

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(PD)No.4220 of 2018

and

C.M.P.No.23176 of 2018

1.D.Radhakrishnan

2.Vijayalakshmi

... Petitioners

Vs

1.The Executive Officer,
Arulmigu Adikesava Perumal Thirukoil,
Korattur, Chennai-80.

2.The Assistant Commissioner,
Corporation of Chennai,
Zone-VII, M.T.H.Road,
Ambattur, Chennai 600 053.

3.The Assistant Engineer,
TNEB, Thirumangalam Division,
TNHB Building, Anna Nagar West,
Chennai-600 040.

...Respondents

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 02.11.2018, made in I.A.No. 155 of 2015 in O.S.No.30 of 2015, on the file of the District Munsif Court, Ambattur and consequentially allow the petition to reject the plaint.

For Petitioners	: Mr.M.L.Ramesh
For R-1	: No appearance
For R-2	: Mr.Karthikaa Ashok
For R-3	: Mr.V.Viswanathan

ORDER

The above Civil Revision petition is filed challenging the order passed in I.A.No.155 of 2015 in O.S.No.30 of 2015 by the learned District Munsif Court, Ambattur dismissing the application filed by the revision petitioners/defendants 1 and 2 to reject the plaint in O.S.No.30 of 2015.

2.The facts necessary to dispose of the civil revision petition is follows:

The first respondent Temple had originally filed a suit in O.S.No.620 of 1994, on the file of the learned District Munsif, Poonamallee, against the revision petitioners herein for the very same relief of Permanent Injunction with reference to the schedule property in the said suit. A compromise decree came to be passed and in the Memorandum of Compromise filed in the suit which had been taken part of the decree, it had been clearly stated that the property which had been described as L.K.J.I.H.G.F.M.N.O.P.Q is allotted to the revision petitioners herein to be enjoyed by them absolutely without any let or hindrance from the first respondent Temple or other parties and the portion marked in E.F.M.R was set apart as passage for access to the property allotted to the revision petitioners herein.

3.Thereafter, the first respondent Temple has come forward with the suit which is subject matter of this revision in the year 1995,

for the very same relief and in respect of the very same property that had been allotted to the revision petitioners under the earlier compromise decree. The plaint does not make any reference to the earlier round of litigation between the parties and passing of compromise decree.

4. After receiving the notice in the above suit, the revision petitioners/defendants 1 & 2 had come forward with the petition which is subject matter of the revision seeking to reject the plaint on the ground that the petitioner is abusing the process of court as well as on the ground of lack of cause of action. The defendants had filed an objection denying the compromise that has been arrived in O.S.No.620 of 1994.

5. The learned District Munsif, by his order dated 02.11.2018, in I.A.No.155 of 2015 in O.S.No.30 of 2015, dismissed the said application, on the ground that the existence of cause of action has to be gone into at the time of trial, and challenging the said order the revision petitioners before this Court.

6. On perusal of the papers, it is clear that a compromise decree has been passed as early as on 18.07.1996, and a compromise memo has been entered into between the parties on 09.06.1996. The property that has been allotted to the defendants 1 & 2 herein has been clearly marked in the plan and the same has been annexed along with the compromise decree. The first

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respondent Temple has deliberately suppressed this fact and when the petition for rejecting the plaint is filed they have come forward with the case that the compromise has not been entered into by them.

7.The defendants in the earlier suit in O.S.No.620 of 1994, has not challenged it at the earlier point of time. In the light of the above, filing of the present suit in O.S.No.30 of 2015, is a clear case of abuse and this Court does not hesitate to reject the said plaint. Hence, the order passed by the learned District Munsif is set aside and the plaint in O.S.No.30 of 2015 has been rejected.

8.In the result, the Civil Revision Petition stands allowed and the order passed by the learned District Munsif is set aside and the plaint in O.S.No.30 of 2015 stands rejected. No costs. Consequently, connected miscellaneous petition is also closed.

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Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order
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To: The District Munsif Court, Ambattur.

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