

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2463 of 2016

and

C.M.P.No.12814 of 2016

M.L.Sampath Kumaran

.. Petitioner

Vs.

1. Sri Sathya Sai Mandali Private Trust
Rep. By its Managing Trustee,
S.Ravindrakumar,
93, Mount Road,
Chennai – 32.

2. Sai Swarna

3. Vijayakamaraj

4. Radhakrishnan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Order and Decretal Order dated 02.06.2016 made in I.A.No.10255 of 2015 in O.S.No.3484 of 2015 on the file of the VII Assistant Judge, City Civil Court, Chennai.

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For Petitioner

: Mr.V.Manohar

For RR1

: Mr.K.Chockalingam

For RR2

: Mr.Cormelius Timothius

ORDER

Civil Revision Petition filed against the Order and Decreetal Order dated 02.06.2016 made in I.A.No.10255 of 2015 in O.S.No.3484 of 2015 on the file of the VII Assistant Judge, City Civil Court, Chennai.

2. The petitioner is the plaintiff and the respondents 2 to 4 are the defendants 1 to 3 in O.S.No.3484 of 2015 on the file of the VII Assistant Judge, City Civil Court, Chennai. The petitioner filed the suit for permanent injunction against second respondent from interfering with the right of the petitioner over the suit property and for permanent injunction against respondents 3 and 4 from interfering with the right of the petitioner over the suit property, except the shops which they were permitted to occupy as tenants. The respondents 2 to 4 filed written statement and are contesting the suit. The first respondent filed an application in I.A.No.10255 of 2015 to implead himself as fourth defendant in the main suit in O.S.No.3484 of 2015.

3. According to the first respondent, one M.J.Loganatha Mudaliar founded the first respondent Trust in the year 1949. He executed an indenture dated 03.02.1949 and bequeathed certain properties belonging to him to the said Trust. The first respondent Trust is in possession and administration of the suit property and they have let out the same to

various third parties. The first respondent is the Managing Trustee, who is administering the Trust and in order to avoid multiplicity of proceedings, first respondent is necessary party.

4. The petitioner filed counter affidavit and opposed the said application and submitted that his father, M.J.Loganatha Mudaliar created the Trust and bequeathed certain properties to the Trust. The suit property has not bequeathed to the Trust, but it was settled on his sister by the settlement deed dated 12.07.1961 and after the death of his sister, the petitioner became the owner of the suit property and is in possession of the suit property. The property adjoining to the suit property belonged to the Trust. The first respondent is not a Managing Trustee. Previous Trustees committed many criminal activities and now the Trust is administered by an Interim Committee appointed by this Court in OSA.Nos.447 and 448 of 2009. The said Committee is in the Management of the Trust. The first respondent is not a necessary and proper party.

5. The learned Trial Judge has allowed the application on the ground that the petitioner and respondents are making rival claim and both are claiming to be in possession of the property and in order to avoid multiplicity of proceedings, ordered impleading of the first respondent.

6. Aggrieved by the order dated 02.06.2016 made in I.A.No.10255 of 2015 in O.S.No.3484 of 2015 , the present Civil Revision Petition is filed.

7. The learned counsel appearing for the petitioner submitted that the learned Trial Judge after extracting averments in the affidavit and counter affidavit allowed the application. The learned Judge has not considered the various objections raised by the petitioner and failed to see that S.Ravindra Kumar is not Managing Trustee of the Trust. The Interim Committee appointed by the Division Bench of this Court in OSA.Nos.447 and 448 of 2009 alone is the management of the Trust. The learned Trial Judge failed to consider in the suit for injunction, it is for the petitioner to prove his possession of the suit property. From the year 1999, the petitioner is in possession and interference by the respondents 2 to 4, he filed the suit. Title of the suit property is not an issue in the suit. The petitioner from the year 1999 is in possession of the suit property. The property tax and water tax are in his name and he is paying all the Taxes to the Government and he is in possession. Considering all the above facts, the learned Trial Judge has granted interim injunction in the suit in I.A.No.8724 of 2015 recognising the possession of the petitioner and the same is still in force.

8. The Learned counsel appearing for the first respondent submitted

that the Founder of the Trust M.J.Loganatha Mudaliar gave the suit property and other properties to the Trust and Trustees are in possession including the suit property. The learned Judge has considered this fact and has rightly allowed the application filed by him to implead him as the fourth defendant in the suit in order to avoid multiplicity of proceedings.

9. Heard learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and perused the materials available on record.

10. The petitioner has filed suit for permanent injunction. According to the petitioner, his father M.J.Loganatha Mudaliar settled the suit property on his sister by settlement deed dated 12.06.1961 and subsequently, after the demise of his sister, the petitioner became the owner of the property. From the year 1999, he is in possession and enjoyment of the property by paying water tax, property tax, etc., His father, M.J.Loganatha Mudaliar was the founder of the Trust and he gave other properties to the Trust which are adjoining to the suit property.

11. The learned counsel for the petitioner referred to Additional Typed set of papers filed by him containing various orders of this Court including Division Bench of this Court dated 17.03.2010 made in OSA.Nos.447 and 448 of 2009 and submitted that application filed by the

first respondent is clear abuse of process of Court.

12. It is pertinent to note that the petitioner has specifically stated that in view of the criminal acts committed by the earlier committee, this Court appointed an interim Committee to administer the Trust consisting of retired Judge of this Court and Senior Advocate of this Court among other members. This specific averment was not disputed by the first respondent. The petitioner also denied that S.Ravindra Kumar is Managing Trustee of the Trust and S.Ravindra Kumar has not stated as to how and when he became the Managing Trustee of the Trust. The first respondent has not furnished any details about the same. In the suit filed by the petitioner for permanent injunction, it is for the petitioner to prove his possession and interference by other respondents with his possession and enjoyment. The title of the property is not an issue in the suit for injunction. The learned Trial Judge has not considered all the above facts and has allowed the application only on the sole ground that both the parties are claiming to be in possession of the property and therefore first respondent is necessary party to the suit. The said reasoning is not a valid one and hence, the learned Trial Judge has committed an irregularity in allowing the application and it is liable to be set aside.

In the result, the order of the learned Trial Judge passed in I.A.No.10255 of 2015 in O.S.No.3484 of 2015 on the file of the VII

Assistant Judge, City Civil Court, Chennai, is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

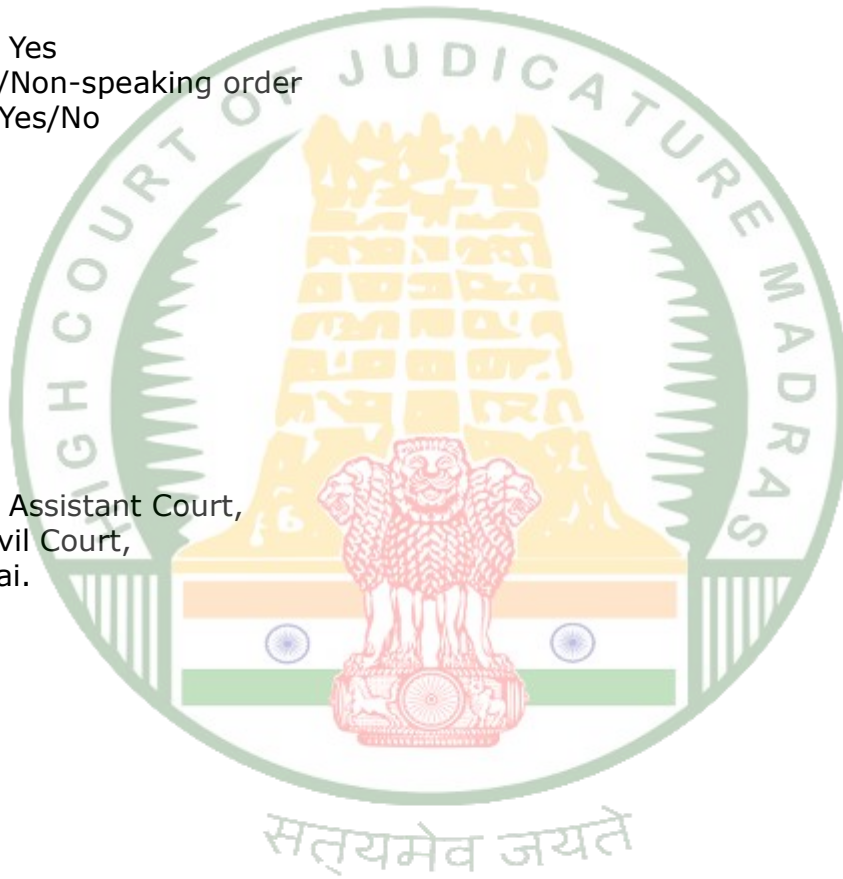
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Index : Yes
Speaking/Non-speaking order
Index : Yes/No

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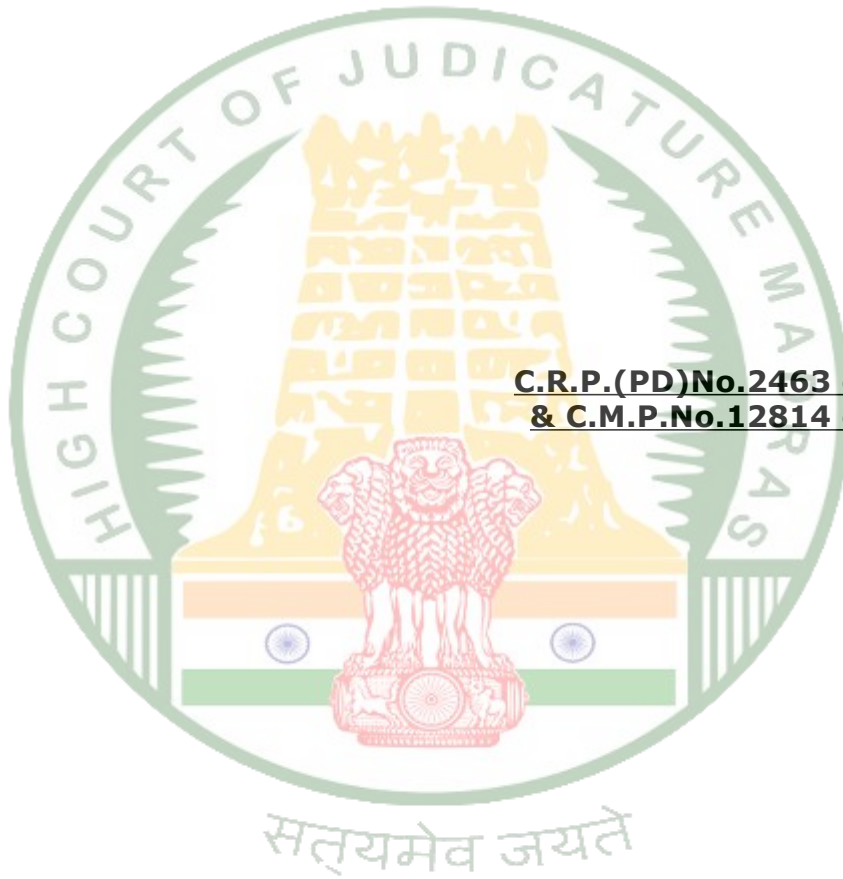
The VII Assistant Court,
City Civil Court,
Chennai.



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V.M.VELUMANI, J.

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