

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

O.S.A. No. 412 of 2018
and
C.M.P. No. 18636 of 2018
and
C.M.P. Nos. 2491 and 2493 of 2019
and
C.R.P. Nos. 349 and 351 of 2019

O.S.A. No. 412 of 2018:-

M/s. Masseys Enterprises Pvt. Ltd.
A Company Rep. by its
Chairman & Managing Director
Mr. Rahul Nath
Having Office at
No.17(Old No.7)
North Railway Terminus Road
Royapuram
Chennai - 600 013.

...Appellant

Vs.

1. Mr. Nithyanandan
2. Mr. D.Eswaramurthy
3. Dr. S.Padma
4. M/s.Kinni Ther Festival Specific Endowment
No.3, Genguraman Street
Park Town, Chennai - 600 003.
5. M/s. Casa Grande Pvt. Ltd.
Having office at NPL Devi
Fifth Floor, New No.111
Old No.59, L.B.Road
Thiruvannamiyur, Chennai - 600 041.
6. Chennai Sri Kalikambal Kamateswarar,
Devasthanam, Represented by its
Managing Trustee
Having Office at
No.212, Thambu Chetty Street
Chennai - 600 001.

7. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maaligai
Egmore, Chennai - 600 008.

8. The Commissioner
Corporation of Chennai
Rippon Building
Chennai - 600 003.

9. The Commissioner
HR & CE Department
119, Uthamar Gandhi Salai
Thousand Lights West
Nungambakkam
Chennai.

(R9 suo motu impleaded vide Court order
dated 21.01.2021 in O.S.A.No.412 of 2018) ... Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of
the Original Side Rules read with Clause 15 of the Letters
Patent, praying to set aside the order and decreetal order
dated 16.07.2018 made in Application No. 2486 of 2017 in C.S.
No. 381 of 2016 on the file of this Court.

Application No.2486 of 2017 in C.S.No.381/2016:

Application praying that the Hon'ble Court be pleased to
reject the plaint in C.S.No.381 of 2016.

For Appellant : Mr. R.Thiagarajan

For Respondents :Mr. A.K.Sriram for M/s. A.S.Kailasam
(For R6)

No appearance - R4

Mr.C.P.Hem Kumar (For R5)

Mr. K.P.Chandrasekaran (For R1 to R3)

Mr. S.Thiruvengadam (For R7)

Mrs. Karthikaa Ashok (For R8)

Mr. M.Karthikeyan (For R9)

Special Government Pleader (HR&CE)

C.R.P. No. 349 of 2019 :-

M/s. Masseys, a Registered Firm
By its Partner, converted as
M/s. Masseys Enterprises Pvt. Ltd.
A Company rep. by its Chairman &

Managing Director, Mr. Rahul Nath
Registered Office at No. 17/7
North Railway Terminus Road
Royapuram, Chennai - 600 013
(Amended as per order in I.A. No. 1976
of 2013 dated 05.03.2013)
No.17/7, North Railway Terminus Road
Royapuram, Chennai - 600 013.

... Petitioner

Vs.

1. Chennai Sri Kalikambal

Kamateeswarar Devasthanam

Represented by its Trustees

1. K.Murthy Achari
2. D.Jagadeesan Achari
3. K.Yuvaraj Achari
4. R.Rajendra Kumar
5. P.Panchatcharam Achari

(Substituted as per order in I.A.
No. 11884/2016 dated 18.11.2016)
No.212, Thambu Chetty Street
Chennai - 600 001.

2. Kinni Ther Festival Specific Endowment

Attached to the Plaintiff Devasthanam

Represented by

1. N.Balasubramanian @ N.Subramanian
 2. G.Murugesan
 3. K.Kesava Narayanan
- (Substituted and amended as per Order in
I.A. No. 2847 of 2008, dated 28.04.2008)
No.3, Ganguraman Steet, Park Town
Chennai - 600 003.

... Respondents

This Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside order and decretal order dated 10.01.2019 made in I.A. No. 12284 of 2018 in O.S. No. 12803 of 1996 on the file of the I Assistant City Civil Judge, Chennai and thereby, allow the Civil Revision Petition.

For Petitioner :Mr. R.Thiagarajan

For Respondents: Mr. A.K.Sriram

For M/s. A.S.Kailasam Associates (For R1)

No appearance (For R2)

C.R.P. No. 351 of 2019 :-

M/s. Masseys, a Registered Firm
By its Partner, converted as
M/s. Masseys Enterprises Pvt. Ltd.
A Company rep. by its Chairman &
Managing Director, Mr. Rahul Nath
Registered Office at No. 17/7
North Railway Terminus Road
Royapuram, Chennai - 600 013

(Amended as per order in I.A. No. 1976
of 2013 dated 05.03.2013)

No.17/7, North Railway Terminus Road
Royapuram, Chennai - 600 013. Petitioner

Vs.

1. Chennai Sri Kalikambal Kamateeswarar Devasthanam
Represented by its Trustees
 1. K.Murthy Achari
 2. D.Jagadeesan Achari
 3. K.Yuvaraj Achari
 4. R.Rajendra Kumar
 5. P.Panchatcharam Achari

(Substituted as per order in I.A.
No. 11884/2016 dated 18.11.2016)

No.212, Thambu Chetty Street
Chennai - 600 001.

2. Kinni Ther Festival Specific Endowment
Attached to the Plaintiff Devasthanam
Represented by

1. N.Balasubramanian @ N.Subramanian
2. G.Murugesan
3. K.Kesava Narayanan

(Substituted and amended as per Order in
I.A. No. 2847 of 2008, dated 28.04.2008)

No.3, Ganguraman Steet, Park Town
Chennai - 600 003.

... Respondents

This Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside order and decretal order dated 10.01.2019 made in I.A. No. 12284 of 2018 in O.S. No. 12804 of 1996 on the file of the I Assistant

City Civil Judge, Chennai and thereby, allow the Civil Revision Petition.

For Petitioner : Mr. R.Thiagarajan

For Respondents : Mr. A.K.Sriram
For M/s. A.S.Kailasam Associates (For R1)

No appearance (For R2)

C O M M O N J U D G M E N T
(Judgment of the court was made by
N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2. This Appeal has been filed against the order of dismissal of the Application in Application No. 2486 of 2017 in C.S. No. 381 of 2016 filed to reject the Plaint in C.S.No. 381 of 2016 taken out by the Second Defendant in the Suit in C.S. No. 381 of 2016.

3. Heard Mr. R.Thiagarajan, Learned Counsel for the Appellant / Petitioner, Mr. A.K.Sriram, Learned Counsel for the Sixth Respondent, Mr. K.P.Chandrasekaran, Learned Counsel for First to Third Respondents, Mr. S.Thiruvengadam, Learned Standing Counsel for Seventh Respondent, Mrs. Karthikaa Ashok, Learned Counsel for the Eighth Respondent and Mr. M.Karthikeyan, Learned Special Government Pleader (HR&CE) for the Ninth Respondent.

4. The Suit in C.S. No. 381 of 2016 has been filed before this Court by the First to Third Respondents against the Appellant and the others for the following prayers :-

- (a) to declare that the order of the city Civil Court executing Sale deed registered as Document No.1700 of 1983 dated 03.10.1983 in favour of the Second Defendant is per incurium, non-est in pursuance of the suit in O.S. No. 6612 of 1976;
- (b) to declare that the self proclamation of the First Defendant that he has become owner from that of the mortgage in respect of the schedule mentioned property is null and void;
- (c) to grant mandatory injunction directing the Second Defendant to produce those documents viz., (1) Lease Deed dated 01.03.1877 and (2) Mortgage Deed dated 21.12.1892;
- (d) to grant permanent injunction restraining the First to Third Defendants from

constructing further in the schedule mentioned property by virtue of the permission alleged to have been granted by the Fifth and Sixth Defendants;

- (e) to grant mandatory injunction directing the Fifth and Sixth Defendants to cancel the planning permission granted in favour of the Second and Third Defendants with respect to the suit schedule property;

- (f) Towards the cost the suit.

The said suit has been transferred in view of enhancement of pecuniary jurisdiction of this Court to the City Civil Court and the same has been re-numbered as O.S. No. 3947 of 2019 pending on the file of XXI Additional City Civil Court, Allikulam, Chennai.

5. Similarly, the Sixth Respondent Temple, viz., Chennai Sri Kalikambal Kamateeswarar Devasthanam filed a Suit in C.S. No. 19 of 1985 and the same was also transferred in view of enhancement of pecuniary jurisdiction of this Court to City Civil Court, Chennai and re-numbered as O.S. No. 12804 of 1996 pending on the file of I Assistant City Civil Court, Chennai.

6. A memo dated 25.03.2021 has been filed on behalf of the Appellant as well as First to Third Respondents and Fifth, Sixth and Ninth Respondents stating that both the above said suits can be clubbed together and can be transferred to a single Court for common recording of evidence and for joint trial and disposal.

7. Therefore, Registry is directed to transfer both the above said suits in O.S.No.3947 of 2019, pending on the file of XXI Additional City Civil Court, Allikulam, Chennai. and O.S.No.12804 of 1996 pending on the file of I Assistant City Civil Court, Chennai to I Additional City Civil Court, Chennai for joint trial and disposal, on or before 17.04.2021. It shall be incumbent upon the Learned I Additional Judge, City Civil Court, Chennai to have at least one effective hearing every week showing progress of the case.

8. This Court has suo motu impleaded the Commissioner of HR & CE Department as ninth respondent in the Appeal. Since HR & CE is not a party in the above said Suits and since this appeal is being disposed of, this Court, suo motu impleads the Commissioner of HR & CE Department as Defendant in both the Suits and the Commissioner of HR & CE Department shall file Written- Statement in both the above said Suits by 17.04.2021. The Plaintiffs in both the above said Suits shall serve copies on the Learned Counsel for the Commissioner of HR & CE Department so that Written-Statement could be filed by 17.04.2021.

9. If any additional issues have to be framed in the said Suits, the same has to be framed within a period of one week from 17.04.2021 and thereafter, trial has to commence. Both the Suits are directed to be disposed of on or before 31.08.2021 and the I Additional Judge, City Civil Court, Chennai is directed to file a compliance report by 02.09.2021.

7. Civil Revision Petitions in C.R.P. Nos. 349 and 351 of 2019 have been filed against the dismissal of the Petitions in I.A.Nos. 12283 and 12284 of 2018 in O.S. No. 12804 of 1996, which were filed to reopen the Plaintiff's side evidence in O.S. No. 12804 of 1996, closed on 13.03.2018 and to recall PW1 for further cross examination by the Revision Petitioner herein, who is the Second Defendant in the Suit in O.S. No. 12804 of 1996 respectively.

8. It is evident that the First Respondent filed the Suit in O.S. No. 12804 of 1996 against the Second Respondent as well as the Appellant in O.S.A.No.412 of 2018. In the said Suit, PW1 has been examined and thereafter, the Plaintiff side evidence was closed. To reopen the Plaintiff's side evidence and for the purpose of recalling and cross-examining PW1, the said Applications in I.A.Nos.12283 and 12284 of 2018 were filed. Subsequently, the same were dismissed holding that the Suit in O.S. No. 12804 of 1996 is pending for more than 22 years and again if the evidence is opened, it will protract the proceedings. More over, the Court below noted that DW1 never turned up before the Court to examine himself and it would only amount to protracting the case. Therefore, the said Petitions were dismissed, against which the present Civil Revision Petitions have been filed.

9. This Court is of the view that during the trial, full opportunity has to be given to all the parties. No doubt, the said Suit is pending for 22 years and the parties are also attempting to protract the proceedings. In an attempt to do complete justice, this Court sets aside the order and allows the Petitions in I.A. Nos. 12283 and 12284 of 2018 in O.S. No. 12804 of 1996 filed by the Revision Petitioner to reopen the Plaintiff's side evidence in O.S. No. 12804 of 1996, closed on 13.03.2018 and to recall PW1 for further cross examination.

10. Even though in Para 6 of the Memo filed by the Learned Counsel for the Appellant as well as Learned Counsel for Fifth, Sixth and Ninth Respondents in O.S.A.No.412 of 2018, an undertaking has been given by the Revision Petitioner who is the Appellant in O.S.A.No.412 of 2018 that he would conclude the cross examination of PW1 within two days, Mr.R.Thiagarajan, Learned Counsel for the Revision Petitioner agrees to cross examine PW1 on a single day. Since this Court has clubbed O.S. No. 12804 of 1996 along with O.S. No. 3947 of 2019 for joint trial and disposal before the I Additional City

Civil Court, Chennai, PW1 is directed to be present before I Additional City Civil Court, Chennai on the date fixed by the trial Court for cross examination and he shall be cross examined by the Revision Petitioner on the same day itself.

11. With the above observations and directions, the Original Side Appeal in O.S.A.No.412 of 2018 is disposed of and Civil Revision Petitions in C.R.P.Nos.349 and 351 of 2019 are ordered. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

Maya/ay

To

- 1.The Section Officer
VR Section
High Court of Madras
Chennai - 600 104.
2. The Sub Assistant Registrar
Original Side Section
High Court of Madras
Chennai.
3. The I Assistant Judge
City Civil Court, Chennai.
4. The XXI Additional Judge
City Civil Court
Allikulam, Chennai.
5. The I Additional Judge
City Civil Court
Chennai.
6. The Commissioner
HR & CE Department
119, Uthamar Gandhi Salai
Thousand Lights West
Nungambakkam, Chennai.

+1cc to M/s.Karthika Ashok, Advocate SR.No.20503

O.S.A. No. 412 of 2018
and
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GSM(CO)
GMY(17/04/2021)



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