



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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C.R.P. (MD) No.1808 of 2017
and
C.M.P. (MD) No.9627 of 2017

1.K.Ganesan
2.K.Dhanabalan

... Petitioners/Defendant

Vs.

D.Ramarathina Ammal (Deceased)

M.Ramalakshmi

... Respondent/Plaintiff

Prayer: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the judgment and decree dated 19.04.2017 passed in E.P.No.47 of 2014 in O.S.No.295 of 1987 on the file of the District Munsif Court, Sivaganga.

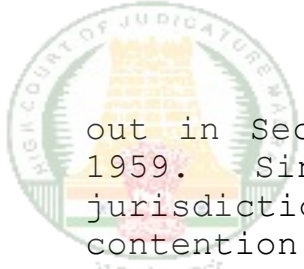
For Petitioner : Mr.G.K.R.Pandiyan
For Respondent : Mr.N.Tamilmani (Caveator)

ORDER

The defendants, who have suffered an order of delivery in the executing Court have filed this civil revision petition.

2.One Ramarathina Ammal filed O.S.No.295 of 1987 on the file of District Munsif Court, Sivagangai seeking the relief of declaration and for recovery of possession. Following an order of remand, the suit was decreed on 15.02.1995. The defendants questioned the same by filing A.S.No.62 of 1995 before the Principal District Judge, Sivagangai. The appeal was dismissed on 20.11.1995. The revision petitioners herein moved this Court by filing S.A.No.1997. On 08.06.2007, the second appeal was dismissed and decree passed by the trial Court was confirmed. To execute the same, E.P.No.47 of 2014 was filed. The revision petitioners herein filed their counter questioning the executability of the decree. The said objections were over ruled and the executing Court passed the impugned order directing delivery of the property in favour of the respondent herein. The original plaintiff passed away and the respondents herein had come on record as her legal representative.

3.Heard Mr.G.K.R.Pandiyan, the learned counsel for the revision petitioner. He would contend that the civil Court had no jurisdiction to entertain the present suit in view of the bar set

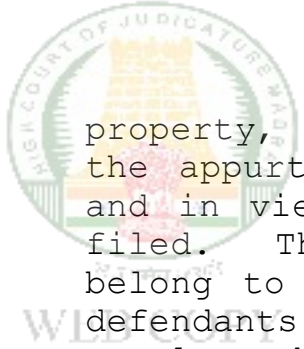


out in Section 63 read with 108 of Tamil Nadu H.R. & C.E. Act, 1959. Since the decree was passed by the Court, which had no jurisdiction, the same could not be executed. In support of his contention that inexecutability of decree is a point that can be canvassed, the learned counsel relied on the decision reported in (2017) 5 Supreme Court Cases 371 - *Brakewel Automotive components (India) (P) Ltd., Vs. P.R.Selvam Alagappan*. To sustain his contentions that the suit in question was not maintainable, the learned counsel would refer to a catena of decisions. They are AIR 1973 MADRAS 281 - *Tiruvengada Varadachariar and others V. Srinivasa Iyengar and others*, 2003(1) CTC 484 - *Inspector/Fir person, H.R. & C.E. V. Amirthammal*, 2010(2) LW 456 - *Assistant Commissioner H.R. and C.E. Admn. Department Vs. K.V.Ramanujam, President of Kulithalai Naidu*, 2011(1) CTC 55 - *P.K.Vasudevan Pillai V. Manikandan Nair and others* and 2015 8 MLJ 738 - *The Principal Secretary, HR & CE Department, Chennai - 34 and others Vs. G.Paramasivam and others*. One can not quarrel with the proposition that if the issue to be adjudicated falls within the purview of Section 63 of Tamil Nadu H.R. & C.E. Act, 1959, the jurisdiction of the civil Court to entertain the subject matter stands ousted in view of Section 108 of the Act. This is the proposition laid down in those decisions.

4. In AIR 1973 MADRAS 281, the plaintiffs claimed to be hereditary trustees along with the defendants 3 and 4. They sought the relief of possession from the defendants 1 and 2. The defence of the first defendant was that the office was not hereditary and that the office had been filled up by the statutory authorities and that only by virtue of such appointment, he is continuing in possession. Since the Division Bench of this Court held that the plaintiffs were bound to establish that they and defendants 3 and 4 were hereditary trustees to get the reliefs sought for. The appeal was dismissed by holding that the suit was barred by Section 108 of the Act.

5. In the present case, the dispute is only between the revision petitioners on one hand and the respondent on the other. The revision petitioners nowhere pleaded that the suit temple is a public temple or that the suit is not maintainable in view of the bar under Section 108 read with Section 63 of the Act.

6. The contention that is now vehemently raised before me was never pleaded or put in issue in the first place. I carefully went through the written statement. The matter was contested as if it was a private dispute between the revision petitioners and the respondent herein. Having lost right up to second appeal, it is too late in the day to contend that the decree is inexecutable. I went through the judgment rendered by this Court in S.A.No.116 of 1997. In para 2, this Court has summarised the rival contentions. The plaintiff claimed that in the suit schedule



property, there is a private temple and that the suit temple and the appurtenant land is the ancestral property of the plaintiff and in view of the acts of the defendants, the suit came to be filed. The defendant contended that the suit property did not belong to the plaintiff. On the other hand, it belongs to the defendants exclusively. They are owning a temple called Dharmar temple and in addition to it, they are in possession of the suit property. Such a dispute can certainly be gone into by the civil Court. If the defendants had raised a defence that the suit temple is a public temple, then, the issue whether a temple is a public temple or a private temple will have to be necessarily decided only by the authority constituted under Tamil Nadu H.R. & C.E. Act, 1959. The revision petitioners herein have not made out a case for ouster of the civil Court jurisdiction. After successfully keeping the plaintiff and her successor in interest at bay for a period of 30 long years, the revision petitioners have now come up with a smart plea that the decree itself cannot be executed.

7. Therefore, none of the case laws relied upon by the revision petitioners have any application or even relevance to the facts of the present case. The plaintiff is entitled to enjoy the fruits of the decree obtained by her after a long and protracted battle. The executing Court rightly rejected the contentions raised by the revision petitioners herein. In any event, the lack of jurisdiction is not apparent on the face of the record. If a factual investigation will have to be undertaken to find out if the Court had jurisdiction or not, it is certainly beyond the powers of the executing Court. The executing Court is bound by the decree that was confirmed by this Court way back in the year 2007. The revision petitioners have absolutely no case. The executing Court assigned correct reasons for ordering delivery. The learned counsel for the respondent informs me that the order impugned in this civil revision petition has already been given effect to. I see no merit in this civil revision petition. It stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Crl side)

/True copy/

Sub Assistant Registrar

To

1. The District Munsif Court, Sivaganga

Copy to:

The Section officer, VR Section,

<https://hcservices.ecourts.gov.in/hcservices/>
Madurai Bench of Madras High Court, Madurai.



+1cc to Mr.N.TAMILMANI,Advocate,SR. 83812

+1cc to Mr.G.K.R.PANDIYAN,Advocate,SR.83872

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