

C.R.P.(NPD)Nos. 1399,1400 of 2012 and
2230, 2231 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21.01.2020

JUDGMENT PRONOUNCED ON : 27.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)Nos.1399 and 1400 of 2012

and

M.P.Nos.1 and 1 of 2012

and

C.R.P.(NPD)Nos.2230 and 2231 of 2012

and

M.P.Nos.1 and 1 of 2012

H.M.Yousuf ... Petitioners in C.R.P (NPD)Nos.1399 and 2231 of 2012

S.Iqbal ... Petitioners in C.R.P (NPD)Nos.1400 and 2230 of 2012

...Versus...

A/M Ekambaranathar Devasthanam,
rep.by its Executive Officer,
Kancheepuram District.

... Respondents in all C.R.Ps

PRAYER in C.R.P(NPD)No.1399 of 2012:This Civil Revision Petition has been filed under Section 115 of C.P.C, against the fair and decreetal order dated 10.11.2011 made in E.A.No.195 of 2011 in E.P.No.67 of 1999 in O.S.No.941 of 1987 on the file of District Munsif, Kancheepuram.

PRAYER in C.R.P(NPD)No.1400 of 2012:This Civil Revision Petition has been filed under Section 115 of C.P.C, against the fair and decreetal order dated 10.11.2011 made in E.A.No.194 of 2011 in E.A.No.557 of 2008 in E.P.No.66 of 99 in O.S.No.953 of 1987 on the file of District Munsif, Kancheepuram.

PRAYER in C.R.P(NPD)No.2230 of 2012:This Civil Revision Petition has been filed under Section 115 of C.P.C, against the fair and decreetal order dated 12.04.2012 made in E.A.No.586 of 2000 in E.P.No.66 of 1999 in O.S.No.953 of 1987 on the file of District Munsif, Kancheepuram.

PRAYER in C.R.P(NPD)No.2231 of 2012:This Civil Revision Petition has been filed under Section 115 of C.P.C, against the fair and decreetal order dated 12.04.2012 made in E.A.No.587 of 2000 in E.P.No.67 of 1999 in O.S.No.941 of 1987 on the file of District Munsif, Kancheepuram.

For Petitioners :: Mr.N.A.Nissar Ahmed
in all C.R.Ps

For Respondent :: Mr.P.V.Arulphazamnee
in all C.R.Ps

COMMON ORDER

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C.R.P.Nos.1399 and 2231 of 2012 have been filed by one Mr.H.M.Yousuf, by challenging (i) of the order dated 10.11.2011 made in E.A.No.195 of 2011, which has been filed by the petitioner, in E.P.No.67 of 1999 in O.S.No.941 of 1987, seeking to re-open E.A.No.587 of 2000

and permit him to let in evidence (ii) the order dated 12.04.2012 in E.A.No.587 of 2000 in E.P.No.67 of 1999 in O.S.No.941 of 1987 filed by the petitioner to dismiss the execution in E.A.No.587 of 2000 filed by the plaintiff.

2. C.R.P.Nos.1400 and 2230 of 2012 have been filed by one Mr.S.Iqbal by challenging (i) the order dated 10.11.2011 made in E.A.No.194 of 2011, which has been filed by the petitioner, in E.A.No.557 of 2008 in E.P.No.66 of 1999 in O.S.No.953 of 1987, seeking to re-open E.A.No.586 of 2000 and permit him to let in evidence (ii) the order dated 12.04.2012 made in E.A.No.586 of 2000 in E.P.No.66 of 1999 in O.S.No.953 of 1987 filed by the petitioner to dismiss the execution in E.A.No.586 of 2000 filed by the plaintiff.

3. The learned counsel for the respondent/plaintiff would contend that the suits were filed by the Executive Office of Ekambaranathar Temple, Kancheepuram against the petitioners. The suits were decreed ex parte on 19.01.1994 and to execute the decree, the respondent/plaintiff filed the execution petitions E.P.Nos.66 & 67 of 1999. The present petitioners have filed applications seeking to re-open the evidence and let in further evidence and to dismiss the execution

petitions. In as much as, the said applications filed by the petitioners herein were rightly dismissed by the Court below, no interference is warranted.

4. The learned counsel for the respondent would further submit that as on date the rental arrears payable by the petitioner in C.R.P.Nos.1399 & 2231 – Mr.H.M.Yousuf in Rs.13,00,000/- (Rupees thirteen lakhs only) and the amount payable by the petitioner in CRP.Nos.1400 and 2230 of 2012 is Rs.1,20,000/- (Rupees One lakh and twenty thousand only).

5. Heard both sides.

6. C.R.P (NPD) No.1400 of 2012:-

This petition has been filed as against the order E.A.No.194 of 2011 seeking to re-open the evidence in E.A.No.586 of 2008. The suit was filed O.S.No.953/1987by M/s.Ekambaranatharswamy Devasthanam, Kancheepuram through Executive Officer for eviction and decree was obtained and E.P was filed in E.P.No.66 of 2009 wherein the tenant-Judgment Debtor involved and filed E.A to dismiss the Execution Petition under Section 47 of C.P.C and the same was numbered as E.A.No.586 of 2008 in which, the evidence has been closed on the side of the plaintiff

and subsequently, posted 'for argument' and hence, he wanted to re-open the case.

7. On perusal of the lower Court records, the evidence on the side of the petitioner was commenced even in the year 2008 and the evidence of P.W.1 was closed only on 15.06.2011 and another witness was examined as P.W.2 and the case was posted for cross of P.W.2 from 16.06.2011 nearly 7 hearings till 14.09.2011 and for all the 7 hearings P.W.2 was not present for the cross examination and hence inspite of sufficient time granted as P.W.2 was not present the cross examination of P.W.2 was closed and it has been posted for respondent side evidence and at that time this application to re-open the petition is filed.

8. In the absence of any reason for re-opening and also taking note of the fact that the E.P was pending for more than 10 years, the learned Principal District Munsif,Kancheepuram has rightly come to the conclusion that in the absence of any explanation by parties and for re-opening no reason being stated in the affidavit or by P.W.1 in the affidavit has rejected in the petition.

9. After going through the reasons assigned therein and also entire case records, I do not find any error on the face of the record calling the interference.

10. Accordingly, C.R.P.No.1400 of 2012 is dismissed and as the same is filed by only to drag on the proceedings. No costs. Consequently, connected Miscellaneous Petition is closed.

11. C.R.P.(NPD) No.2230 of 2012:-

This petition has been filed by the very same petitioner against the order in E.A.No.586 of 2000 which is filed to dismiss the Execution Petition filed by the plaintiff. The petitioner is a tenant of the property which is situated in the southern side of the Mangalatheertham Tank as the respondent Temple Authorities decided to vacate all the tenants including the petitioner. They have sought the eviction and filed the suit and obtained the ex-parte decree in the execution. Various petitions have been filed to drag the proceedings, one such ground is that there was a resolution by temple authorities to withdraw the suit. For the protection of the copy of the resolution, several adjournments seems to have been filed. On behalf of the petitioner, P.W.1, P.W.2 and Exhibit P1 were

marked. Though the petition is filed under Section 47 of C.P.C, no evidence has been let in for the dismissal of the Execution Petition. The said claim petitioner has been filed and kept pending for more than 10 years due to the dilating tactics adopting by the petitioner and furthermore, in the absence of any evidence adduced relating to the averments made in the petition and the learned District Munsif after perusing the points raised in the claim petition and also the petition in the suit. Both are appeared to be one and the same and accordingly, rejected the claim.

12. After perusing the order passed by the trial Court, I do not find any irregularity or illegality warranting interference by this Court. It appears as per the statement by the learned counsel, the petitioner involved is due in payment of Rs.1,20,000/- for spending about several years and it is only drag dilating tactics, there is no merits in the Civil Revision Petition.

13. Accordingly, C.R.P.No.2230 of 2012 is dismissed. No costs.

Consequently, connected M.P is closed.

14. C.R.P.(NPD)No.1399 of 2012:-

This petition has been filed as against the order in E.A.No.195 of 1999 in E.P.No.67/1999 in O.S.No.951/1087 on the file of the learned District Munsif Court, Kancheepuram. The respondent-temple Arulmighu Ekambaranatharswami Devasthanam by its E.O is filed the above suit for eviction of the tenant and obtained a decree and filed the E.P.67/97. In the said E.P-Judgment Debtor has filed 587 of 2000 and the plaintiff side evidence is closed and the matter was posted 'for argument' and hence, he filed E.A.No.195/2011, to re-open the petitioner side evidence for letting in further evidence.

15. The trial Court on consideration of the fact that E.A.No.587/2000 has filed under Section 47 of C.P.C for posted on 14.09.2001, the case was pending from 2002 to 2011 for nearly 11 years on the side of the evidence of petitioner's side as no evidence has over forthcoming and the evidence was let in only in the year 2008 and the evidence was completed in the year 2011 and cross examination was also taken out.

16. In the absence of any reason for re-opening the petitioner's side and also taking note of the fact that sufficient time of 10/11 years was given for the petitioner side evidence. Time was given for letting in evidence, the trial Court has rightly dismissed the petitioner for re-opening the petitioner side and at the same, does not suffer from any interference by this Court.

17. Accordingly, C.R.P.No.1399 of 2012 is dismissed. No costs. Consequently, connected M.P is closed.

18. C.R.P(NPD)No.2231 of 2012:-

The petition has been filed by the petitioner in E.A.587 of 2000. The respondent -temple filed a suit in O.S.No.951/1087 ex-parte decree E.P was filed in 67/99 in which this E.A was filed under Section 47 of C.P.C and numbered as E.A.587 of 2000. The main ground on which the petition was filed is that there was a compromise between the tenant and the Executive Officer. However, no resolution has been produced before the Court on the side of the petitioner. P.W.1 was examined and exhibits P1 to P4 were marked. On the side of the respondents R1 to R3 were

marked and no witness were examined. The Execution Petition has been filed for delivery.

19. The learned counsel for the respondent-Temple has submitted that other tenants are already left the suit property and the petition is filed solely on the ground that there was a compromise entered between the Temple Authority and the petitioner/tenant has not filed any document to that effect. Despite the passage of 10 more years at this application. E.P was filed in the year 1999 and in the year 2000 under Section 47 C.P.C has been filed. Tenancy is admitted and ex-parte decree is also admitted. In the absence of any positive evidence to show that the alleged resolution said to have been passed between the tenant and the temple authorities, the Execution Court has rightly rejected the petition and ordered eviction and hence, I do not find any irregularity or illegality warranting interference by this Court.

20. Accordingly, C.R.P.No.2231 of 2012 is dismissed. No costs. Consequently, connected M.P is closed.

21. The Execution Petitions were filed in the year 1999 and the matters are pending conclusion and the same could not be proceeded with, in view of the interim stay granted and hence, as the Civil Revision Petitions are disposed of, the Execution Court is hereby directed to dispose of the Execution Petitions in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

27.01.2020

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

Note: Issue order copy on 28.01.2020

To

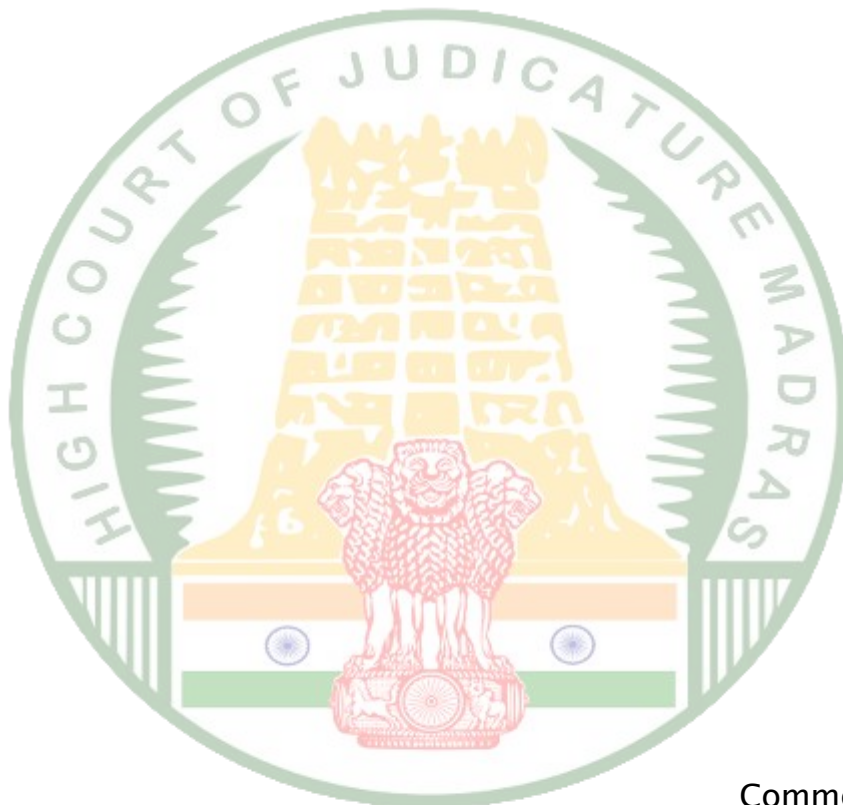
The District Munsif, Kancheepuram.

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RMT.TEEKAA RAMAN,J.,

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