

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.7.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (NPD) No.3156 of 2017

and

C.M.P.No.14812 of 2017

and

C.M.P.No.16639 of 2019

A.Sankar

Petitioner

vs.

Arulmigu Angalaparameswari Thirukkcoil
rep. by its Executive Officer,
No.189, Adam Sahib Street,
Royapuram, Chennai 600 013.

Respondent

Civil Revision Petition filed under Section 115 CPC against the Fair and Decreetal order dated 10.8.2017 passed in E.A.No.1029 of 2014 in E.P.No.3907 of 2007 in O.S.No.5203 of 1997 on the file of the IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.Balasubramaniam

For Respondents : Mr.D.R.Sivakumar

ORDER

The revision has been filed against the order dated 10.8.2017 passed by the IX Assistant Judge, City Civil Court, Chennai in E.A.No.1029 of 2014 in E.P.No.3907 of 2007 in O.S.No.5203 of 1997.

2. Brief facts of the case is as under:-

i) The revision petitioner is the son of one Angamuthu, who was inducted as a tenant in respect of the land of the respondent to an extent of 1200 sqft during the year 1970 and in the year 1972, the petitioner's father constructed four shops and let out the same to third party tenants. Thereafter the petitioner's father died and the petitioner was occupying the said premises.

ii) Finding that the petitioner is a trespasser, the respondent temple filed a suit in O.S.No.5203 of 1997 before the City Civil Court Chennai for evicting the petitioner and for the rental balance of Rs.3492 for the period from 1.2.1992 to 31.1.1997 and to pay an amount of Rs.97/- towards damages from the date of cancellation of the agreement till the date of handing over possession.

iii) The suit was decreed on 30.6.2004 and the petitioner was directed to quit and deliver vacant possession to the temple before 30.8.2004 and the petitioner was directed to pay Rs.1800/- towards rental balance and Rs.50/- towards damages for the period from 1.2.1997 till handing over vacant possession and also a sum of Rs.1028/- as cost.

iv) Against the above judgment and decree, the petitioner preferred first appeal in A.S.No.406 of 2004 which was dismissed on

27.10.2005 and the Second Appeal preferred by the petitioner in S.A.No.507 of 2008 was also dismissed on 18.3.2009 confirming the order passed by the Trial Court in O.S.No.5203 of 1997.

v) The respondent/decreed holder filed E.P. 3907 of 2007 to evict the petitioner. The petitioner filed E.A.1029 of 2014 under Section 47 to pass an order that the decree obtained, by reason of subsequent development, is not enforceable and inexecutable and the same was also watered-down by the post decreetal arrangement. The E.A. filed by the petitioner was dismissed against which, the present civil revision petition has been filed.

3. The learned counsel for the petitioner would submit that originally, in the year 1970, his father occupied the land belonging to the respondent and put up four shops in the said land and he was paying the rent regularly to the respondent and thereby his tenancy was recognised by the respondent and after his demise, the petitioner came to occupy the same and he had paid a sum of Rs.4,14,000/- in total to the respondent out of which a sum of Rs.3,50,000/- was received in lumpsum under the guise of settlement towards donation and advance. He would further submit that though the Trial Court had directed the petitioner only to pay Rs.1800/- towards rental arrears and to pay Rs.50/- towards damages, the respondent had

collected huge amounts as evidenced by the receipts marked by the petitioner and in view of the subsequent events, the decree has become varied and modified and therefore, it has become unenforceable in law and thereby the petitioner had filed petition under Section 47 of CPC, however, the Executing court, without taking into consideration the subsequent events, had dismissed the E.A. Therefore, he would seek to allow the revision and set aside the order passed by the Executing Court.

4. Mr.D.R.Sivakumar, learned counsel appearing for the respondent would submit that at no point of time, the respondent temple has recognised the tenancy of the petitioner and the respondent had filed O.S.No.5203 of 1997 and obtained decree in the year 2004 itself and the first appeal and the second appeal filed by the petitioner were also dismissed and the petitioner had not preferred any Second Appeal as against those orders and thereby the order passed by the Trial court has been confirmed. He would further submit that the Executing Court, rightly finding that there is no variation or modification in the decree, dismissed the petition filed under Section 47 CPC. He would also submit that the amounts alleged to have been paid by the petitioner are towards rental arrears and the respondent/temple authorities have never recognized the

tenancy. He would also submit that as per Explanation (a) to Section 78 of the HR&CE Act, the petitioner is squatting on the property without the approval of the competent authority as an encroacher and is unable to be evicted. He would further submit that the petitioner alleged about payment of huge amount towards compromise and settlement, but, such amount was accepted only without prejudice to the pending litigations and the person to whom the amount was said to have been paid has no authority to settle the matter with the petitioner in view of Section 43 of the HR & CE Act and thereby, as on date, in pursuance of the decree passed, the petitioner is an encroacher on the property and the temple has taken every steps to evict the petitioner and finding that the petitioner is an encroacher the Executing Court has rightly dismissed the petition.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. It is the case of the petitioner that subsequent to the decree, the respondents have received an amount of Rs.4,14,000/- under the guise of donation and advance and having received the amounts, they have gone back from settlement.

7. It is not in dispute that the tenancy cannot be inherited under the HR&CE Act. As per Explanation (a) to Section 78 of the

HR&CE Act, any person, who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) is determined as an encroacher. The competent authority vested with the power of sanctioning the licence refers to the Commissioner of HR&CE and he alone has the authority to sanction for compromise any lis to which a religious institution is a party as evidenced by Section 43 of the HR&CE Act.

8. Of course, it is brought to the notice of this court that the petitioner had already approached the authorities for recognizing him as tenant and that approach had failed.

9. On going through the entire materials, this court is able to understand the delaying tactics played by the petitioner in dragging the proceedings and thereby preventing the respondent from executing the decree for nearly about two decades. The Executing Court has rightly restricted itself without going into the questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and dismissed the petition filed under Section 47 of CPC. I do not find any error or infirmity in the order passed by the Executing Court. The civil revision petition is dismissed. No costs. The connected Miscellaneous Petitions are closed.

15.7.2021.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

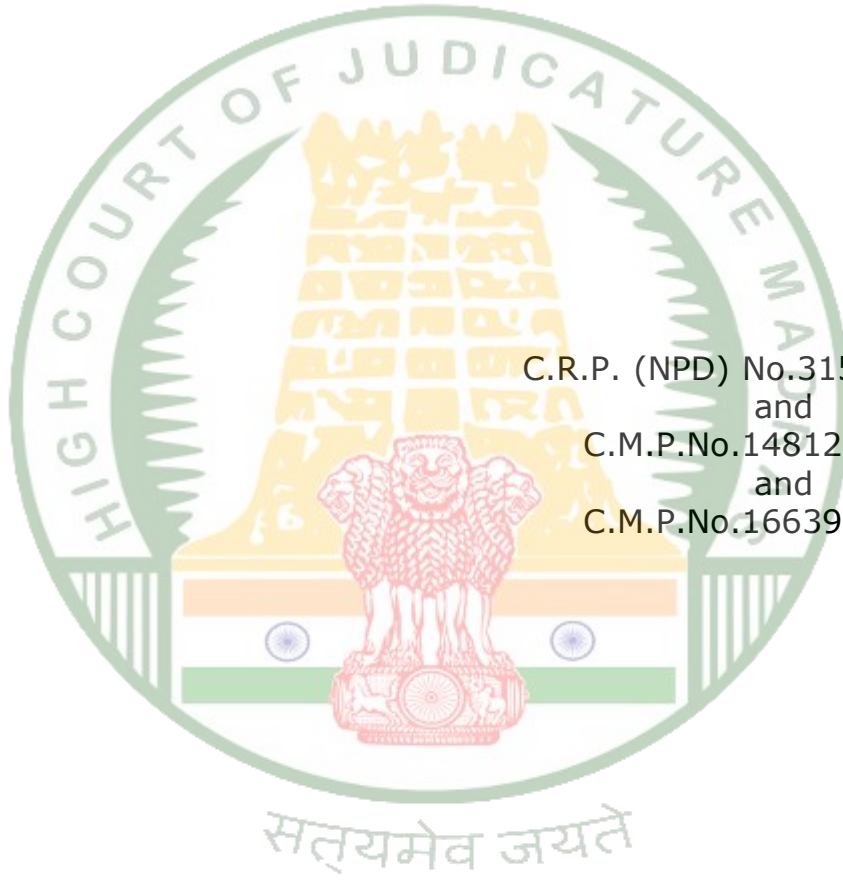
1. IX Assistant Judge,
City Civil Court, Chennai.
2. Arulmigu Angalaparameswari Thirukkoil
rep. by its Executive Officer,
No.189, Adam Sahib Street,
Royapuram, Chennai 600 013.



WEB COPY

A.D.JAGADISH CHANDIRA, J.

Ssk.



C.R.P. (NPD) No.3156 of 2017
and
C.M.P.No.14812 of 2017
and
C.M.P.No.16639 of 2019

WEB COPY

15.7.2021.