

HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **03.02.2020**

PRONOUNCED ON : **01.06.2020**

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

C.R.P(NPD)Nos.3655 of 2010 and 5012 of 2011

and

M.P.Nos.1 of 2010 and 1 of 2011

C.R.P.No.3655 of 2010:

1.Krishnaveni Ammal

2.Thilaga

... Petitioners/Petitioners 1 & 4/Appellants 1 & 4/defendants 3 & 6

vs.

1.S.Chandrasekaran

2.S.Jayalakshmi

Geetharaman (died)

3.V.Shyamala

4.B.Premkumari

5.S.Nirmala

6.S.Hemalatha

7.S.Komathy

8.S.Kalavathy

9.S.Vijayakumar

10.Arulmighu Nagareeswarar Devasthanam,

Kancheepuram, rep. by its Fit Person/

Executive Officer, Arulmighu

Ekambaranathar Koil Devasthanam,

Kancheepuram.

... Respondents 1 to 10/Respondents 1, 2, 4 to 11/

Respondents 1, 2, 4 to 11/Plaintiffs 1, 2, 4 to 11

11.Ramu
12.Arul
13.T.Nagu

.... Respondents 11 to 13/Petitioners 2, 3 & 5/
Appellants 2, 3 & 5/Defendants 4, 5 & 7

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decreetal order passed in C.M.P.No.71 of 2008 in un-numbered A.S..... of 2008, dated 14.12.2009 on the file of the Subordinate Court, Kancheepuram against the judgment and decree passed in O.S.No.364 of 1985 dated 02.11.2006 on the file of the Additional District Munsif Court, Kancheepuram.

For Petitioners : Mr.R.Singaravelan,
Senior Counsel
For R-10 : Mrs.A.Sumathy

C.R.P.No.5012 of 2010:

1.Krishnaveni
2.Ramu
3.Thilaga
4.T.Nagu

... Petitioners/Petitioners 3, 4, 6 & 7/defendants 3, 4, 6 & 7

vs.

1.S.Chandrasekaran
2.S.Jayalakshmi
3.V.Shyamala
4.B.Premkumari
5.S.Nirmala
6.S.Hemalatha

7.S.Komathy
8.S.Kalavathy
9.S.Vijayakumar

... Respondents 1 to 9/Decree Holders 2, 3,5 to 11

10.Arulmighu Nagareeswarar Devasthanam,
Kancheepuram, rep. by its Fit Person/
Executive Officer, Arulmighu
Ekambaranathar Koil Devasthanam,
Kancheepuram.

... 10th respondent/1st respondent/1st defendant

11.Arul

.... 11th respondent/5th respondent/5th defendant

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and dcreetal order passed in E.P.No.37/2008 in O.S.No.364/1985 dated 28.09.2011 on the file of the Principal District Munsif Court, Kancheepuram.

(In both CRPs)

For Petitioners : Mr.R.Singaravelan,
Senior Counsel

For R-10 : Mrs.A.Sumathy

COMMON ORDER

C.R.P(NPD)No.3655 of 2010:

The defendants 3 & 6 in the suit in O.S.No.364 of 1985 on the file of the Additional District Munsif Court, Kancheepuram, are the revision petitioners herein. The original plaintiffs in the suit are V.Sreenivasa Mudaliar and

Chandrasekaran. Pending suit, Sreenivasa Mudaliar died and his LR's were brought on record viz., the respondents herein.

2. The original plaintiff along with the respondents herein filed O.S.No.364 of 1985 on the file of the Additional District Munsif Court of Kanchipuram, to declare that the alleged lease deed executed by the first defendant temple by its Fit Person in favour of the second defendant is null and void and for recovery of possession. Pending suit, the second defendant Thanikachalam died. His LR's were brought on record as defendants 3 to 7.

3. On the side of the plaintiffs, P.W.1 was examined and Ex.A1 to A15 were marked and on the side of the defendants D.W.1 and D.W.2 were examined and Exs.B1 to B19 were marked and Advocate Commissioner's report with plan were marked as Ex.C1 and Ex.C2.

4. On consideration of both oral and documentary evidence, the trial Court has come to the conclusion that the plaintiffs are entitled for the relief as prayed for and accordingly, decreed the suit. The defendants viz., D3 to D7 Krishnaveni and four others have preferred appeal before the Sub-Court, Kancheperum. As there was a delay of 240 days in filing the appeal, they have

filed application under Order 41 Rule 3(A) r/w 151 C.P.C, to condone the said delay in C.M.P.No.71 of 2008 on the ground that one of the appellants had met with an accident and sustained severe injuries on her left leg and hip portion. After major operation and surgery, only after three years, she could able to contact the Advocate and hence, there was a delay of 240 days. It was contested by the plaintiffs by filing counter.

5. The learned Subordinate Judge taking note of the fact that there was a delay of 240 days and out of five petitioners only four petitioners have filed the petition on their behalf and on behalf of other petitioners. Though it is alleged that one of the appellants met with an accident, no medical records were produced and accordingly, dismissed C.M.P.No.71 of 2008 in unnumbered A.S, by an order dated 14.12.2009.

6. Aggrieved against the said order, the defendants 3 and 6 in the suit have filed the present CRP. Though the defendants 4 and 7 have also preferred the appeal, however, after dismissal of the above said C.M.P., the co-appellants have not preferred the CRP, assumes significance.

7. After decree in O.S.No.364 of 1985 on 02.11.2006, the successful

plaintiffs have preferred the execution petition in E.P.No.37 of 2008. Since the first appeal was filed with delay and in view of the pendency of the condone delay petition in the first appellate Court, the said execution petition was kept in abeyance and on disposal of the condone delay petition, the Executing Court has ordered for delivery. Aggrieved against the order of delivery, the defendants 3, 4, 6 and 7 have filed C.R.P.No.5012 of 2011.

8. It remains to be stated that the defendants 4 and 7 have not challenged the rejection of the condone delay petition by the Sub-Judge, Kanchipuram against the decree in O.S.No.364 of 1985. However, they have challenged the order passed in the execution proceedings, also assumes significance. Ramu and Nagu herein are not revision petitioners in C.R.P.No.3655 of 2010.

9. At this juncture, it is pertinent to note that as against these two persons Ramu and Nagu, the order passed by the Sub-Judge, Kanchipuram, in refusing to condone the delay in preferring the appeal, has become final. Consequently, the decree passed in O.S.No.364 of 1985 also attained finality and hence, they cannot now challenge the execution proceedings passed against them by way of C.R.P.No.5012 of 2011 since the execution proceedings has been allowed only on the ground that the appeal was dismissed at the SR Stage.

10. Heard Mr.R.Singaravelan, learned Senior counsel for the revision petitioner and Mrs.A.Sumathy, learned counsel for the tenth respondent/temple.

11. The learned Senior Counsel for the petitioners submitted the narration of facts leading to the filing of the suit in O.S.No.459 of 1975, O.S.No.470 of 2001, O.S.No.364 of 1985 and O.S.No.366 of 1985.

12. The learned counsel for the temple would state that the Fit Person has been removed from the administration of the temple, who had created a havoc in the administration of the temple lands and the Executive Officer/10th respondent took charge of the temple and based upon the report of the tenth respondent, the Joint Commissioner, HR & CE vide proceedings in Na.Ka.No.10088/2012 dated 20.09.2018 had initiated proceedings under Section 78 of the HR & CE Act and treated the revision petitioner herein Thilaga and others as encroachers and passed an order of eviction.

13. The learned Counsel for the temple has further stated that as against the said order of eviction passed by the Joint Commissioner, HR & CE in the

above said application, both the revision petitioner Thilagam and others have also preferred the revision petition under Section 21 of the Tamil Nadu HR & CE Act, as amended by the Tamil Nadu Act 22 of 1995, whereby both the revisions are dismissed and the lands are ought to be handed over to the temple.

14. After hearing the rival submissions and also perusing the records and also taking note of the submissions of the learned Senior Counsel R.Singaravelan regarding the chequered history of the case, it is seen that the lands measuring an extent of 73 cents situate in Survey Nos.284 & 285, Ward No.3, Kancheepuram Town, Kancheepuram Taluk & District, belonged to Arulmighu Nagareeswarar Thirukoil, Karukkinil Amarnthaval Koil Street, Kancheepuram-631 501. The said lands were originally leased out to one Mr.Anandha Mudaliar by the then Trustees of the said Temple in the year 1928 for a period of 17 years, the residential and non residential premises on a monthly rent on permanent basis. The said Anandha Mudaliar has built a pucca flour mill after spending considerable amount and was utilizing the adjacent vacant land for the purpose of boiling and drying the paddy. The said mill along with leasehold right was transferred in favour of one Mr.Kannappa Mudaliar in and by a registered sale deed dated 01.02.1945. The then Trustee one Mr.Ethiraj Chettiyar, recognized the said transaction and executed a fresh

lease deed dated 17.03.1945 for a period of 12 years with a monthly rent of Rs.7/-.

15. Thereafter, the said Mr.Kannappa Mudaliar sold his half share in the mill and business in favour of one Mr.Sreenivasa Mudaliar in and by a registered sale deed dated 17.04.1947. The said Sreenivasa Mudaliyar was in occupation and possession and enjoyment of the said property and was regularly paying the monthly rents.

16. The plaintiffs in the suit are the legal representatives of the deceased Sreenivasa Mudaliar.

17. In the first round of litigation in O.S.No.459 of 1975, the Trustee of the temple filed the suit on the file of the Munsif Court Court, Kancheepuram for eviction against the said Sreenivasa Mudaliar. The said suit came to be dismissed. However, in the said suit Sreenivasa Mudaliar filed I.A.No.1467 of 1975 praying for purchase of the said property under City Tenants Protection Act. The said I.A was allowed and an Advocate Commissioner was appointed and a sum of Rs.21,000/- was fixed as sale price payable in three installments.

18. On revision filed before the Honourable High Court of Madras in

C.R.P.No.828 of 1990, sale price was fixed at Rs.35,000/-. On payment of the said sum, an Execution Petition was also filed. Since there was discrepancy in Survey Number, an amendment petition was filed in I.A.No.545 of 1985 and the same was allowed by the District Munsif, Kancheepuram.

19. Revision filed by the temple against the said order in CRP.No.392 of 1994 was also dismissed by the Honourable High Court, Madras on 10.07.1995. Thereafter, amendment was carried out in E.P., regarding survey number and the same was pending. During the pendency of the above said Execution Petition, T.N.Act 2/1996 came into force and therefore, all the proceedings stand abated due to legal effect of T.N.Act 2/1996 and the above said E.P was dismissed. Against the dismissal of the said E.P, the said Sreenivasa Mudaliar preferred CRP.No.1056 of 1996 and the same was also dismissed by the High Court, Madras. Appeal preferred against the said order in S.L.P.No.45/2001 was also dismissed by the Honourable Supreme Court.

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20. In the meanwhile, the said Sreenivasa Mudaliar died on 18.12.2000. Thereafter, the temple filed a suit for eviction against the legal heirs of the said Sreenivasa Mudaliar in O.S.No.470 of 2001 on the file of the District Munsif, Kancheepuram. The said suit was decreed on 06.08.2014 ordering eviction.

21. Against the decreeing of the suit, the defendants therein preferred Appeal Suit in A.S.No.27/2017 and the same is pending before the Sub-Court, Kancheepuram.

22. In the second round of litigation, the revision petitioner herein Thilagam and two others have encroached a portion of the property. However, the temple treated Selvaraj and Thilagam as their tenants. Against the said recognition, suit has been filed against them in O.S.No.364 of 1985 and 366 of 1985 and the same culminated in favour of the plaintiffs therein. Execution Petitions are also pending with regard to the execution of the said decree.

23. In third round of litigation, the temple has filed a suit against the legal heirs of the said Sreenivasa Mudaliar in O.S.No.470 of 2001 on the file of the District Munsif Court at Kancheepuram for recovery of possession and the said suit culminated in filing of the Appeal Suit in A.S.No.29 of 2017 before the Sub-Court, Kancheepuram.

24. It is pertinent to note from the submissions of the learned Senior

Counsel Mr.R.Singaravelan, that the revision petitioner Thilagam was a tenant for more than 50 years in the schedule of property and the ground of the schedule of property was originally belongs to the temple. The Executive Officer has let out the schedule of property to the revision petitioner's father Thanigachalam and he has been in possession and enjoyment of the same till his demise.

25. Subsequently, the revision petitioner Thilagam has continued her possession and enjoyment of the suit property without any hindrance for the past 30 years by paying taxes to the Kancheepuram Municipality and till date and has no arrears of taxes towards any competent Authorities. Further, she has sent lot of letters to the Assistant Commissioner, HR & CE and the Executive Officer of the Temple, for recognising her as a Tenant. However, the temple authorities have treated her as an encroacher and also taken necessary proceedings as contemplated under Section 78 of the HR & CE Act and the revision preferred by her before the Commissioner in R.P.No.178/2012 D2 was also dismissed on 26.09.2019, as submitted by the learned Special Government Pleader for HR & CE, also assumes significance.

26. It remains to be stated that before filing of appeal suit, the plaintiffs

filed execution proceedings in E.P.No.37/2018. At that stage, as the revision petitioner Thilagam carried out unauthorised construction to an extent of 437 ½ sq. ft., during the pendency of the eviction proceedings, the Executive Officer has lodged a complaint against her on the file of Vishnu Kanchi Police station. However, she carried on with construction. The photographs are seems to have been marked before the departmental enquiry under proceeding under Section 78 and 24 of the HR & CE Act and the Commissioner, HR & CE also rendered a finding that she has not produced any document to show that her possession is lawful and she is the tenant of the temple. As no legal right subsisting in favour of her in the manner known to law, she was treated as encroacher under Section 78 of the Act, assumes significance.

27. On the point of delay in preferring A.S., (Subject matter of C.R.P.No.3655 of 2010), it is observed that though in respect of delay of 240 days, medical ground is alleged, no medical records or receipt to substantiate the said plea, have been filed before the Sub-Court, Kancheepuram. Despite there were five petitioners, only one of the petitioners filed an affidavit. It is not known, as to how the other four petitioners are actively participating in prosecuting the appeal. In the absence of any plausible much less any explanation in support of the alleged medical ground, the lower appellate Court

has rightly rejected the application and hence, this Court finds no infirmity to interfere with the said order. Accordingly, the order passed in C.M.P.No.71 of 2008 in un-numbered A.S..... of 2008, dated 14.12.2009 on the file of the Subordinate Court, Kancheepuram, is hereby confirmed and the C.R.P, is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

C.R.P.No.5012 of 2011:

28. As observed earlier, the judgment debtors viz., Ramu and Nagu, the petitioners herein have not preferred any appeal against the judgment and decree in O.S.No.364 of 1985. As such, the dismissal order passed by the trial is also binding upon them in the absence of any revision being preferred by them. Accordingly, this CRP is rejected in respect of the second petitioner Ramu and fourth petitioner Nagu.

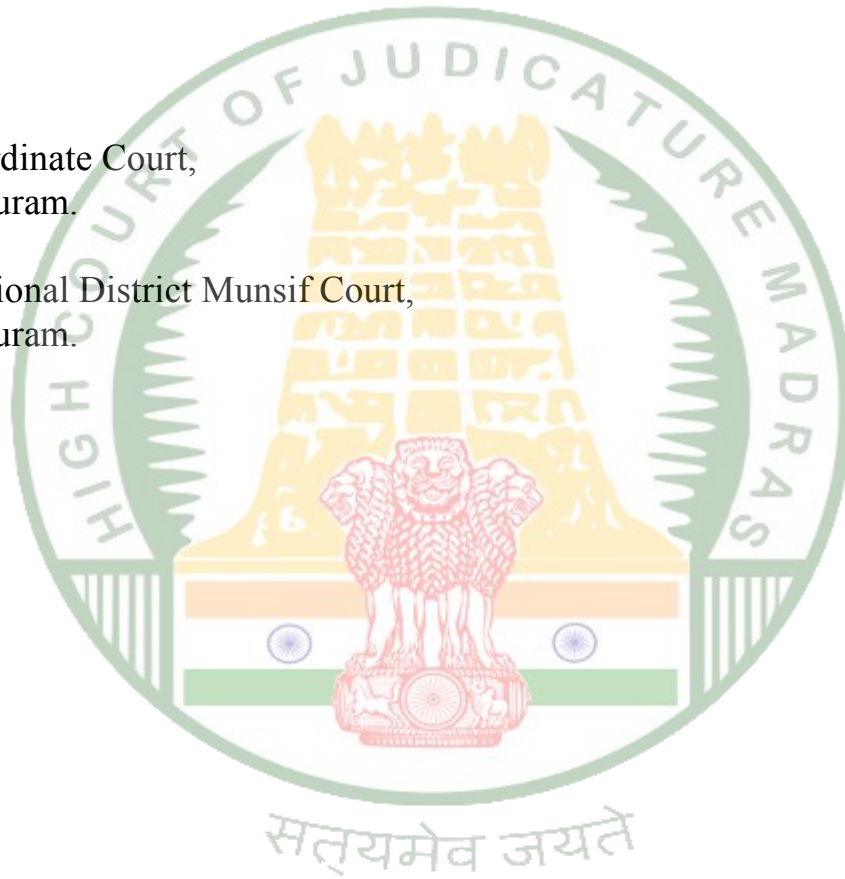
29. In view of the finding in the preceding paragraphs of the order passed in C.R.P(NPD)No.3655 of 2010, C.R.P(NPD)No.5012 of 2011 also stands dismissed in respect of the other two petitioners also. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

01.06.2020

Index :Yes/No
Internet :Yes/No
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To

- 1.The Subordinate Court,
Kancheepuram.
- 2.The Additional District Munsif Court,
Kancheepuram.



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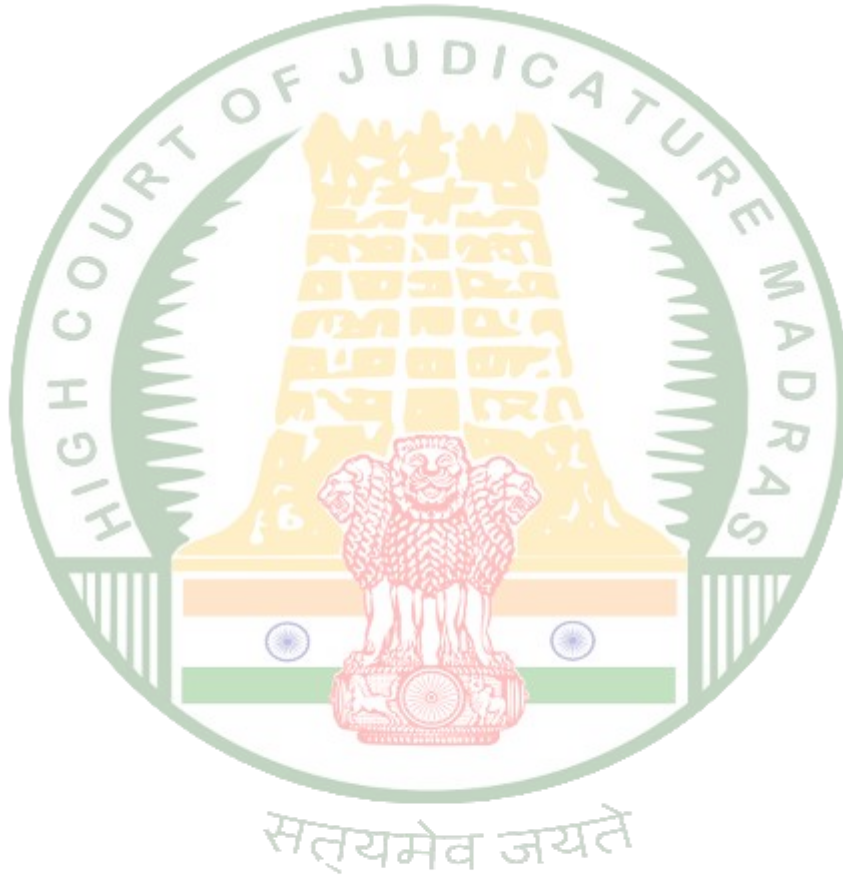
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