

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD)No.3855 of 2018 &
C.M.P.No.21458 of 2018

Durai Pandian

....

Petitioner

Vs.

1.E.Ramachandran
2.E.Mahadevan
3.C.Panneerselvam
4.P.Muthiyal

....

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Order and Decretal Order dated 08.10.2018 in I.A.No.488 of 2018 in O.S.No.49 of 2011 passed by the learned District Munsif, Madurantakam District, dismissing I.A.No.488 of 2018 in deciding the preliminary issue and allow I.A.No.488 of 2018.

For Petitioner : Mr.N.Nagu Sah

For Respondents : Mr.M.S.Subramanian for R1 and R2
No appearance for R3 and R4

ORDER

This Revision is directed against the Fair and Decreetal order passed in I.A.No.488 of 2018 in O.S.No.49 of 2011, wherein, the learned District Munsif, Madurantakam rejected the petition filed under Order IXV Rule 2 (2) read with Section 151 of C.P.C. r/w Section 12 of Tamil Nadu Court Fees and Suit Valuation Act.

2. The respondents 1 and 2 herein instituted the Suit O.S.No.49 of 2011 to declare that the suit property is absolute property of Sri Srinivasa Perumal Temple at Vembanur Village, Kadapakkam; deliver possession of the suit property; to declare that the sale deed dated 28.09.2005 executed by the second defendant in favour of the first respondent as null and void and for determination of mense profits.

3. It is the case of the plaintiffs that the suit schedule property is the exclusive and absolute property of Sri Srinivasa Perumal Temple , by way of dedication under settlement patta bearing T.D.No.1465. Apart from the suit property, the Temple also owns an extent of 2.64 acres in S.No.14/1 of Vembanur Village. It is alleged that the first defendant

colluding with the second defendant got the property by way of registered sale deed dated 28.09.2005. According to the plaintiffs, the second defendant has no right or authority to convey the suit property to the first defendant.

4. The suit was contested by the petitioner disputing the averments made in the plaint. It is his case that the suit property belongs to an individual and his vendor is having title to convey the property to him.

5. During the pendency of the suit, the present I.A was filed contending that the suit property was not properly valued and proper Court fee has not been paid. It is alleged that learned District Munsiff has no peculiar jurisdiction to try the case. In the affidavit, he has stated that a residential house constructed in the suit property is worth of Rs.10,00,000/-

6. A counter affidavit has been filed stating that the suit property is a Ryotwari land and it was assessed to kist and the suit property has been properly valued and Court fee paid under Section 25 A of the Old Tamil Nadu Court Fees Act. It is further stated that the plaintiffs are not claiming any right over the unauthorized construction made in the suit

property. It is also stated that the written statement was filed long back and when the suit was posted in the list, the present application has been filed with an intention to drag on the case and the learned District Munsif, dismissed the petition. Aggrieved over the same, the present Revision has been filed.

7. It is the submission of Mr.N.Nagu Sah learned counsel for the petitioner that the reasons assigned by the trial Court for rejecting the petition is factually incorrect. According to him, in the plaint itself it has been stated that the petitioner / first defendant has constructed a house and hence, the observation of the learned trial Judge that whether construction was made prior to the suit or after, at the conclusion of the trial cannot be countenanced.

8. *Per contra* Mr.M.S.Subramanian, learned counsel appearing for the respondents 1 and 2/plaintiffs argued in support of the impugned order. It is stated that the suit property is an agricultural land having an extent of 1.37 acres and annual kist is Rs.1.71 ps. and proper Court fee has been paid, according to the relevant provision.

9. Heard the rival submissions on either side and perused the materials available on record.

10. In the instant case, the plaintiffs have relied on the settlement patta bearing TD No.1465 to state that the suit property belongs to Sri Srinivasa Perumal Temple. It must be pointed out that the plaintiffs have not claimed their right over the suit property and it is their case that the property belongs to a Temple and the second defendant has no right or authority to convey the property to the first defendant.

11. Perusal of the suit schedule shows that the property has an extent of 1.37 acres. Hence, I am unable to agree with the submission of the learned counsel for the petitioner that the suit property is a house site and the plaintiffs have to pay Court fee for the value of the property. Based on the averments contained in the plaint, the learned Judge has held that the suit property has been described as Ryotwari property, and it is properly valued and proper Court fee has been paid. It is pertinent to note that the suit was filed in the year 2011 and when the suit is posted in the list, this application has been filed belatedly in 2018. This shows lack of bonafide in

the application.

12. In the light of the above facts, I find no illegality or infirmity in the order impugned in this Civil Revision Case. Accordingly, the Civil Revision Case fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

05.08.2021

Index : Yes.

Internet : Yes.

Speaking order / Non Speaking Order

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To

The District Munsif,
Madurantakam District.

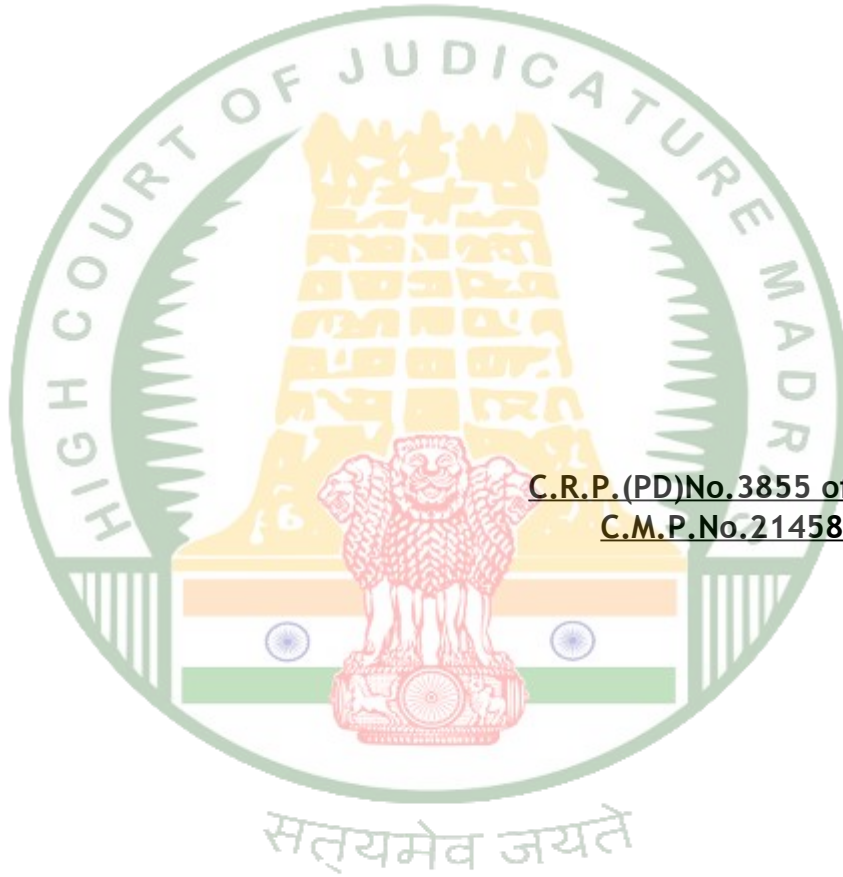


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K.KALYANASUNDARAM, J.

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