

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1133 of 2012

Executive Officer
Alanduraiyar Kothandaramasamy Temple
Ariyalur

.. Petitioner

Vs.

Selvam

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 15.03.2011 made in I.A.No.389 of 2010 in O.S.No.39 of 1999 on the file of the Principal District Munsif, Ariyalur.

For Petitioner : Mr.K.S.Vamsidhar

For Respondent : Mr.R.Baskaran for
M/S.J.Tamilarasi

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 15.03.2011 made in I.A.No.389 of 2010 in O.S.No.39 of 1999 on the file of the Principal District Munsif, Ariyalur.

2. The petitioner is the second defendant and respondent is the plaintiff in O.S.No.39 of 1999. The respondent filed suit for declaration and injunction against the petitioner and one Subramaniyan. The petitioner did not appear and contest the suit. The petitioner was set exparte on 16.04.1999 and exparte decree was passed on 01.12.1999. The petitioner filed the present I.A.No.389 of 2010 to condone the delay of 3454 days in filing the petition to set aside the exparte decree dated 01.12.1999.

3. According to the petitioner, he is the present Executive Officer and he joined duty on 17.02.2009 and having come to know about the suit, while verifying the file, no particulars were available with the temple. Immediately, he contacted their advocate and came to know about the exparte decree dated 01.12.1999 and filed the present I.A. to condone the delay of 3454 days in filing the petition to set aside the exparte decree dated 01.12.1999.

4. The respondent filed counter affidavit and denied the averments made in the affidavit filed in support of the said application and submitted that after service of summons, the petitioner did not enter appearance and contest the suit. In spite of

the decree passed in favour of the respondent, the petitioner was interfering with his possession. He filed execution petition to execute the decree. The petitioner entered appearance and did not file any counter. The respondent is in possession of the suit property for more than 10 years and prayed for dismissal of the application.

5. The learned Judge considering all the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

6. Against the said order of dismissal dated 15.03.2011 made in I.A.No.389 of 2010, the present civil revision petition is filed by the petitioner/second defendant.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Mr.R.Baskaran, the learned counsel representing Ms.J.Tamilarasi, the learned counsel on record for the respondent, reported no instructions.

8. The learned counsel appearing for the petitioner submitted that the petitioner is a temple and idol is considered as a minor. The

Court must protect the interest of the minor and the Court must take pragmatic approach in protecting the interest of the minor. The petitioner must be given an opportunity to put forth the case of the temple on merits and protect the land belonging to the temple. In support of his contention, he relied on the judgment reported in **2004-1-L.W.402 (K.S.Selvaraj and others v. Sree Komaleeswarar Devasthanam represented by its Executive Officer)**. These contentions of the petitioner have considerable force. It is well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

9. In the present case, the petitioner is a temple and according to the petitioner, the suit property is belonging to the temple. As per Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the provision of Limitation Act is not applicable to any suit for possession of immovable property

belonging to any religious institution or for possession of any interest in such property. The petitioner/temple can initiate proceedings for recovery of possession of the temple property without provision of limitation being applicable to the said proceedings.

10. For the above reason, the petitioner must be given an opportunity to put forth the case of the temple on merits. Accordingly, the Civil Revision Petition is allowed and the order of the learned trial Judge dated 15.03.2011 made in I.A.No.389 of 2010 is liable to be set aside. No Costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
dm/kj

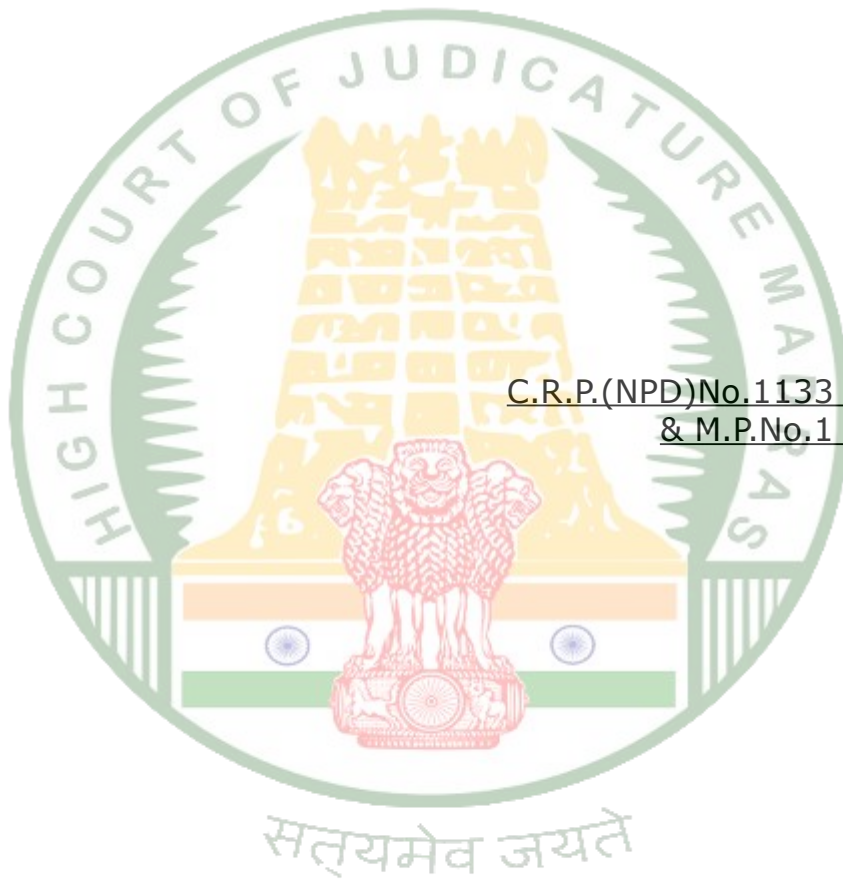
To

The Principal District Munsif,
Ariyalur

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V.M.VELUMANI, J.

dm/kj



C.R.P.(NPD)No.1133 of 2012
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