

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-04-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD Nos.788 & 789 of 2015
and M.P.Nos.1 & 1 of 2015**

Manickammal ... Petitioner in CRP PD No.788/2015

Somasundaram ... Petitioner in CRP PD No.789/2015

Vs

Arulmigu Karivaradharaj Perumal Temple

Rep.by its Executive Officer,

S.S.Koil Street, Pollachi Town & Taluk,

Coimbatore District. ...

Respondents in both CRPs

Civil Revision Petitions are filed under Article 227 of the Constitution of India against the order and decretal orders dated 16.12.2013 made in I.A.Nos.981 & 983 of 2013 in O.S.Nos.569 & 575/2011 on the file of the Court of the IV Additional District & Sessions Judge, Coimbatore.

For Petitioners

in both CRPs : Mr.T.P.Manoharan

For Respondent

in both CRPs : Mr.K.A.Vinodkumar

COMMON ORDER

The petitioners are the defendants and the respondent is the plaintiff in O.S.Nos.569 & 575 of 2011. Since the issues involved in both

the Civil Revision Petitions are one and the same, this Common order is passed.

2. The respondent is the plaintiff in both the suits filed for declaration and recovery of possession. The petitioners have filed the written statements on 30.09.2013 & 03.01.2012 respectively and are contesting the suit. Both the petitioners filed I.A.Nos.981 & 983 of 2013 to take up the question of issues with regard to court fee and limitation relating to the suit as preliminary issues and reject the plaint. According to the petitioners, they have been issued with ryotwari patta by Settlement Tahsildar. The respondent has not challenged the issue of patta for more than 42 years and no appeal was filed against the grant of patta in favour of the petitioners. The exemption granted under Section 109 of HR &CE Act, 1989 and G.O.Ms.No.363 (Home (Courts-VIA) Department dated 09.04.2010 are not applicable to the facts of the present case. In view of the said fact, the temple is not the owner of the property. Moreover, the property is situated in Pollachi Town and is having higher valuation than the amount mentioned in the plaint.

3. The respondent filed counter in both the applications and denied all the averments made by the petitioners stating that the patta granted in the name of the petitioners were set aside by this Court in

STA Nos.174, 181 & 210 of 1974 and hence the respondent-temple is the owner of the property. G.O.Ms.No.363 (Home (Courts-VIA) Department dated 09.04.2010 and Section 109 HR &CE Act are clearly applicable to the facts of the present case. The question of limitation as well as valuation of the suit can be decided only at the time of trial.

4. The learned Trial Judge, taking into consideration the averments of the respondent that the patta issued in the name of the petitioners were set aside in STA Nos.174, 181 & 210 of 1974 by this Court and whether the respondent has mentioned the correct market value, whether the exemption granted in G.O.Ms.No363 (Home (Courts-VIA) Department dated 09.04.2010 is applicable to the present case and whether the petitioners are illegal occupant or trespassers can be decided only after conclusion of the trial and dismissed the application. Against the said order, the present Civil Revision Petitions have been filed.

5. The learned counsel for the petitioners contended that the patta has been issued in favour of the petitioners's father and in the circumstances, they cannot be termed as illegal occupants or trespassers. In view of the patta issued to the petitioners's father, the respondent temple has lost its title over the suit property and

G.O.Ms.No.363 (Home (Courts-VIA) Department dated 09.04.2010 and Section 109 of HR & CE Act are not applicable to the respondent. The learned Trial Judge has not properly appreciated the G.O.Ms.No.363 (Home (Courts-VIA) Department dated 09.04.2010 and erroneously given a finding that the said Government Order is applicable to the respondent-temple in respect of the suit property.

6. The learned counsel for the respondent submitted that the pattas issued in favour of the petitioners and others were set aside by this Court in STA Nos.174, 181 & 210 of 1974. In view of the said order passed by this court in above STAs, the petitioners are only trespassers and they are in illegal occupation of the properties which belongs to the temple, as per G.O.Ms.No.363(Home (Courts-VIA) Department dated 09.04.201. Similarly, as per Section 109 of HR & CE Act, the provisions of Limitation Act are not applicable to the legal proceedings initiated by the temple. Whether payment of court fee is correct or not is the issue between the plaintiff and the court and the defendant has no say in the matter. The reasoning of the learned Trial Judge is proper and valid and prayed for dismissal of both the Civil Revision Petitions.

7. Heard the learned counsel for the petitioners, respondent and perused the materials available on record.

8. The petitioners have sought for rejection of plaint on two grounds –

(i) The respondent has not properly valued the suit property and has not paid the proper court fee and ;

(ii) consequently, the suit is barred by limitation.

9. The above contentions are raised by the petitioners on the ground that the patta has been issued in the name of the petitioners' father and the respondent is not the owner of the property. On the other hand, the respondent has stated that in view of setting aside of the order of issue of pattas in the name of the father of the petitioner and others in STA Nos.174, 181 & 210 of 1974 by this court, the respondent is the owner of the property and G.O.Ms.No.363 dated 09.04.2010 and Section 109 of HR & CE Act are applicable to the facts of the present case. In deciding the application for rejection of plaint, the averments made in the plaint and documents relied upon by the petitioners can only be considered by the Court in the present case. In para 6 of the plaint, the respondents referred to STA Nos.174, 181 & 210 of 1974 filed by them before this court and a copy of the judgment dated 09.11.1975 passed

by this Court. Whether the patta issued in favour of the petitioners's father is still in force or set aside and whether the property belongs to the respondent temple the applicability of G.O.Ms.No.363 dated 09.04.2010 and Section 109 of HR&CE Act is a mixed question of fact and law which can be decided only at the time of conclusion of trial by appreciating the evidence let in by the parties. The learned Trial Judge has considered all the aspects and passed the orders. I do not find any illegality or irregularity in the order passed by the trial court.

10. In the result, both these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.04.2017

Speaking/Non-speaking order
Index : Yes
rgr

To

The IV Additional District & Sessions Judge,
Coimbatore.

V.M.VELUMANI, J.

rgr

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