

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2216 of 2012
& M.P.No.1 of 2012

A.Habibullah

...

Petitioner

Vs.

Salem Kitchipalayam Sola Vellalar
Samugam Trust; Rep.by its President
Kitchipalayam,
Salem.

...

Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.09.2011 made in I.A.No.534 of 2011 in I.A.No.98 of 2004 in O.S.No.124 of 2003 on the file of II Additional District Munsif Court, Salem.

For Petitioners : Mr.N.Suresh

For Respondents : Mr.T.M.Hariharan

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ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 19.09.2011 made in I.A.No.534 of 2011 in I.A.No.98 of 2004 in O.S.No.124 of 2003 on the file of II Additional District Munsif Court, Salem.

2. The petitioner is the second defendant and respondent is the plaintiff in the suit in O.S.No.124 of 2003 on the file of II Additional District Munsif, Salem. The respondent filed the above suit originally against one M.N.Abdul Wahab, the first defendant who is the father of the petitioner, for recovery of possession of suit property and damages for use and occupation from 01.10.2003 till the date of handing over the possession. After the death of the first defendant, the petitioner was impleaded as second defendant in the suit. The first defendant filed written statement on 22.04.2003 and was contesting the suit. After his death, the second defendant is contesting the suit. According to the first defendant and petitioner, the respondent leased out only the vacant land in the suit property and superstructure was put up by the first defendant. In view of this contention, the petitioner filed I.A.No.98 of 2004 under Section 9 of the City Tenants Protection Act for a direction to the respondent to sell the vacant land as per the price fixed by the Court.

3. The respondent filed counter and denied the various allegations made by the petitioner and also took a stand that City Tenants Protection Act is not applicable to the respondent since the same is a Public Religious and Charitable Trust. The petitioner filed

I.A.No.534 of 2011 to decide the question of jurisdiction "whether the respondent Trust is a Religious Charity? as a preliminary point." According to the petitioner, as per the provisions of the HR&CE Act, only Commissioner, HR&CE Department has power to decide whether the respondent is a Public Religious and Charitable Trust and the Civil Court has no jurisdiction to decide the issue. The respondent filed counter in the said application and submitted that in O.S.No.3 of 1967, the character of the respondent was decided and declared as a Public Trust of Religious Charity and was confirmed by this Court. The said decision is binding on the petitioner who is a tenant and respondent cannot get declaration for each and every tenant. The petitioner has no *locus standi* to question about the character of the Religious Trust. The Commissioner, HR&CE Department has no power or jurisdiction to declare the administration and Management of the Trust properties.

4. The learned Judge, considering the averments in the affidavit, counter affidavit and the judgments relied on by the learned counsel for the petitioner and the contention of the respondent that already respondent has been declared as Public Trust of Religious Charity which was confirmed by this Court, dismissed the application.

5. Against the order of dismissal dated 19.09.2011 made in I.A.No.534 of 2011 in I.A.No.98 of 2004 in O.S.No.124 of 2003, the petitioner has come out with the present Civil Revision Petition.

6. The contention of the learned counsel for the petitioner is that the character of the respondent Trust has to be decided as a preliminary issue. According to the learned counsel for the petitioner, the respondent is claiming exemption from the provisions of City Tenants Protection Act on the ground that it is a Public Religious and Charitable Trust. Unless this issue is decided first as a preliminary issue, the other issues cannot be decided.

7. The learned counsel for the respondent submitted that already the character of the respondent Trust was decided and declared as a Public Religious and Charitable Trust by the Scheme Court in O.S.No.3 of 1967 declaring the respondent Trust as a Public Religious and Charitable Trust and this decree has been confirmed by this Court. In view of this decree, it is not necessary to once again decide whether the respondent is a Religious Trust or not. As rightly submitted by the learned counsel for the respondent, the respondent cannot be called upon to prove its nature and character of Trust in each and every suit when the issue

is raised by the tenants. The said decision is binding on the petitioner who is a tenant and respondent cannot get a declaration for each and every tenant. In support of his contention, the learned counsel for the respondent relied upon the judgment reported in **1999 MLJ 585 [P.Natesa Achar & anr. v. Parasamaya Kolerinatha Madam, Tirunelveli]** wherein it has been held as follows -

18. Counsel for the appellant further submitted that in a suit filed under [Section 92](#), C.P.C., there cannot be a declaration decree and as the defendants are not parties to that suit, that judgment and decree Exs.P-1 and P-2 are not binding on the defendants. The decision in [Khaja Hassanulla Khan v. Royal Mosque Trust Board](#) (1947) 1 M.L.J. 395 : I.L.R. 1948 Mad. 257.

A decree passed in a suit filed under Section 92 of the Code of Civil Procedure framing a scheme is binding on all and it prevents every person, whether a party to the suit or not, from asserting in a subsequent suit rights which conflict with or attack the scheme.

The scheme decree is a judgment in rem and is binding on all.

8. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

9. The contention of the learned counsel for the petitioner that character of the respondent Trust has to be decided as a preliminary issue is without any merits. The character of the respondent Trust was already decided by the Civil Court in O.S.No.3 of 1967 declaring the Trust as a Public Religious and Charitable Trust and the said decree has been confirmed by this Court. In view of this decree and the judgment relied on by the learned counsel for the respondent, it is not necessary to once again decide whether the respondent Trust is a Public Religious and Charitable Trust. As rightly submitted by the learned counsel for the respondent, the respondent cannot be called upon to prove its nature and character as Trust, in each and every suit when the issues are raised by the different tenants.

10. In the above circumstances, the learned Judge has considered all the above facts and dismissed I.A.No.534 of 2011 in I.A.No.98 of 2004 in O.S.No.124 of 2003 vide order dated

19.09.2011. I do not find any irregularity or illegality in the said order warranting interference by this Court.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. Since the suit is of the year 2003, the learned II Additional District Munsif Court, Salem is directed to dispose of the suit, as expeditiously as possible, not later than three months from the date of receipt of a copy of this order.

27.07.2017

Index : Yes/No
rgr

To

The II Additional District Munsif Court,
Salem.

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V.M.VELUMANI, J.
rgr



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