



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2019

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

C.R.P (MD) (NPD) No.1478 of 2013

Bommi Rajammal

... Petitioner/Petitioner/
Appellant

Vs.

1.Gowri Vinayagar Kovil,
Sivagangai Town,
Sivagangai District,
represented by Executive Officer,
Arulmighu Vettudayar Kaliyamman
Thirukovil, Sivagangai Taluk,
Sivagangai District.

2.The State of Tamil Nadu
represented by the District Collector,
Sivagangai District,
Maruthupandiyar Nagar,
Sivagangai, Sivagangai District.

3.The Tahsildar,
Sivagangai Taluk Office,
Sivagangai District.

4.The Executive Officer,
Arulmighu Vettudayar Kaliyamman
Thirukovil, Sivagangai Taluk,
Sivagangai District.

... Respondents

(R1 description amended vide order dated 19.01.2015 in M.P.(MD)No.1 of 2014)

Prayer:Civil Revision Petition filed under Section 115 of Cr.P.C., against the fair and decreetal order dated 16.07.2013 made in I.A.No.380 of 2009 in unnumbered appeal No. of 2013 on the file of the Subordinate Court, Sivagangai.

For Petitioner : Ms.K.R.Shiva Shankari

For R1 : No appearance

For R2 and R3 : Mr.V.R.Shanmuganathan

Special Government Pleader

For R4 : Mr.S.Madhavan

**ORDER**

This Civil Revision Petition is filed against the order of the learned Subordinate Judge, Sivagangai in I.A.No.380 of 2009 in unnumbered appeal No. of 2013.

WEB COPY

2.The revision petitioner, as plaintiff, filed a suit in O.S.No.128 of 2000 on the file of the District Munsif Court, Sivagangai, for declaration of title and for other consequential reliefs, namely, permanent and mandatory injunctions. The said suit was partly decreed, by granting the relief of injunction not to evict the petitioner, otherwise than due process of law. It is admitted that the trial Court has decided the title in favour of the temple. Aggrieved by the same, the revision petitioner has filed an appeal with a delay of 299 days.

3.In the affidavit filed in support of that petition, the petitioner has explained the delay by stating that there was some delay in getting the certified copies for preferring the appeal and collecting the papers from the Counsel, who was appearing for the plaintiff before the trial Court. The lower Court dismissed the said petition by holding that the plaintiff / revision petitioner has not explained the delay by producing sufficient documents or witness to accept the plea of petitioner to condone the delay. The additional reason was also given by the lower Court that the petitioner has not substituted the present Trustee of the temple, even though it is brought to the notice of the petitioner about the death of the erstwhile trustee of the temple. Aggrieved by the same, the plaintiff has preferred the above revision petition.

4.The learned Counsel for the revision petitioner submitted that the delay has been properly explained by the petitioner. He further stated that there is no abatement, as the respondent temple has now been represented by the present Executive Officer. It is also stated that a petition has been filed before this Court to amend the cause title by showing the temple as one represented by the Executive Officer of Arulmighu Vettudayar Kaliasman Thirukovil, Sivagangai District, who is the person acting as a Fit Person for the temple.

5.The learned Counsel for the fourth respondent contested the revision petition by referring to the merits of the case. He also submitted that no reason or explanation given in the petition, that was filed by the petitioner before the lower Court. He also reiterated that the cause title has not been amended in the appeal, so as to substitute the present Trustee / Executive Officer of the temple, who is competent to represent the temple.

6.It is not in dispute that the temple has engaged an Advocate both before the lower Court as well as before this Court. It is now admitted that the temple is properly represented by a Fit Person and the cause title in the revision petition has been



amended to substitute the Trustee, who died after the disposal of the suit. In these circumstances, this Court is unable to accept the plea of the respondents that there is abatement and that the appeal itself does not survive without impleading the rightful person or Trustee of the temple.

WEB COPY

7.No doubt, the delay is inordinate. However, the suit was in respect of vast extent of land and buildings. The revision petitioner can be denied the opportunity, if there is abandonment of his right after the disposal of the suit. However, the inordinate delay cannot be condoned as a matter of routine, as serious prejudice is caused to the respondent temple. Hence, the civil revision petition is allowed on condition that the petitioner / plaintiff pay a sum of Rs.25,000/- to the respondent temple within a period of three weeks from the date of receipt of a copy of this order. The order passed in I.A.No.380 of 2009 in unnumbered appeal No. of 2013, dated 16.07.2013, passed by the Subordinate Judge, Sivagangai, is set aside. Upon showing the proof of payment, as directed by this Court, the learned Subordinate Judge, Sivagangai, shall number the appeal.

Sd/-

Assistant Registrar (P & A)

// True Copy //

Sub Assistant Registrar (CS)

cmr

To

- 1.The Subordinate Court, Sivagangai.
- 2.The District Collector,
Sivagangai District,
Maruthupandiyar Nagar,
Sivagangai, Sivagangai District.
- 3.The Tahsildar,
Sivagangai Taluk Office,
Sivagangai District.

+1CC TO MR.S.SRINIVASA RAGHAVAN, Advocate Sr. No.63071
+1CC TO MR.S.MADHAVAN, Advocate Sr. No. 63127

C.R.P (MD) (NPD) No.1478 of 2013
26.04.2019

SCR (CO)

TR (09.05.2019) 3P 6C