

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.2482 & 2483 of 2017
and C.M.P.No.11773 of 2017

1.B.Rajeswari
2.B.Manjula
3.B.Gopinath

...Petitioners in both CRPs

Vs

Arulmighu Srinivasa Perumal Thirukoil
Rep by its Executive Officer
A.Ramani, W/o.Devaraj
Hindu Religious and Charitable
Endowment Department,
Chennai-84.

...Respondent in both CRPs

Prayer in CRP (NPD) No.2482 of 2017 : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal order passed in E.A.No.4517 of 2016 in E.P.No.171 of 2016 in O.S.No.2794 of 1988 dated 27.06.2017 on the file of the IX Assistant Judge, City Civil Court, Chennai and allow the above Civil Revision Petition.

Prayer in CRP (NPD) No.2483 of 2017 : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal order passed in E.A.No.4516 of 2016 in E.P.No.171 of 2016 in O.S.No.2794 of 1988 dated 27.06.2017 on the file of the IX Assistant Judge, City Civil Court, Chennai and allow the above Civil Revision Petition.

For Petitioners : Mr.V.V.Sairam (in both CRPs)

For Respondent : Mr.R.Mahalingam (in both CRPs)

COMMON ORDER

The CRP No.2482 of 2017 is directed against the fair and decreetal order dated 27.06.2017 made in E.A.No.4517 of 2016 in E.P.No.171 of 2016 in O.S.No. 2794 of 1988 on the file of the IX Assistant Judge, City Civil Court, Chennai, thereby dismissing the petition to set aside the exparte decree.

2. The CRP No. 2483 of 2017 is directed against the fair and decreetal order dated 27.06.2017 made in E.A.No.4516 of 2016 in E.P.No.171 of 2016 in O.S.No.2794 of 1988 on the file of the IX Assistant Judge, City Civil Court, Chennai, thereby dismissing the petition to condone the delay of 80 days in filing the petition to set aside the exparte decree.

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3. In both the Civil Revision Petitions, the petitioners are the legal heirs of the sole defendant in the suit filed by the respondent herein. The respondent filed a suit for direction, directing the deceased defendant to

vacate the suit property and hand over the possession. The suit was decreed by judgment and decree dated 24.12.2003. Aggrieved by the same, the deceased defendant filed an appeal suit in A.S.No.137 of 2004 and the same was dismissed thereby confirming the judgment and decree passed by the Trial Court. Thereafter, the sole defendant died and the legal heirs of the petitioners herein filed a Second Appeal in S.A.No.923 of 2007 and the same was also dismissed thereby confirming the decree passed by the Lower Appellate Court. Against the same, the petitioner did not prefer any appeal before the Hon'ble Supreme Court. The Second Appeal was dismissed on 17.08.2015. On the strength of the judgment and decree confirmed by this Court, the respondent filed an Execution Petition in E.P.No. 171 of 2016. After receipt of notice, the petitioners also filed their counter on 24.11.2016. Thereafter, willingly and wantonly, they have failed to appear before the Execution Court. Hence they were set exparte and an ex-parte decree was passed. Thereafter, they filed a petition to condone the delay of 80 days in filing the exparte decree.

4. A perusal of the affidavit filed in support of the condone delay petition stating that their father died on 16.01.2014 and their father only engaged the Advocates and looking after the court proceedings would show that they have no knowledge about the court proceedings. Thereafter, one of their brothers died and as such, they were put in dark and confusion. Further they have no knowledge about the Court proceedings insofar as the Second Appeal is concerned and the business that was being run in the suit premises.

5. A perusal of the records reveals that the petitioners were very much impleaded in S.A.No.923 of 2007 before this Court and duly instructed to vacate the suit property and hand over the possession and the same was dismissed on 17.08.2015. In fact, they also received notice in the Execution Petition and engaged a counsel. They also filed a counter on 24.11.2016. Thereafter, wantonly failed to appear before the Execution Court and an ex-parte order was passed by the Execution Court.

6. That apart, a perusal of the counter filed by the respondent revealed that the suit property is a vacant land measuring to an extent of 3390 sq.ft situated at No.882, Poonamallee High Road, Egmore, Chennai. It is a prime locality and now the petitioners converted the same as a playground of Tennis. By conversion of play ground for the Tennis players, the petitioners are earning huge money through their illegal activities. By the lease deed dated 23.06.1984 the petitioners are paying a rent of Rs.312.50/- p.m. to the suit property.

7. The petitioners filed a Memo stating that from the month of December 2017, they are paying rent for a sum of Rs.5,000/- to the petition premises. The suit property ad-measuring 3390 sq.ft. for which Rs.5,000/- is very meagre. The petitioners converted the suit property as Tennis Court and earning huge money. Now a days, it became very good business in the city of Chennai. If a person owned small vacant cite, it will be converted into Cricket Pitch, Foot Ball Ground and Badminton Court under the flood lights and mounting huge money. It is commercial in nature and running

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round the clock and charging in an hourly basis. That apart, he stated false reasons in the affidavit and as such, the Court below has rightly dismissed the petition.

8. In view of the above, this Court finds no infirmity or illegality in the orders passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

23.03.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The IX Assistant Judge,
City Civil Court, Chennai

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