

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) No.2966 of 2007 &
M.P.No.1 of 2007

E.V. Mohan

... Petitioner

Versus

Arulmigu Sengaluneer
Vinayakar and Koluraman
Thirukoil by its
Executive Officer/Manager

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure praying to call for the records pertaining to the order and decreetal order dated 11.12.2006 made in Ejectment No.27 of 2005 on the file of the Learned III Judge, Small Causes Court, Chennai and set aside the same.

For Petitioner

....

Mr.J.Saravanan
for Usha Tholgappian

For Respondent

...

Mr.Sriram
for A.S.Kailasam

ORDER

The defendant in the Ejectment Suit No.27 of 2005 on the file of the learned third Judge, Small Causes Court, Chennai is the Revision Petitioner.

2.The suit was filed by the respondent temple for ejectment to evict the petitioner, who was a tenant under them. The Ejectment Suit No.27 of 2005 was decreed by the trial court on 11.12.2006, in favour of the respondent. Against the Judgment and Decree dated 11.12.2006, passed by the trial court in Ejectment Suit No.27 of 2005, the instant Civil Revision Petition has been filed.

3.According to the petitioner, he is a tenant with the respondent temple, occupying 27 sq.feet of built up space and was paying monthly rent of Rs.400 per month, from January 2006 onwards. According to the petitioner, he has been paying rent to the respondent without committing any default.

4.In the Ejectment Suit, three defences were raised by the petitioner. The first defence was that an Executive Officer, who had filed the suit on behalf of the respondent is not a competent authority to file the suit as per provisions of Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The second defence was that there is a lack of bonafides on the part of the respondent to file the suit. According to the petitioner, though the earlier suit filed by the respondent against the same petitioner was dismissed, the respondent has once again filed the Ejectment Suit No.27 of 2005. The third defence raised by the petitioner in the Ejectment

Suit was that he had paid the rent fixed by the respondent without committing any default. According to him, the termination of tenancy is improper and illegal.

5.The learned counsel for the petitioner has relied upon the Division Bench Judgment of this Court reported in **2003 (1) L.W. 386 in the case of the Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy vs. T.M.Muthuswamy Padayaci etc., and others** and referred to the relevant portion in Paragraph No.21 of the said Judgment, which is reads under:

“ 21. In this case, the Executive Officer, in his chief-examination as P.W.1 has stated that for the purpose of filing the suit, he sought permission from the Commissioner and got the order under Ex.A.12. On a perusal of Ex.A.12 dated 24.06.1970, it is seen that instructions were issued to the Executive Officer and the Board of Trustees to obtain legal opinion to enforce the charges mentioned in the settlement deed dated 1.11.1897 executed by one Thiru Venkatachala Gounder and his wife. A copy of these instructions was issued to the Executive Officer as well as to the Chairman, Board of Trustees. The above instructions did not authorise the Executive Officer to file a suit. As a matter of fact, the

instructions were addressed to both the Executive Officer as well as to the Chairman, Board of Trustees in order to obtain legal opinion in reference to the enforcement of the settlement deed. Thereafter, the Inspector, H.R. & C.E. Department held an enquiry on 01.10.1971 on the petition by T.P.Ardhanari Padayachi (the first plaintiff in the Community's suit). Ex.B.107 is the report of the Inspector dated 24.01.1972 wherein he has stated that he found on his enquiry, that from the date of the gift/settlement deed dated 1.11.1897, no such Nandavanam and its performance was conducted. It was further noted that in reference to this property, there was already an enquiry by the Commissioner on 26.5.1970 and an order dated 24.6.1970 had been passed directing the concerned to take legal opinion. From the above, it is clear that the Executive Officer is not the authority competent to initiate legal proceedings and that he had not been assigned with the power of filing a suit. It is only the Board of Trustees in existence at that time which was competent to initiate the legal proceedings, the Trustees are not made parties to the suit and therefore, their finding insofar as the Executive Officer's suit is concerned, that it is filed without authority has to be upheld."

6.He also drew the attention of this Court to Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which reads as follows:

“45.Appointment and duties of Executive Officers.”-(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an Executive Officer for any religious institution other than a math or a specific endowment attached to a math.

Explanation.-In this section “math” shall not include a temple under the control of a math.

(2) The Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner:

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred to in sub-section (1) shall be assigned to the Executive Officer.

(3) The Commissioner may define the powers and duties which may be exercised and discharged, respectively, by the Executive Officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the Executive Officer.”

7. Admittedly, in the instant case, the Board of Trustees of the temple have not filed the suit, nor the Commissioner under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 has authorized the Executive Officer of the temple to file the suit. As held by the Division Bench of this

Court cited supra an Executive Officer cannot file the suit on behalf of the temple without proper authorization from the Commissioner. The learned Counsel for the respondent also concedes that no proper authorization was given by the Commissioner to the Executive Officer for filing the suit.

8. Even though, the learned Counsel for the respondent conceded that the Executive Officer of the temple was not the Competent Authority to file suit, he contended that the other grounds namely lack of banafides and non-payment of rent will entitle the respondent to evict the petitioner. The Trial Court has erred in entertaining the suit even though, the Executive Officer was not competent to file the suit and as he did not have proper authorization from the Commissioner, Hindu Religious and Charitable Endowments. As held by the Division Bench judgment of this Court reported in **2003 (1) L.W. 386** referred to supra, a suit filed by the Executive Officer without authorization from the Commissioner is not maintainable.

9. Having perused the materials available on record, this Court is of the considered view that the suit has been filed by the respondent through its Executive Officer who does not have authority to file the suit. The Trial Court failed to take note of the fact that without proper authorization from the Commissioner, the Executive Officer cannot file the suit. On this ground alone,

the instant Civil Revision Petition will have to be necessarily allowed. Insofar as, the other defences raised by the petitioner in the written statement filed in the Ejectment Suit No.27 of 2005, are concerned, the trial Court as and when, any fresh suit is filed by the respondent against the petitioner, the said suit will have to be decided by the Trial Court on merits and in accordance with law.

10. Accordingly, the Civil Revision Petition shall stand allowed, on the ground of maintainability of the suit, as the suit filed by the Executive Officer, on behalf of the respondent temple is not a Competent Authority, as he does not have an authorization from the Commissioner, HR & CE to file the suit. Insofar as, the other grounds raised by the respondent for eviction of the petitioner, are concerned, the same shall be decided on merits and in accordance with law as and when a fresh suit against the petitioner is filed by a Competent Authority acting on behalf of the respondent temple. No cost. Consequently, connected miscellaneous petition is closed.

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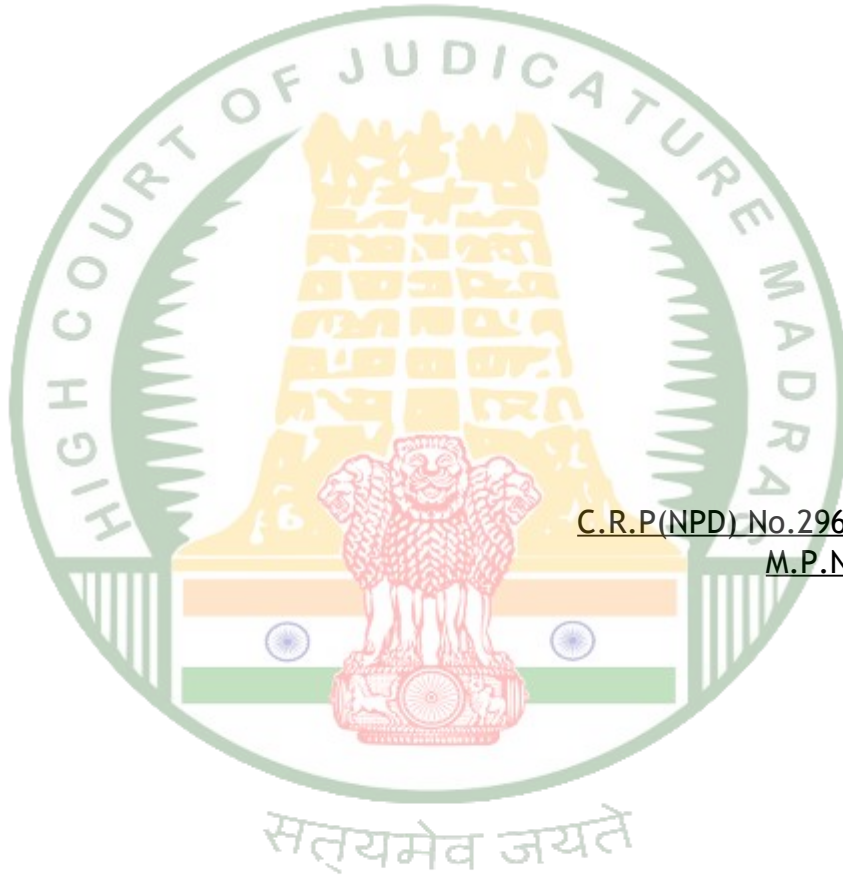
Index : Yes / No

Speaking/Non-Speaking order

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ABDUL QUDDHOSE. J,

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