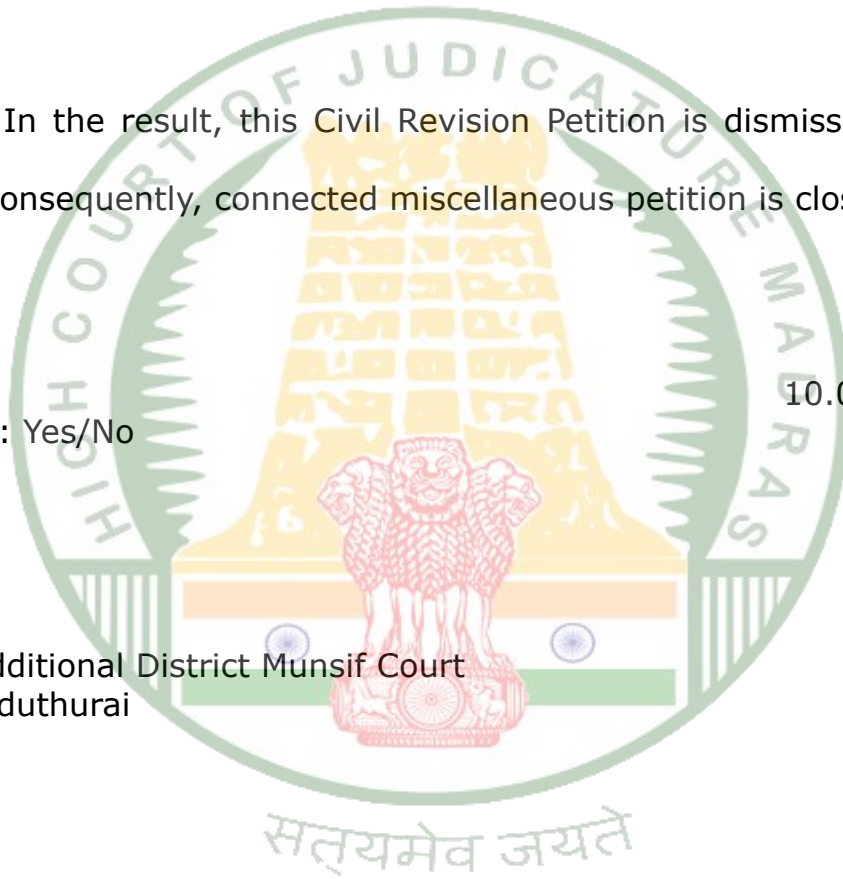
9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.07.2017

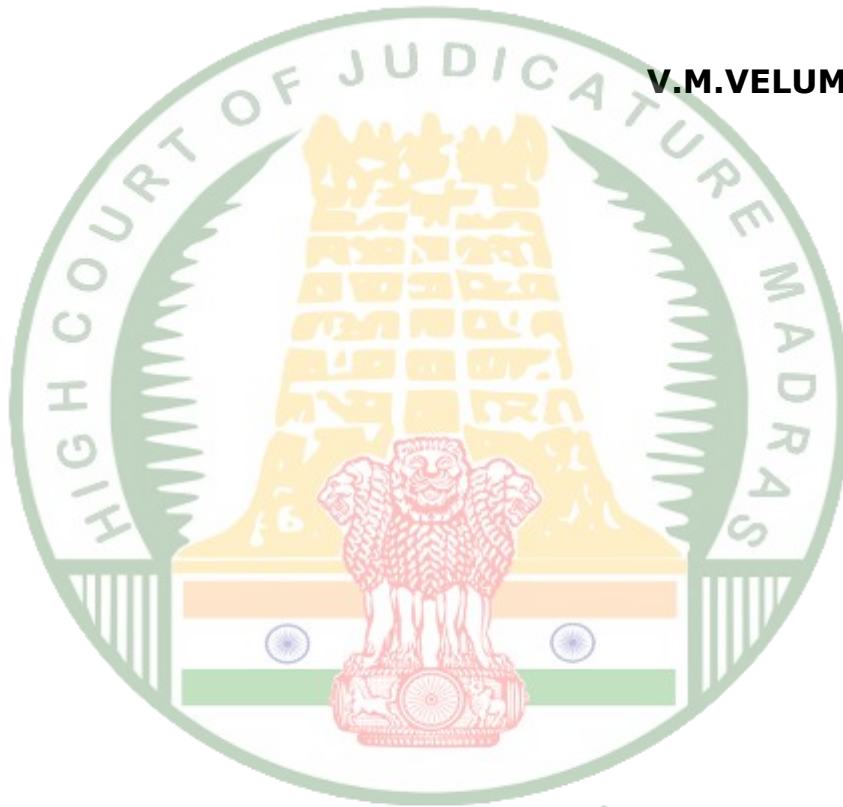
Index : Yes/No
gsa

To

The Additional District Munsif Court
Mayiladuthurai



WEB COPY



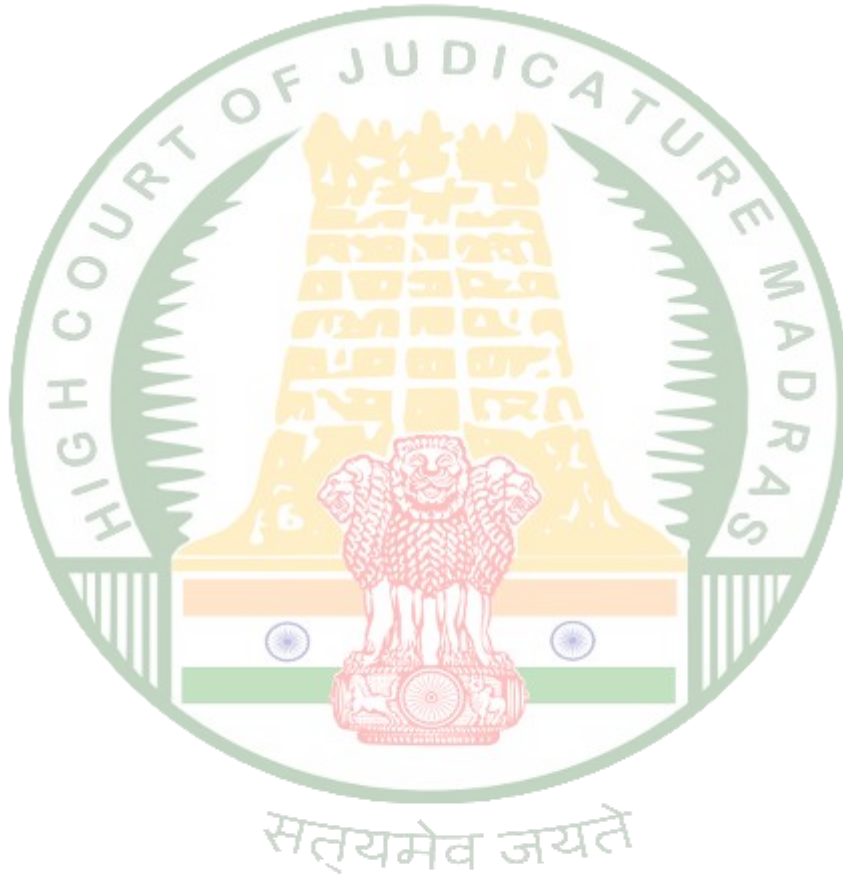
V.M.VELUMANI, J.
gsa

C.R.P.(NPD) No.1266 of 2009

सत्यमेव जयते

WEB COPY

10.07.2017



WEB COPY