

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD). No.1783 of 2021

(Through Video Conference)

C. MyleruRavindran

...Petitioner

Versus

V. Geetha

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 18.02.2021 passed in I.A.No.18 of 2021 in A.S.No.7 of 2021 by the learned Principal Judge, Erode.

For Petitioner : Mr.S.Ramesh

For Respondent : Mr.Murugamanickam,
Senior Advocate

ORDER

This Civil Revision Petition is filed against the order passed in I.A. No.18 of 2021 in A.S.No. 7 of 2021 passed by the learned Principal Judge, Erode on 18.02.2021.

2. The learned counsel for the petitioner submitted that the petitioner filed a suit in O.S.No.392 of 2012 seeking the relief of declaring that the control and management of the suit property is vested in the eldest male member coming within the eldest male branch of the plaintiff ancestors and for a consequential injunction restraining the defendants from preventing the plaintiff exercising the control and management of the suit property and for directing the defendants to pay the costs of the suit to the plaintiff. Against this judgment and decree, the respondent/ first appellant preferred an appeal in A.S.No.7 of 2021.

3. It is the submission of the learned counsel for the petitioner that as per the tradition and custom followed in Appichimar Madam family, the eldest male member of the eldest branch of the family is alone entitled to be the Madathipathy of Appichimar Madam(suit property). For the past four hundred years, there has been no woman was the Madathipathy. The Temple was kept under lock for 7 years. The petitioner, after getting the judgment in his favour, was permitted to do poojas. Therefore, the petitioner approached the Revenue Divisional Officer (R.D.O.), Erode for opening the Temple. The R.D.O. passed an order on 13.01.2021 for opening of the Temple and permitting the petitioner to do pooja.

4. The respondent filed I.A.No.18 of 2021 under Order 41 Rule 5(1) of

the Civil Procedure Code for granting stay. The said application was contested by the petitioner. However, inspite of contest, the learned Principal District Judge, Erode, without considering the merits of the petitioner's case, to offer prayers, granted stay of the proceedings and therefore, this Civil Revision Petition has been filed.

5. The learned counsel for the respondent opposed this Civil Revision petition on the ground that the suit was decreed on 07.12.2020. Copies were made available to the parties on 6.01.2021. Even before the copies were made available, the petitioner trespassed into the property on 05.01.2021. On 13.01.2021, the R.D.O passed an order permitting the petitioner to open the Temple and offer pooja. The order of R.D.O is without jurisdiction and illegal.

6. The learned Principal Judge, Erode considered the sequence of the events and also the powers of the R.D.O and granted stay. The learned counsel for the respondent prayed for confirming the order of stay and finally made submission to give directions to the learned Principal Judge, Erode for disposal of the appeal within the time frame fixed by this Court.

7. Considering the rival submissions and perused the records.

8. At this stage, this Court does not want to go into the merits of the case. The issue involved in this case is very limited as to whether the R.D.O can pass orders when the Civil Court is seized of the matter by way of an appeal. It is seen that the learned Principal Judge, Erode had considered the submissions made by the parties extensively and granted stay mainly on two grounds. First ground is that, there was no notice served by the R.D.O to the other side before passing the order. The other ground is that under Section 145 (6) (A) of the Criminal Procedure Code, if the order passed by the R.D.O is the first order, he should have decided and declared the rights to be in possession, but only after hearing the other party. If there is already an earlier order, there will be no question of again handing over /taking over the control and management of the Madam.

9. This Court finds that these two reasons given by the learned Principal Judge, Erode for ordering stay, is absolutely correct and in accordance with law. First of all, the R.D.O has no right to pass orders when the appeal is pending. Even if there is an assumed right, no order can be passed without giving notice to the other side. In this view of the matter, this Court finds no reasons to interfere with the order of stay of operation of the judgment and decree passed

in O.S.No 392 of 2012 by the learned Principal Judge, Erode till the disposal of A.S.No.7 of 2021.

10. With regard to the submissions of the learned counsel for the respondent that a direction may be issued for the early disposal of the appeal in A.S.No.7 of 2021 within the time frame fixed by this Court, the learned counsel for the petitioner is also in agreement with the proposal. It is seen from the submissions made by the parties that the Appeal is ripe for final disposal. Considering the sensitivity of the issue and also the fact that the Temple was kept in lock down for 7 years and no pooja was offered, the learned Principal Judge, Erode is directed to dispose the Appeal as expeditiously as possible, preferably within a period of two(02) months from the date of receipt of a copy of this order. With the above directions, this **Civil Revision Petition is Disposed** of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Speaking Order / Non-Speaking Order
sts/jai

G.CHANDRASEKHARAN, J.,

sts/jai

To:
The Principal District Judge,
Erode.



Order made in
C.R.P.(PD)No.1783 of 2021

Dated:
06.09.2021

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