



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2019

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP (PD) (MD) Nos.2422 & 2423 of 2017

and

C.M.P. (MD) Nos.11497 & 11498 of 2017

Muthukaruppan @ Muthukumar

... Petitioner in both C.R.Ps.,

vs.

Idol of the Arulmigu Kalyana Pasupatheeswaraswamy,
Arulmigu Kalyana Pasupatheeswaraswamy Devasthanam,
Karur,
represented by its Executive Officer,
Karur.

... Respondent in both C.R.Ps.,

COMMON PRAYER:- Civil Revision Petitions filed the under Article 227 of the Constitution of India, to set aside the order passed by the Principal District Judge, Karur in I.A.Nos.103 & 104 of 2017 in O.S.Nos.45 & 46 of 2016 dated 21.09.2017.

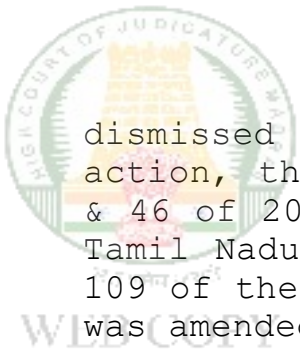
For Petitioner
in both C.R.Ps., : Mr.E.K.Kumaresan

For Respondent
in both C.R.Ps., : Mr.G.Sridharan

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the order passed by the Principal District Judge, Karur in I.A.Nos.103 & 104 of 2017 in O.S.Nos.45 & 46 of 2016 dated 21.09.2017.

2.I.A.Nos.103 & 104 of 2017 were filed by the petitioner, who is the defendant in the suit in O.S.Nos.45 & 46 of 2016, in which, he has contended that the suit was filed by the plaintiff/the respondent herein on the basis of cause of action that arose on 03.06.1989 and on the same cause of action, the plaintiff had already filed a suit in O.S.No.324 of 1989 and the same was



dismissed for non payment of Court fee. On the same cause of action, the respondent/plaintiff has filed the suit in O.S.Nos.45 & 46 of 2016 relying upon the amendment under Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowment Act. Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowment Act was amended in the year 2003.

3.It is contended by the petitioner that the petitioner and his predecessors in title have enjoyed the suit property from time immemorial for more than 150 years and they have perfected their title even before 30.09.1951. Hence, the contention of the petitioner is that the respondent cannot rely on amended Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowment Act and the patta for the property was granted to the father of the petitioner and as against the grant of patta, the respondent filed appeals before the Inam Abolition Tribunal and the Tribunal dismissed the same, against which, the revision applications filed by the respondent and the same was dismissed and hence, the present suit i.e., O.S.No.45 of 2016 is barred by law of limitation.

4.The respondent in his counter statement contended that amended Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowment Act is applicable to the pending suit and further contended that the earlier suit was not dismissed on merits. Hence, the purpose, for which, Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowment Act was amended is to safeguard the properties of the religious institutions and the limitation Act is not applicable to the religious institutions and therefore, there is no necessity to decide the issue as a preliminary issue.

5.Based on the rival claims made by both the parties, the trial Court dismissed the same and given a finding that this Court has held in the case of **R.Mohanasundaram and others Vs. Arulmigu Kolavizhi Amman Temple, Chennai** reported in **2012-2-L.W.86** that the amended Section 109 of the said Act will apply to pending suit also. So even if the suit filed in 1989 is pending now, the amended provision of Section 109 will apply to it. Since there is no period of limitation available, the trial Court found that the plaintiff could inspect the suit for recovery of possession and no way the suit is not barred by any law of limitation. Hence, the said petition filed by the petitioner was dismissed. Aggrieved against the said order, the petitioner herein has preferred the present Civil Revision Petitions.

6.It is observed that the only issue in the said suit is that whether the suit is barred by limitation and whether the amendment under Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowment Act is available in the suit filed by the plaintiff.



The issue is only with regard to whether it has to be tried as preliminary issue or not.

7. From the findings and also the amendment under Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, it is seen that the suit is filed in the year 2016 and the issues were framed and now the case stands at the stage of trial and hence, the necessity of discussing the applicability of the amendment and the relief sought by the plaintiff, the trial Court can proceed with the trial and this issue can be a main issue and the same can be dealt along with other issues between the parties by way of placing their documents and evidence before the trial Court. In view of the above, the learned District Judge, Karur is directed to dispose of the suit in O.S.Nos.45 & 46 of 2016 at the earliest and after disposal, report the same before this Court.

8. These Civil Revision Petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

The Principal District Judge,
Karur.

+1 CC to M/s.G.SRIDHARAN, Advocate (SR-52163[F] dated 07/03/2019)

+2 CC to M/s.K.SURESH, Advocate (SR-52651,52650[F] dated 08/03/2019)

MM

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