

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON: 27.04.2021**

**PRONOUNCED ON: 03.06.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

**C.R.P. (NPD) No. 2338 of 2020**

**And**

**C.M.P.No. 14718 of 2020**

1. Elangovan
2. U.Porkodi

... Petitioners/Petitioners/Respondents/Respondents

**-Vs-**

Arulmighu Tharakeswara Swamy Temple  
Thottapalayam, Vellore,  
Rep. by its Executive Officer  
Vellore – 632 004.

... Respondents / Respondents/Petitioner/Plaintiff

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the orders passed in E.A.No. 117 of 2020 in E.A.No. 100 of 2018 in E.P.No. 57 of 2017 in O.S.No. 348 of 1999, on the file of the Additional Munsif Court, Vellore, dated 11.12.2020.

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For Petitioners : Mr. V.Ravi

For Respondent : Mr. A.V.Ilango

**ORDER**

The petitioners in E.A. No. 117 of 2020 are the Revision Petitioners. They had originally filed E.A. No. 100 of 2018 u/s 47 CPC in E.P. No.57 of 2017 in O.S. No. 348 of 1999, on the file of the Additional District Munsif, Vellore. The said E.A. No. 100 of 2018 had been dismissed for default on 12.03.2020. Seeking to restore E.A. No. 100 of 2017, the petitioners filed E.A. No. 117 of 2020. That application had been dismissed by the learned Additional District Munsif, Vellore, by order dated 11.12.2020. Questioning that order, the present Civil Revision Petition has been filed.

**A narration of the facts would be instructive:**

2. O.S. No. 348 of 1999 had been filed by Arulmigu Tharakeswarswamy Temple at Tottapalayam in Vellore District against M. Ulagannal and S. Elangovan seeking a judgment and decree to direct the defendants to deliver vacant possession of the building and premises

described in the schedule to the plaint and for costs of the suit. In the schedule, the property was described as Municipal Door No. 61, Katpadi Road, Thottapalayam, where the defendants were doing business. In the particulars of valuation of the suit, it had been stated that the suit had been filed for eviction by the plaintiff, a Hindu Religious Institution and reference had been made to G.O. Ms. No. 1574, Home, dated 29.10.1979 relating to eviction of buildings belonging to Hindu Religious Institutions.

3. Pending the suit, the 1<sup>st</sup> defendant, M. Ulagannal died and his widow, U. Porkodi was impleaded as the 3<sup>rd</sup> defendant. The 2<sup>nd</sup> defendant, S. Elangovan and the 3<sup>rd</sup> defendant, U. Porkodi are the revision petitioners herein.

4. In the plaint, it had been very specifically stated that the building and premises bearing Door no. 61, Katpadi Road, Vellore, belongs to the temple, who is the landlord. The 1<sup>st</sup> defendant was the tenant of the building paying a monthly rent of Rs.656/-. It had been stated in the plaint, that the 1<sup>st</sup> defendant was residing at Salem, but carrying on business at

Vellore. The 2<sup>nd</sup> defendant, S. Elangovan is said to be power of attorney agent of the 1<sup>st</sup> defendant.

5. This brings to light a very significant fact. The very locus of the 2<sup>nd</sup> defendant to file the affidavit in support of E.A. No. 117 of 2020 is questionable. There are no averments that he is also the power of attorney agent of the 3<sup>rd</sup> defendant, U. Porkudi. She had been impleaded in her individual capacity. The principal, M. Ulagannal, the 1<sup>st</sup> defendant is dead. The power of attorney automatically stands terminated and the 2<sup>nd</sup> defendant S. Elangovan becomes a persona non grata. He has never been the tenant. He was the power agent of the tenant. On death of the tenant, the legal heir of the tenant had been impleaded as the 3<sup>rd</sup> defendant. The agency stands frustrated by death of the principal. Even before delving further into the facts it can be stated that S. Elangovan, the 2<sup>nd</sup> defendant has no right to question the decree in O.S. No. 348 of 1999 either under Section 47 of CPC or under any other provision. He is a stranger/squatter in the property.

6. In the plaint, it had been stated that S. Elangovan had been impleaded as the 2<sup>nd</sup> defendant only in his capacity as power of attorney agent of the 1<sup>st</sup> defendant and was representing the 1<sup>st</sup> defendant in allied proceedings in O.S. No. 161 of 1982, and in E.P. No. 223 of 1991 in the said suit, then pending on the file of the Sub Court, Vellore, where he had impleaded himself as the 2<sup>nd</sup> defendant on the strength of the power of attorney document, said to have been executed by the 1<sup>st</sup> defendant, M. Ulagannal on 11.12.1989. Unless the 2<sup>nd</sup> defendant, S. Elangovan is able to establish that U. Porkodi had executed a power of attorney in his favour prior to 23.12.2009, which is the date of the order impleading her as 3<sup>rd</sup> defendant, it can be very confidently stated that the 1<sup>st</sup> revision petitioner, S. Elangovan has played a fraud on the Court proceedings, and is continuing to play fraud and abuse the process of Court by filing this revision petition, when he never had any right over the suit property, except as power of attorney to represent the deceased 1<sup>st</sup> defendant in the Court proceedings which power has come to a natural death on the death of the 1<sup>st</sup> defendant, M. Ulagannal.

7. In the plaint, it had been stated that a notice dated 17.07.1998 was issued calling upon the defendants to pay arrears of rent, which had accumulated to Rs.96,322/- on the date of filing of the suit, in the year 1999. The suit was filed for eviction of the defendants.

8. It must be pointed out that at every place in the plaint, the tenanted portion was always referred to as building and premises. It had never been referred as land, or vacant land. It had been further stated that since the building belongs to a religious institution, the provisions of the Madras Buildings (Lease and Rent Control) Act will not apply. It was also stated that notice dated 30.01.1999 had been issued under section 106 of the Transfer of Property Act, 1882 terminating the tenancy with the midnight of 28<sup>th</sup> February 1999 and asking the defendants to vacate and hand over possession on 1<sup>st</sup> March 1999. The suit had been filed since the defendants did not vacate the building. The plaintiff reserved right to file a separate suit for recovery of arrears of rent.

9. In the written statement, which was incidentally filed by the 2<sup>nd</sup> defendant, the defendants denied title of the plaintiff to the superstructure, which they claimed belonged to the 1<sup>st</sup> defendant. It is claimed that the 1<sup>st</sup> defendant purchased the superstructure by registered sale deed dated 04.06.1953. They claimed title to the building and the compound wall.

10. This aspect had been noted by the learned Additional District Munsif, Vellore, before whom the trial was conducted. In the judgment, he had extracted the relevant portion of the written statement in full. It is extracted herein again :

*“The suit property was a minor Inam and under the Minor Inam estate Abolition act Government has taken over the suit property and recognizing the owner ship of the site alone the Government granted patta for the suit site alone to plaintiff under patta proceedings dated 9.5.69 in S.R. No.1224 and 12297/88 and for the building on the suit site the patta was granted to the defendant and this order has become final and hence the claim of*

*the plaintiff to the building standing in the site belonging to the plaintiff is clearly not maintainable. In other words the plaintiff temple is not the owner of the building standing on the site.”*

**11.** The trial in O.S. No.348 of 1999 was a long drawn affair and the defendants cannot complain of opportunity not being granted.

**12.** The plaintiff examined S. Gandhimathi Nathan was P.W.1 and marked Ex. A1 to Ex.A 82. These included the judgment dated 14.03.1980 in O.S. No. 31 of 1978 as Ex. A2, the judgment and decree of the High Court dated 16.03.1990 in A.S. No. 1245 of 1980 as Ex. A3 and A4, the judgment in O.S. No. 161 of 1992 as Ex. A6, and Rental receipts as Ex.A 15 to Ex. A 80.

**13.** The defendants examined the 2<sup>nd</sup> defendant S. Elangovan as D.W.1 and marked Ex. B 1 to Ex. B14. These included the Rental receipts as Ex. B2 to Ex. B6, the sale deed dated 04.06.1953 in favour of the 1<sup>st</sup> defendant as Ex. B7, and the Municipal tax receipts as Ex. B8 to Ex. B11.

14. In the judgment, dated 19.10.2012, the learned District Munsif gave a specific finding with respect to the claim of the defendants that the plaintiff was the owner of the land alone and cannot seek eviction of the defendants from the building. He rejected such a contention, basing his opinion on the rental receipts marked as Ex. A15 to Ex.A 80 by the plaintiff and as Ex. B2 to Ex. B6 by the defendants wherein it had been clearly stated that the rents were paid for land and building. He also pointed out Section 34 C of the Hindu Religious and Endowments Act, 1959, wherein it had been provided that any building constructed on land belonging to a religious institution, would vest along with the land on the religious institution.

15. In the course of the judgment, the claim of the defendants for title to the building had been answered and the claim had been rejected. The suit was decreed.

16. This judgment travelled in its course and finally reached the High Court where the defendants in the suit filed S.A. No. 469 of 2016. An order dated 30.11.2016 was passed in C.M.P. No. 7813 of 2016, which was the application seeking stay. The relevant portion of the order had been

extracted by the learned Additional District Munsif, Vellore in his order dated 11.12.2020 in E.A. 117 of 2020, which order is the subject matter of the revision. The said portion is extracted again.

*“The interim stay granted by this court already is made absolute, subject to the following conditions:*

*(a) The petitioners/appellants shall pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the respondent Temple within a period of eight weeks from today, without prejudice to the contentions of either parties with regard to the quantum of rent and the arrears payable.*

*(b) If the said amount of Rs.10,00,000/- is not paid by the petitioners/appellants as directed supra and within the time stipulated the stay granted herein stands automatically vacated without reference to this Court.*

*(c) In the event of the stay being vacated as stated supra, it is open to the temple to file an execution petition and execute the decree, notwithstanding the fact that the Second Appeal is pending before this Court. No extension of time will be granted for making such payment as it is contended that the arrears of rent has accrued from the year 1998 onwards...”*

17. The defendants/revision petitioners who were directed to pay Rs. 10,00,000/- as directed above, did not pay the said amount. They had taken a conscious decision not to obey the orders of this Court. They had taken a conscious decision to defy the orders of this Court. They had just simply refused to comply with the directions of this Court. Naturally, the stay granted stood vacated and the plaintiff/Temple was entitled to file Execution Petition.

18. The plaintiff/Temple filed E.P. No. 57 of 2017 against the revision petitioners/2<sup>nd</sup> and 3<sup>rd</sup> defendants seeking delivery of possession of the suit schedule property. It is to be again pointed out that the 1<sup>st</sup> revision petitioner/2<sup>nd</sup> defendant has no locus to claim any legal right, title or interest over the suit schedule property. He was not a tenant. He was merely a power of attorney agent of the 1<sup>st</sup> defendant, and on the death of the 1<sup>st</sup> defendant, his right to be recognized in the suit also stood automatically extinguished. I hold he does not have the competency to maintain this revision petition. The 2<sup>nd</sup> revision petitioner/3<sup>rd</sup> defendant had been impleaded in the suit, being the widow of the deceased 1<sup>st</sup> defendant.

However much the records are read, the only impression that remains is that she is a puppet in the hands of the 1<sup>st</sup> revision petitioner. The Civil Revision Petition itself is an abuse of process of Court.

19. The abuse of process actually commenced by not just the refusal to comply with the directions dated 30.11.2016 of this Court in C.M.P. No. 7813 of 2016 in S.A. No. 469 of 2016, but also by the audacity in filing E.A. No. 100 of 2018 in E.P. No. 57 of 2017 under section 47 of CPC, questioning the judgment and decree in O.S. No. 348 of 1999, by raising the very same grounds which had been considered and rejected by the learned Additional District Munsif in the judgment dated 19.10.2012. It was again claimed that the Temple was the owner of the site alone and that the defendants were the owners of the building. That assertion by the 2<sup>nd</sup> defendant is false to his knowledge, since he was only a power of attorney agent of the deceased 1<sup>st</sup> defendant who was the original tenant, and on death of the 1<sup>st</sup> defendant, the rights under the power of attorney document automatically stood extinguished. He has no right to claim title or even possession. He had no right to claim to be heard. He had no right to lead

evidence. He is a stranger taking advantage of a document which, as on the date of filing E.A. No. 100 of 2018 was just a useless scrap of paper.

**20.** The Temple joined issue in the said Application and filed counter. It was specifically pointed out that the grounds raised had been considered and rejected by successive judgments of the Trial Court and the First Appellate Court. It was also pointed out that the defendants had not complied with the directions of the High Court to pay a sum of Rs.10,00,000/- towards the arrears of rent. It was urged that the application should be dismissed.

**21.** The application was dismissed on 12.03.2020, since neither the 2<sup>nd</sup> defendant, nor his counsel appeared.

**22.** The 1<sup>st</sup> revision petitioner/2<sup>nd</sup> defendant then filed E.A. No. 117 of 2020 to restore E.A. No. 100 of 2018. He claimed that on 12.03.2020, he had gone to Chennai with his family owing to the death of a cousin sister. He claimed that his advocate did not represent the case owing to advocate boycott. An advocate, as a professional will have to fix his

priorities. No reasons had been advanced why the 3<sup>rd</sup> defendant, who is more directly involved with the litigation in her capacity as widow of the deceased 1<sup>st</sup> defendant did not attend the Court.

**23.** A counter had been filed on behalf of the Temple, again expressing distress at the ingenuous ways in which the litigation has been prolonged by the revision petitioners/defendants, and again pointing out non compliance of the directions of this Court to pay Rs.10,00,000/- towards arrears of rent and stating that the revision petitioners/defendants have been squatting in the property for nearly 20 years without paying any rent.

**24.** The order dated 11.12.2020 by the learned Additional District Munsif in the said E.A. No. 117 of 2020 is the subject matter of the present revision petition. It must be pointed out that the 1<sup>st</sup> revision petitioner/2<sup>nd</sup> defendant had not chosen to graze the witness box to substantiate the reasons advanced in his affidavit filed in support of the petition in E.A. No. 117 of 2020. The reasons stated therein, namely, that he had gone to Chennai and the advocate participated in advocate boycott stand unproved. They remain mere statements.

25. I must commend the learned Additional District Munsif for the manner in which he maneuvered himself around the reasons put forth for absence on 12.03.2020, particularly advocate boycott, and balanced the same with the obvious lack of bonafide on the part of the revision petitioners and the fact that they had blatantly refused to comply with the directions of this Court to pay Rs.10,00,000/- towards the accruing rental arrears. Very sensibly, he leaned back on the order of this court dated 30.11.2016 imposing such a condition.

26. In the order now under revision, the learned Additional District Munsif pointed out that the revision petitioners herein have successfully dragged the proceedings for more than 4 years without complying with the said direction of this Court. He took into consideration the quantum of amount involved, meaning of course the mounting rental arrears, the delay caused and the fact that the respondent is a Temple. He observed that *“it would certainly be a mockery of justice, if this petition is allowed in an usual manner on payment of nominal costs.”* He therefore stated that the petition would be allowed only if the petitioners comply with the order dated 30.11.2016 passed by this Court, which was a direction to pay

Rs.10,00,000/- towards part of the rental arrears. Time was granted till 21.12.2020.

**27.** It has been informed that since the direction was not complied, E.A. No. 117 of 2020 was dismissed on 27.01.2021. I must again commend the learned Additional District Munsif.

**28.** The order dated 11.12.2020 has been challenged by Mr. V. Ravi, learned counsel for the revision petitioners, who argued that there are several precedents when courts have leniently condoned non appearance of an advocate owing to boycott of courts. Learned Counsel also pointed out that the very proceedings in the Execution Petition should have been deferred since a Review Petition had been filed in S.A. No. 469 of 2016.

**29.** A string of citations have been relied on by Mr. V. Ravi, and to do justice for the preparation of the learned counsel, let me examine all of them. The cited judgments are as follows :

1. *Rafiq-vs- Munshilal, (1981) 2 SCC 788 at page 789 = 1981 AIR SC 1400.*

2. *Unreported judgment dated 25.03.2019, in CMA No. 1885 of 2019, Somasundaram –vs- Parameswari Ammal (deceased) and others.*

3. *Unreported judgment dated 26.08.2016 in CRP (NPD) No. 2642 of 2016, Antonyammal and another –vs- Regina Duraisamy and another.*

4. *Unreported judgment dated 12.02.2018 in CRP (NPD) (MD) Nos. 2038 and 2039 of 2017, S. Muniammal –vs- G. Pushpa.*

5. *Kumud Lata Das v. Indu Prasad, (1996) 11 SCC 195 at page 196 = AIR 1997 SC 34.*

6. *Unreported judgment dated 20.11.2017, in CRP(NPD) No. 4232 of 2017, M/s. Senthil Textiles Ltd., -vs- M/s. Sri Ram Spinners.*

7. *Unreported judgment dated 22.11.2012, in CRP(PD)(MD) No.1379 of 2012, Rajkumar -vs-Arumugaperumal.*

8. *Unreported judgment dated 06.12.2019, in CRP(NPD) No. 3958 of 2019, K. Raja and another -vs- S. Sayath Yusuf and others.*

9. *Unreported judgment dated 29.01.2018, in CRP(NPD) No. 128 of 2018, Rajendran and another -vs-Mohanambal.*

10. *Unreported judgment dated 21.08.2020, in CRP(PD) No. 3936 of 2018, C.N.K. Elangovan -vs- C.N.K. Rajasekar.*

11. *Unreported judgment dated 22.03.2019, in CRP(NPD) No. 1125 of 2019, A. Ramasamy -vs- Mohammed Mohaideen.*

12. *S.M.C.P. No. 782 of 2005, B. Ramalingam, formerly III Additional Judge, City Civil Court, Chennai, now functioning as Additional District Judge-cum-Presiding Officer, Special Court, constituted under E.C.Act, Salem, reported in (2006) 1 MLJ 75.*

13. *Unreported judgment dated 18.10.2019, in CRP(MD) No. 1318 of 2012 (PD), R.S. Sornam -vs- Rathinam and others.*

30. In *Rafiq-vs- Munshilal*, (1981) 2 SCC 788 at page 789 = 1981 AIR SC 1400, the Hon'ble Supreme Court observed as follows:

*“3. The disturbing feature of the case is that under our present adversary legal*

*system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job”*

**31.** The 1<sup>st</sup> revision petitioner cannot seek recourse to the said observations. He cannot claim innocence of the court proceedings, having

successfully dragged it for more than 20 years. He cannot claim to be a villager, or a person from a rural place or to be a person having no knowledge of the court's procedure. He has launched himself in a venture which is a sheer abuse of process of Court.

32. The said observations were stated by a learned Single Judge of this Court in the ***unreported judgment dated 25.03.2019, in CMA No. 1885 of 2019, Somasundaram –vs- Parameswari Ammal (deceased) and others.*** That was a case where the defendant had not filed written statement and suffered an exparte decree. An application was filed to set aside the exparte decree without filing the written statement. Subsequently an affidavit was filed that the written statement was misplaced and could not be filed earlier. The learned Judge had observed that it was “*a classic example of the mistake on the part of Advocate*”. Again the facts in the instant case are totally different and I am afraid the said observation would not be applicable.

33. In the ***unreported judgment dated 26.08.2016 in CRP (NPD) No. 2642 of 2016, Antonyammal and another –vs- Regina Duraisamy and***

*another*, a learned Single Judge examined a case where an Advocate Commissioner was appointed to record evidence and then sought time owing to boycott by advocates. The learned Judge observed that “*the parties cannot be blamed for not completing the cross examination in time.*” Again, I must point out that the facts in the instant case are entirely different. Here is a petitioner, whose locus is suspect and who has simply and deliberately refused to comply with the directions of this Court.

34. In the *unreported judgment dated 12.02.2018 in CRP (NPD) (MD) Nos. 2038 and 2039 of 2017, S. Muniammal –vs- G. Pushpa*, a learned Single Judge of the Madurai Bench examined a case where, on a day posted for examination of witness on the side of the defendant, owing to court boycott, the advocate did not appear, but the defendant appeared and sought time, the Principal Sub Judge, observing that sufficient time had already been granted closed the evidence on the side of the defendant. The learned Judge had observed that “*in my considered opinion, an opportunity could be given to the petitioner to meet the ends of justice.*” I hold that in the instant case, the petitioners herein having exhibited supine indifference to the direction of this Court, cannot seek indulgence on the pretext of innocence.

35. In *Kumud Lata Das v. Indu Prasad*, (1996) 11 SCC 195 at page 196 = AIR 1997 SC 34, the Hon'ble Supreme Court, while examining the nature of costs imposed to set aside an ex parte decree passed in a suit, filed, in the background of divorce proceedings pending between her son and daughter-in-law, by a mother-in-law against her daughter-in-law for possession of a property based on title, observed as follows :

*“3. In view of the fact that the parties are closely related and the matter has been disposed of ex parte, we are of the view that it is not a fit case to impose costs of depositing mesne profits from the date of ex parte decree and to continue to deposit it as a condition to contest the application to set aside ex parte decree. Moreover, such onerous condition is not valid, though discretionary.”*

36. In the *unreported judgment dated 20.11.2017, in CRP(NPD) No. 4232 of 2017, M/s. Senthil Textiles Ltd., -vs- M/s. Sri Ram Spinners*, a learned Single Judge of this Court examined a conditional order to deposit 50% of the decree amount as a condition to allow the petition filed to condone the delay of 835 in filing petition to set aside an ex parte decree, held : *“In the interest of justice the conditional order passed by the court*

*below” to be modified to “payment of cost of Rs.50,000/- (Rupees Fifty Thousand only) to the respondent.”*

37. That was a case where the revision petitioner’s father, the Chairman of the petitioner mill suffered from ill health and was not able to go to court, and also unfortunately died. In those attendant circumstances, the condition imposed was modified to payment of costs, which incidentally was also quite on the higher side.

38. The facts in the instant case are totally different from that of the aforementioned two cases. In ***Kumud Lata Das (referred supra, (1996) 11 SCC 195 at page 196 = AIR 1997 SC 34)***, the parties were closely related. The suit was between a mother-in-law and her daughter-in-law. The Hon’ble Supreme Court had been sensitive to that fact.

39. In ***M/s. Senthil Textiles Ltd.,(referred supra, judgment dated 20.11.2017, in CRP(NPD) No. 4232 of 2017)***, again the learned Single judge, while considering a situation where the person who suffered ill health and was not able to go to Court, actually subsequently died, had thought it

fit to modify the condition imposed to set aside the exparte decree to one to payment of costs. Both the orders are laudable in their nature taking into consideration the peculiar circumstances in those cases. I doubt whether the revision petitioners can take advantage of them. I hold they cannot.

40. In the *unreported judgment dated 22.11.20127, in CRP(PD)(MD) No.1379 of 2012, Rajkumar -vs-Arumugaperumal*, a learned Single Judge of the Madurai Bench examined a situation wherein, challenging the judgment and decree of the trial court in O.S. No. 164 of 2005, an appeal in A.S. No. 29 of 2012 was filed along with I.A. No. 116 of 2012 seeking stay, but the appellate court dismissed the application holding that there was a direction from this Court for speedy disposal of the execution petition filed by the decree holder. The learned Single Judge held that the costs granted by the trial Court should be paid, and with respect to the payment of mesne profits, directed 50% of the amount determined should be deposited by the defendant in the Court. Directions were given to dispose the Appeal Suit within a period of two months from the date of receipt of a copy of the order.

41. In the instant case, the learned Additional District Munsif only reiterated payment of costs already imposed by this Court. The judgment referred would be of no assistance to the revision petitioners.

42. In the *unreported judgment dated 06.12.2019, in CRP(NPD) No. 3958 of 2019, K. Raja and another -vs- S. Sayath Yusuf and others*, a learned Single Judge of this Court held that direction can be given to dispose of the appeal filed against the judgment and decree in the original suit within a time frame, and further held that the execution petition can be kept pending .

43. In the instant case, the learned Additional District Munsif had not disposed the execution petition. He had afforded an opportunity to the revision petitioners to participate, but had imposed costs as had already been imposed by this Court. The judgment relied on is distinguishable on facts.

44. In the *unreported judgment dated 29.01.2018, in CRP(NPD) No. 128 of 2018, Rajendran and another -vs-Mohanambal*, a learned

Single Judge of this Court in a revision filed against an order refusing to grant stay of proceedings in an execution petition, pending disposal of the first appeal, reversed the order, granted stay and issued a direction to dispose of the first appeal.

45. As pointed out earlier, the learned Additional District Munsif in the instant case has actually granted permission to the revision petitioners to participate in the execution proceedings. He had only reiterated the condition already imposed by this Court. The judgment cited is distinguishable on facts.

46. In the *unreported judgment dated 21.08.2020, in CRP(PD) No. 3936 of 2018, C.N.K. Elangovan -vs- C.N.K. Rajasekar*, a learned Single Judge of this Court was called upon to consider grant of stay of the order of the Rent Controller pending disposal of appeal, granted stay and issued a direction to the appellate court to dispose the appeal within a specific time frame.

47. In the instant case, the revision petitioners cannot seek stay of further proceedings in the execution petition since they are the petitioners who had filed application under section 47 of CPC. They should comply with the direction of this Court to pay Rs.10,00,000/- towards rental arrears, which is also the tenor of the order of the Additional District Munsif. The judgment cited is not applicable to the facts of this case.

48. In the *unreported judgment dated 22.03.2019, in CRP(NPD) No. 1125 of 2019, A. Ramasamy -vs- Mohammed Mohaideen*, a learned Single Judge of this Court dismissed a Civil Revision Petition filed against an order granting stay of the order of the Rent Controller, in an appeal filed by the tenant. Learned Judge observed that if stay is not granted the appeal itself would become infructuous.

49. The learned Additional District Munsif had passed an order in favour of the revision petitioners, but only reiterated deposit of Rs.10,00,000/- towards arrears of rental arrears. That was actually a condition earlier imposed by this Court. The judgment cited is not applicable to the facts of the instant case.

50. In *S.M.C.P. No. 782 of 2005, B. Ramalingam, formerly III Additional Judge, City Civil Court, Chennai, now functioning as Additional District Judge-cum-Presiding Officer, Special Court, constituted under E.C.Act, Salem, reported in(2006)1 MLJ 75*, a Division Bench of this Court initiated suo motto contempt in a case where there were two suits, one filed by a daughter against her mother and another filed by the mother against her daughter. Injunction was granted for a limited period in favour of the mother, and a similar application filed by the daughter was dismissed. Subsequently, however, owing to non compliance of the stipulation under Or.39 Rule 3(a) CPC, the injunction granted in favour of the mother was vacated. The mother filed a civil revision petition before this Court. The daughter filed an appeal against the order refusing to grant injunction in her favour. The High Court again granted injunction in favour of the mother. In spite of communication of that order, the appellate Court granted injunction in favour of the daughter. That led to the initiation of suo motto contempt by the High Court against the Judicial Officer. The Division Bench then proceeded to give certain directions, of which direction nos. 1, 2 and 6 are extracted below. This has been pointed out by Mr. V. Ravi, who

stated that the Additional District Munsif had imposed the condition to deposit Rs.10,00,000/- even though a Review Petition was pending in this Court against the disposal of S.A. No.469 of 2016.

*“(I) When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts to ignore the settled decisions rendered by High Courts and the Supreme Court and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism should be avoided.*

*(II) Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, the humility of function should be a constant theme of Judges. Judicial restraint in this regard might better be called judicial respect; i.e., respect by the judiciary.*

....

*(VI) Judicial system requires that clear pronouncements by the High Court, about what the law on a matter is, must be treated as binding*

*on all the subordinate Courts. Where the High Court has that the law laid down in a particular case is the applicable law, it is not open to the subordinate Court to consider or rely on any supposedly conflicting decisions from any other High Court, our High Court's decision is binding on all the subordinate judiciary in Tamil Nadu and Pondicherry."*

**51.** In the instant case, I am not able to comprehend the judicial impropriety in the order under revision. The petitioner did not go to Court. His advocate boycotted Court. The learned Additional District Munsif, rightly dismissed the petition filed by the revision petitioners. They filed application to set aside that order and restore their petition which had been dismissed for default. The Additional District Munsif passed an order restoring their petition, but imposed the condition which had been earlier imposed by this Court, which the petitioners had refused to comply. I hold that the order under revision does not suffer from any judicial impropriety.

**52.** In the *unreported judgment dated 18.10.2019, in CRP(MD) No. 1318 of 2012 (PD), R.S. Sornam -vs- Rathinam and others*, a learned

Single Judge of Madurai Bench was confronted in a revision petition with an allegation of fraud and collusion in obtaining a decree in a suit. A suit seeking specific performance of an agreement dated 27.06.1986 was filed in the year 2009. The learned Judge found that the suit was barred by the law of Limitation. More shockingly, the defendant, on receipt of summons, filed a memo submitting to a decree. An Exparte decree was also passed. It was found that the property had already been sold by the defendant to the revision petitioner, and on the date when he filed the memo submitting to a decree, he did not any right over the property. Holding that fraud had been committed, the learned Judge, rightly struck down all the proceedings off the file, exercising the power under Article 227 of the Constitution of India.

**53.** In the instant case, it is the 1<sup>st</sup> revision petitioner who can be imputed with abusing the process of court, since he claimed to be a power of attorney agent of a principal, who had long since died. In the body of the plaint, the property had been consistently mentioned as building. The parties went to trial on that pleading. A clear finding had been given that the plaintiff Temple was the owner of the land and building. The contentions raised have been rejected by the Trial Court, First Appellate Court and in

Second Appeal by the High Court. Reagitating the same issue will not be of any avail to the revision petitioners.

**54.** In *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573 at page 592, the Hon'ble Supreme Court reagitation of the same issue is an abuse of process of Court. They held as follows :

*“44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop*

*such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding”.*

55. The High Court had directed the revision petitioners to pay a sum of Rs.10,00,000/- towards the existing rental arrears. The revision petitioners had two choices, they could comply with the direction, or they could refuse to comply with the direct. They chose the second option. The Additional District Munsif gave them a lifeline, by imposing the same condition. Again they refused to comply with the direction. Their application came to be dismissed. The revision petitioners cannot have any cause for grievance.

56. I do not find any merit in the revision petition.

57. The Hon'ble Supreme Court in its decision in ***A.A. Gopalakrishnan –vs- Cochin Devaswom Board and others*** reported in

**2007 (7) SCC 482**, observed that temple properties need to be protected. In para 10, they held as follows :

*“10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaites/employees.*

*Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of “fences eating the crops” should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or*

*misappropriation.”*

**58.** In *T.E. Varadarajan –vs- A. Sirajudeen (died) and others*, reported in **CDJ 2008 MHC 3223**, it had been held as follows :

*“It is crystal clear that even though a lessee under the temple of the site which belonged to the temple had put up a superstructure over it he cannot claim exclusive right against the superstructure put up by him on the land taken on lease by him from the temple. After the termination of the lease, the authorities of the public temple has got every right to take possession of the superstructure inclusive of fixtures put up by the lessee over the land which was leased out to him by the said temple.”*

**59.** In **2021 SCC OnLine SC 341, Rahul S. Shah –vs- Jitrndra Kumar Gandhi**, the Hon’ble Sureme Court had occasion to express dismay at attempts to frustrate execution of a decree in the following words :

*“23. This court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and*

*execution of decrees. This was discussed even in the year 1872 by the Privy Council in **The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing** reported in (1871-72) 14 Moo IA 605 which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in **Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Bubna** reported in (2009) 9 SCC 689, wherein it recommended that the Law Commission and the Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or the Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. **The execution proceedings which are supposed to be handmaid of justice and sub-serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.***

*(Emphasis Supplied)*

**60.** Thus, viewed from any angle I hold that the revision petitioners have not made out any case. As repeatedly pointed out, when they refuse to comply with the directions of the Court, they will have to suffer the consequences, namely dismissal of their petition.

**61.** The Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

**62.** Imposing costs will be a meaningless exercise, since it would not be complied with. The revision petitioners are of the opinion that they are above law. Therefore costs are not imposed.

**63.** However, a direction is given to the Additional District Munsif, Vellore to dispose E.P. No. 57 of 2017 and record possession being taken by 30.06.2021. Assistance of the revenue/police authorities may be sought if required. Since the revision petitioners have refused to comply with the direction dated 30.11.2016 of this Court in C.M.P. No. 7813 of 2016 in S.A. No. 469 of 2016, I further direct that any defence or steps taken by the

revision petitioners to protract further proceedings of E.P. No. 57 of 2017  
be struck off.

03.06.2021

vsg

Index: Yes/No

Internet: Yes/No.

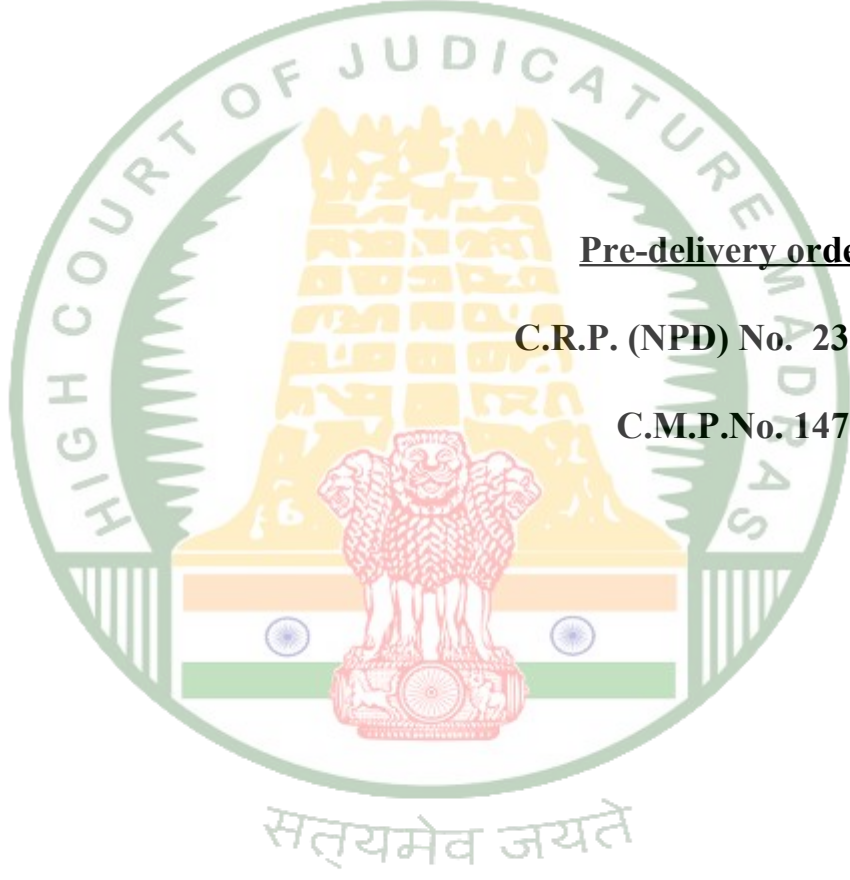
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**C.V.KARTHIKEYAN, J.**

**vsg**



**Pre-delivery order made in**

**C.R.P. (NPD) No. 2338 of 2020**

**And**

**C.M.P.No. 14718 of 2020**

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**03.06.2021**