

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.25486 of 2018

A.Saravanan

...Petitioner

Vs.

The Assistant Commissioner,
Hindu Religious and Charitable
Endowment,
Chennai - 34.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondent to remove the lock of petitioner house to allow petitioner family to continue the residence in the said property situated at 75/16 market lane 8 cross street, Kaladipet, Thiruvottiyur, Chennai.

For Petitioner : Mr.S.Mahaveersshivaji

For Respondents : Mr.M.Maharaja
Special Government Pleader

O R D E R

This writ petition is filed for a Mandamus directing the respondent to remove the lock of the petitioner's house and allow the petitioner family to continue in the residence in the property situated at 75/16 market lane 8 cross street, Kaladipet, Thiruvottiyur, Chennai.

2. The case of the petitioner is as follows:

The petitioner's father namely, A.T.Arumugam has inherited the property, which is the subject matter of this writ petition and executed a Will in favour of the petitioner during his life time and consequently, the petitioner was residing in the said property with his family all along by having absolute right and title over the said property. When that being the position, the respondent came to the premises of the petitioner on 07.09.2018 and forcibly evicted the petitioner and his family and locked the premises.

3. Learned counsel for the petitioner vehemently contended that the property does not belong to HR & CE Department and on the other hand, it is the absolute property of the petitioner, for which, the petitioner is having valid documents in his possession. Therefore, he contended that the respondents are not justified in locking the premises.

4. On the other hand, Mr.M.Maharaja, learned Special Government Pleader, after inviting this Court's attention to the proceedings issued under Sections 78 and 79 of the HR & CE Act dated 21.09.2016 and the subsequent notice issued to the petitioner's father on 07.08.2018, submitted that the petitioner was an encroacher and therefore, he is not entitled to seek for any relief from this Court, more particularly, when the proceedings issued under sections 78 and 79 dated 21.07.2016 has not been challenged by the petitioner's father or the petitioner so far.

5. Learned Special Government Pleader further contended that even though the Temple has given an option for the petitioner's father to pay the amount towards damages for use and occupation, they have not utilised the opportunity and paid the amount and consequently, the respondent took possession of the property.

6. Perusal of the proceedings dated 21.07.2016 issued by the Joint Commissioner of HR & CE, Chennai, against the petitioner's father and one B.Saraswathi Ammal would show that they were directed to quit the premises and hand over the same within 15 days from the date of the said order. It is further seen that by way of subsequent proceedings dated 07.09.2018, the petitioner's father was asked to pay a sum of Rs.2,58,840/- towards the damages for use and occupation. It is seen the neither the order passed on 21.07.2016 under sections 78 and 79 was put to challenge nor the amount claimed in the notice dated 07.09.2018 was paid by the petitioner's father.

7. When such being the factual position, I do not think that this Court can issue any writ as sought for in this writ petition, more particularly, when it is claimed by the petitioner that the subject matter property is belonging to him absolutely by way of inheritance, based on certain documents to support such claim. Therefore, it is for the petitioner to work out his remedy before the competent Civil Court by filing appropriate civil suit and seek for the relief including any interim relief as stated in the writ petition. Without doing so, the petitioner is not justified in seeking the present relief. Learned counsel for the petitioner also contended that the right to reside is fundamental right and therefore, the respondents are not entitled to evict the petitioner. Needless to say that

such right cannot sought to be raised and sustained in other man's property, especially, when the eviction order passed as early as on 21.07.2016 has become final and not been challenged by the petitioner.

8. Accordingly, the Writ Petition is disposed of by granting liberty to the petitioner work out his remedy before the competent Civil Court. No costs.

vsi

Sd/-
Assistant Registrar

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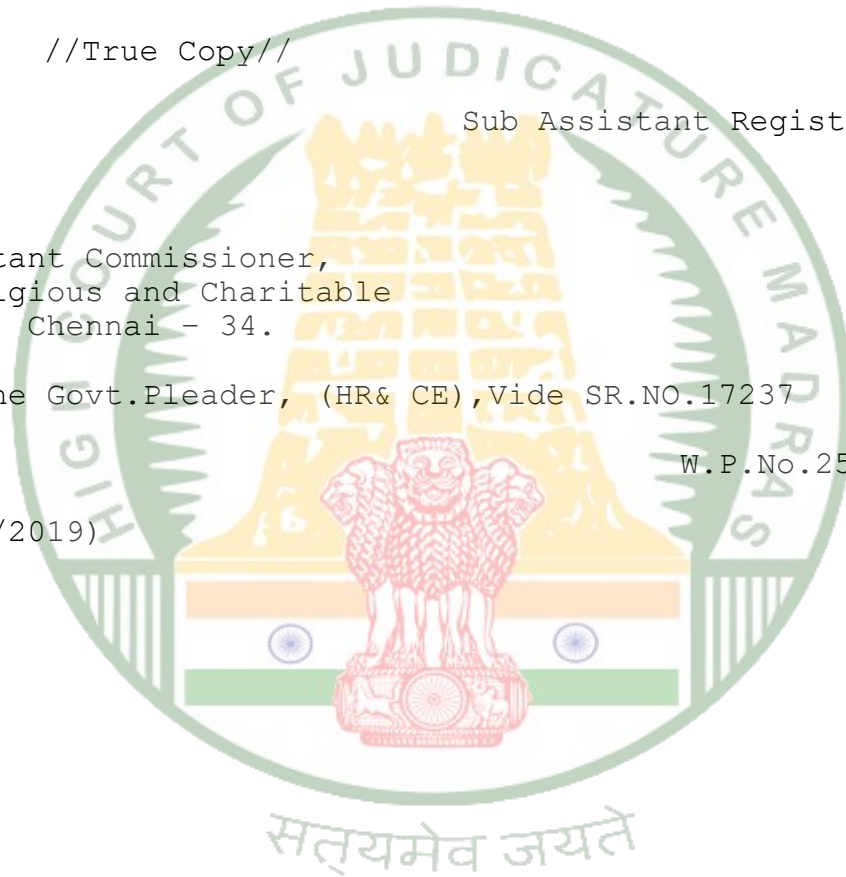
Sub Assistant Registrar

To
The Assistant Commissioner,
Hindu Religious and Charitable
Endowment, Chennai - 34.

+1cc to The Govt.Pleader, (HR& CE),Vide SR.NO.17237

W.P.No.25486 of 2018

Kak(18/03/2019)



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