

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.680 of 2013
& M.P.No.1 of 2013

A.M.Sridevi Karumariamman Thirukoil
Thiruverkadu, represented by its
Joint Commissioner
Thiruverkadu, Chennai-600 077.

.. Petitioner

Vs.

1.C.T.Venkatasami Naidu (deceased)
2.C.V.Netaji
3.C.V.Balaji

(RR2 and 3 brought on record
as legal heirs of the deceased sole
respondent vide Order of Court
dated 21.12.2017 made in C.M.P.No.
19474 to 197476 of 2015 in
CRP.NPD.No.680 of 2015)

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C.,
against the fair and decretal order dated 15.12.2012 made in
O.S.No.302 of 2012 on the file of the Additional District Munsif
Court, Poonamallee.

For Petitioner	: Mr.Ashok Menon
For R1	: Died
For R2 and R3	: Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 15.12.2012 made in O.S.No.302 of 2012 on the file of the Additional District Munsif Court, Poonamallee.

2. The petitioner is defendant and first respondent is plaintiff in O.S.No.302 of 2012 on the file of the Additional District Munsif Court, Poonamallee. The deceased first respondent filed said suit for a direction to the petitioner to restore the possession of the suit property to him. According to the deceased first respondent, he was permitted to sell the spiritual books in second praharam of the temple. The petitioner tried to dispossess the same without issuing any notice to the deceased first respondent. He has filed O.S.No.372 of 2002 on the file of the District Munsif court, Poonamallee and obtained an order of injunction in I.A.No.1444 of 2002. The said suit was dismissed for default on 02.03.2012 and the deceased first respondent filed an application to restore the suit on 22.03.2002. While the said application was pending, the petitioner along with his henchman illegally, without following any procedure threw out the table with all the materials on 30.03.2002 and also assaulted the worker of the deceased first respondent. The petitioners have taken

all the goods of the deceased first respondent. The application in I.A.No.372 of 2002 for restoration was dismissed and the deceased first respondent is taking steps to restore the suit. As per Section 6 of the Specific Relief Act, the deceased first respondent is entitled to restore the possession.

3. The petitioner filed written statement and denied all the averments made by the deceased first respondent. According to the petitioner/temple, the deceased first respondent was given permission by the proceedings dated 11.10.2001 bearing No.00.MO 71224/200 by the Special Commissioner, HR and CE Department, to sell the spiritual divine books on behalf of Swami Natesanar Niketan, subject to certain terms and conditions. The petitioner was granted permission till 30.06.2012 and the period was also expired. The permission granted to the deceased first respondent was withdrawn after 30.06.2002. The deceased first respondent has not paid any amount after 2002. The application in I.A.No.367 of 2012 to restore O.S.No.372 of 2002 was dismissed on 14.06.2012. The deceased first respondent was prevented from entering the temple and selling books. The deceased first respondent removed all his books and all other movables on 06.04.2012 and has acknowledged the same.

4. Before the learned Judge, the deceased first respondent examined himself as P.W.1 and marked four documents Exs.P1 to P4. On the side of the petitioner, one Baskaran was examined as R.W.1 and a letter dated 06.04.2012 was marked as Ex.R1.

5. The learned Judge considering the pleadings and oral and documentary evidence, decreed the suit holding that in view of the permission granted to the deceased first respondent, he is a tenant and without issuing notice, he cannot be evicted and as per Section 6 of the Specific Relief Act, the suit filed by the deceased first respondent is maintainable. The learned Judge has also held that while interim injunction was in force in O.S.No.372 of 2002, the petitioner removed the deceased first respondent.

6. Against the said judgment and decree dated 15.12.2012 made in O.S.No.302 of 2012, the present Civil Revision Petition is filed by the petitioner/defendant.

7. Pending Civil Revision Petition, the first respondent died and the respondents 2 and 3, who are his legal heirs, were brought on record. Though notice was served on the respondents 2 and 3 and

their names have been printed in the cause list, there is no representation on behalf of them either in person or through counsel.

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

9. The deceased first respondent filed suit for repossession under Section 6 of the Specific Relief Act. The learned counsel for the petitioner contended that the said Section is not applicable as no immovable property was handed over to the deceased first respondent and he was not dispossessed from any immovable property. The deceased first respondent was permitted to sell the spiritual books on the table and he kept the spiritual books and other items on the table in the second praharam of the temple and sold the same. The learned Judge erred in holding that the deceased first respondent is a tenant in view of the permission granted to the deceased first respondent to sell the books. The said permission is only a license to sell the books and it is not a lease. The permission granted to the deceased first respondent expired on 30.06.2002 and the same was not extended subsequently.

10. It is not correct to state that no notice was issued to the deceased first respondent before removing his articles and table. The deceased first respondent filed O.S.No.372 of 2002 on the file of the District Munsif Court, Poonamallee and obtained interim injunction and continued to sell the books in view of the interim injunction. The said suit was dismissed for default on 02.03.2012 and I.A.No.367 of 2012 filed by the deceased first respondent to restore O.S.No.372 of 2002 was also dismissed on 14.06.2012. The contentions of the learned counsel for the petitioner with regard to the above aspect have considerable force. The deceased first respondent was not put in possession of any immovable property and he was not dispossessed from any immovable property.

11. As per Section 6 of the Specific Relief Act, a person, who is dispossessed from immovable property only can claim repossession of the said immovable property. In the present case, the deceased first respondent has put up a table in the second praharam of the temple and was permitted to sell the books and other items on the table. The deceased first respondent was not granted any permission to put up temporary or permanent structures as per the permission granted by the Special

Commissioner, HR and CE Department, vide proceedings dated 11.10.2001.

12. In view of the above facts, the learned Judge failed to consider Section 6 of the Specific Relief Act in proper perspective and also failed to take into account the dismissal of O.S.No.372 of 2002 and I.A.No.367 of 2012 filed by the deceased first respondent to restore the suit.

13. In the result, the Civil Revision Petition is allowed and the judgment and decree dated 15.12.2012 made in O.S.No.302 of 2012 is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No
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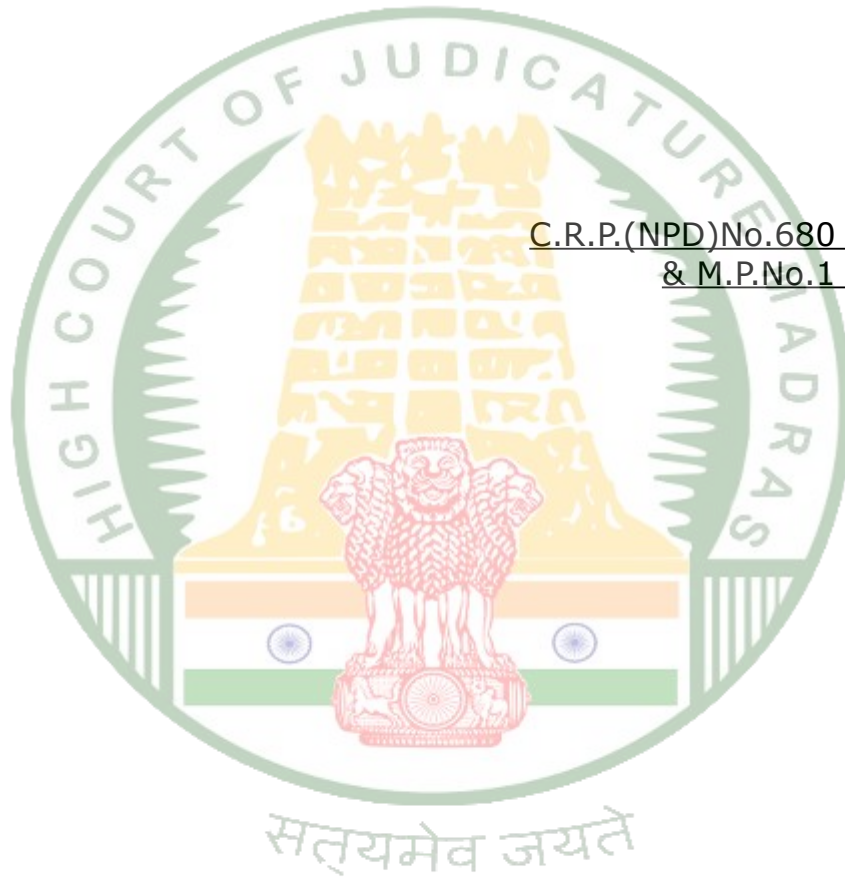
05.01.2018

To

The Additional District Munsif, Poonamallee.

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V.M.VELUMANI, J.



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