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W.A.Nos.2029, 2030 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.A.Nos.2029 and 2030 of 2010 and

M.P.No.1 + 1 of 2010

In W.A.No.2029/2010 (against W.P.No.24142 of 2008)

Church of South India Trust Association

Rep. by its Power of Attorney Mr.Benjamin Franklin

Property Officer, Coimbatore Diocese,

256, Race Course Road, Coimbatore.

... Appellant

//vs/

1. The District Revenue Officer,
Collectorate, Salem.
2. The Revenue Divisional Officer, Salem.
3. The Record Officer & Tahsildar, Salem.
4. The Farm Manager, CSI (Farm),
Hasthampatti, Salem 636 007.
5. Rev. Joshua Karamchander, Presbyter,
CSI Immanuel Church Compound,
Avinashi Road, Coimbatore.



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6. K.Selvamani (died)

7. Ruby Selvia

8. Evangeline Devapria

9. Merlin

(R7 to R9 are brought on record as Legal heirs of the deceased 6th respondent K.Selvamani, vide order of this Court dated 15.11.2022 made in CMP No.18300/2022 in W.A.No.2029/2010)

... Respondents

In W.A.No.2030/2010 (against W.P.No.28719 of 2007)

Church of South India Trust Association

Rep. by its Power of Attorney Mr.Benjamin Franklin
Property Officer, Coimbatore Diocese,
256, Race Course Road, Coimbatore.

... Appellant

//vs/

1. The District Revenue Officer,
Collectorate, Salem.

2. The Revenue Divisional Officer, Salem.

3. The Record Officer & Tahsildar, Salem.

4. K.Selvamani (died)

5. Rev. Joshua Karamchander, Presbyter,
CSI Immanuel Church Compound,
Avinashi Road, Coimbatore.



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6. Ruby Selvia
7. Evangeline Devapria

8. Merlin

(R6 to R8 are brought on record as Legal heirs of the deceased 4th respondent K.Selvamani, vide order of this Court dated 15.11.2022 made in CMP No.18299/2022 in W.A.No.2030/2010)

... Respondents

Prayer in W.A.No.2029/2010: Writ Appeal filed under Clause 15 of Letters

Patent to set aside the order passed by this Court in W.P.No.24142/2008 dated 30.03.2010.

Prayer in W.A.No.2030/2010: Writ Appeal filed under Clause 15 of Letters

Patent to set aside the order passed by this Court in W.P.No.28719/2007 dated 30.03.2010.

In both writ appeals

For Appellant : Mr.A.Immauel in both appeals

For Respondents : Mrs.P.Raja Rajeswari, Govt.Advocate
for R1 to R3 in W.A.2029/2010

Mrs. R.L.Karthika, Government Advocate
for R1 to R3 in W.A.2030/2010

Mr.K.Prahalad Bhat
for R7 to R9 in W.A.No.2029/2010
for R6 to R8 in W.A.No.2030/2010



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No appearance for R4 and R5 in
W.A.No.2029/2010

No appearance for R5
in W.A.No.2030/2010

K.Selvamani - Died
(R6 in W.A.No.2029/2010 and
R4 in W.A.No.2030/2010)

COMMON JUDGEMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

The Intra Court Appeal in W.A.No.2029/2010 has been filed by the Church of South India Trust Association, challenging the order passed in W.P.24142/ 2008, dated 30.03.2020, whereby, the order of the Tahsildar, Salem, (returning the bank draft for Rs.24,000/- towards lease amount) dated 18.12.2007, challenged by one K.Selvamani, was set aside and the Tahsildar was directed to receive the rents, without prejudice to the rights of the parties and subject to the outcome of the order passed by DRO.

2. The Intra Court Appeal in W.A.No.2030/2010 has been filed by the Church of South India Trust Association as against the dismissal of W.P.No.28179/ 2007, wherein, challenge was made as against, i) the order



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of the District Revenue Officer, Salem dated 16.05.2007, recording Mr.K.Selvamani as cultivating tenant in respect of 8.20 acres of land in Survey Nos.9/2 and 10 in Hasthampatti Village, Salem Taluk and dismissing the revision petition filed by one Rev.Joshua Karamchander/ 5th respondent in this appeal and ii) the order of the District Revenue Officer, Salem dated 07.09.2006, dismissing the impleadment of one I.Benjamin Franklin, Property Officer of the appellant herein as a party to the above said revision petition.

3. The facts and circumstances and the issues involved in both the writ appeals are interconnected and hence, this court passes the common order.

4. For the sake of convenience, the parties, namely Rev. Joshua Karamchander, Presbyter and K.Selvamani are referred to as fifth and sixth respondent, as per their rank in W.A.No.2029/2010 and the Church of South India Trust Association is referred to as appellant.



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5. The brief facts leading to file the appeals are as follows.

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The appellant is the Church of South India Trust Association, represented by its power of attorney and they are the owners of 9.00 acres in T.S.No.9 Old T.S.No.5 and 6 and 0.11 acres in T.S.No.10, old T.S.No.8/part in Block-1, in Ward-B in Salem Town. In respect to the above lands, the 5th respondent/Rev. Joshua Karamchander, Presbyter has executed a lease agreement in favour of K.Selvamani/6th respondent, permitting him to cultivate the lands for one year from 01.07.2000 to 30.06.2001. But the above Presbyter himself has no authority to execute any agreement in favour of sixth respondent and the appellant has not granted any power to him for executing such lease deed. The sixth respondent/ K.Selvamani had initiated proceedings in T.R.No.1/2003 to register his name as cultivating tenants before the Tahsildar Salem, wherein, the fifth respondent was a respondent and the above petition was dismissed by the Tahsildar, vide order dated 20.10.2003. Against which, the sixth respondent had filed an appeal before the Revenue Divisional Officer, Salem and it was allowed, vide order dated 09.03.2006. As against the above dismissal of the appeal, the fifth respondent had filed a revision petition before the District Revenue Officer,



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Salem. Pending revision petition, the appellant herein had filed a petition to implead him as a party to the revision petition and it was dismissed, vide order dated 07.09.2006. Subsequently, the revision petition was also dismissed, vide order dated 16.05.2007. Therefore, challenging the above said orders dated 16.05.2007 and 07.09.2006, the appellant herein had filed W.P.No.28719/ 2007.

5.1. Further, the sixth respondent/K.Selvamani had filed an application before the Tahsildar, Salem under Section 3(3)(a) of the Tamil Nadu Cultivating Tenants Protection Act, 1955 to permit him to deposit the rent, since the landlord/ the appellant herein had refused to receive the rent; and also to receive the demand draft for a sum Rs.24,000/-. The above said demand draft was returned by the Tahsildar, Salem, directing the sixth respondent/K.Selvamani him to seek appropriate relief through court of law. Therefore, challenging the above said order, the sixth respondent/ K.Selvamani had filed a writ petition in W.P.No.24142/2008 before this Court.



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5.2. In the meanwhile, the sixth respondent/K.Selvamani and another had filed a suit in O.S.No.1005/2007 before the Principal District Munsif, Salem seeking injunction against the land owners/ appellant herein along with I.A.No.1215/2007 seeking ad-interim injunction. The above injunction application was dismissed on 26.10.2007, observing that the petitioners are residing in the land as coolie workers and not as tenants. As against the dismissal of the petition, they had filed CMA No.33/2007, which was also dismissed by the learned Principal Subordinate Judge, Salem, vide order dated 04.08.2008. Therefore, the sixth respondent/K.Selvamani had filed CRP No.2239/2009.

5.3. The Writ Court has taken up the above W.P.No.28719/2007 and W.P.No.24142/2008 along with CRP No.2239/2009 and after hearing the matters join together, has passed the common order, dismissing the writ petition in W.P.28719/2007 filed by the appellant herein and allowed the writ petition in W.P.No.24142/2008 as well as the civil revision petition in CRP No.2239/2009 filed by sixth respondent/K.Selvamani. Therefore, as against the orders passed in W.P.28719/2007 and W.P.24142/2008, the



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present writ appeals have been filed.

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6. Heard the counsel for the parties and also, we have perused the materials on record.

7. The learned counsel for the the appellant submitted that, as against the order passed in CRP No.2239/2009, the appellant herein had filed special leave to appeal (civil) C.C.No.6289/2011 before the Hon'ble Supreme Court, and the Apex Court has dismissed the said petition, vide order dated 11.07.2011. According to the appellant Trust, they are the owner of the properties, however, no opportunity was granted to them by the revenue authorities to place their contentions and hence, the impugned orders passed by the Writ Court are liable to be set aside.

8. Per contra, the learned counsel for the sixth respondent submitted that the order passed by the learned Single Judge is perfectly correct. He also drew the attention of this court to the order passed by the Hon'ble Supreme Court in Special Leave to appeal in CC.No. 6289/2011 dated



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11.07.2011, in which, while dismissing the petition, the Apex Court has observed as follows.

“ Delay condoned.

This is not a fit case for interference under Article 136 of Constitution of India. Special leave petition dismissed.

However, this will not come in the way of the petitioners initiating action in accordance with law for evicting the respondents and any similar proceedings in such eviction shall be decided on merits on the material placed, in such proceedings, without being influenced by any of the observations of the High Court or the other authorities which are challenged in this petition.

Therefore, in the light of the above observation, the order passed by the Writ Court does not warrant any interference and hence he seeks for dismissal of the writ appeals.

9. At this juncture, the learned counsel for the appellant pointed out that, the appellant herein was not a party to the proceedings before the Revenue authorities and hence, they are not in a position to take further actions and hence, the order passed by the writ court may be set aside.



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10. It is not disputed by the fifth and sixth respondent that the appellant herein are the owners of the properties in question. The foremost contention of the appellant is that, even without having any right over the properties, the fifth respondent had leased out the properties to the sixth respondent. Further, it is contended by the appellant that, even though the Trust is the owner of the properties, without impleading them as a party to the proceedings, the fifth and sixth respondent had filed application and appeal before the revenue authorities and the sixth respondent had obtained order in favour of him from the revisional authority, as he is the cultivating tenant in respect of the properties in question. Further, the Writ Court has also directed the Tahsildar, Salem to receive the rents from him, without prejudice to the rights of the parties and subject to the outcome of the order passed by the District Revenue Officer.

11. In any event, with regard to the properties in question, already a suit in O.S.No.1005/2007 was filed by the sixth respondent/K.Selvamani for injunction against the appellant and with regard to the dismissal of I.A.No.1215/2007 in O.S.No.1005/2007 for granting interim injunction, the



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matter was went upto the Supreme Court and while dismissing the matter, the Hon'ble Apex Court has observed that “ this order will not come in the way of the petitioners/ appellant herein initiating action in accordance with law for evicting the respondents and any similar proceedings in such eviction shall be decided on merits on the material placed, in such proceedings, without being influenced by any of the observations of the High Court or the other authorities which are challenged in this petition”.

12. In such circumstances, we are of the view that though the appellant /Trust is not a party to the proceedings before the revenue authorities, being claimed that they are the owner of the properties, they are having every right to agitate their rights before the appropriate forum to evict the respondent concerned with due process of law, by placing appropriate title records of the properties. Till such time, the receipt of rents by the Tahsildar, Salem from legal heirs of the sixth respondent/ K.Selvamani (died) is subject to the result of the further orders passed by the appropriate forum.



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13. With the above observations, the Writ Appeals W.A.No.2029, 2030/2010 are disposed of . No costs. Consequently connected miscellaneous petitions are closed.

(D.K.K.J.)

(P.B.B.J.)

20.07.2023

Internet: Yes/No

Index : Yes/No

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To

1. The District Revenue Officer,
Collectorate, Salem.
2. The Revenue Divisional Officer, Salem.
3. The Record Officer & Tahsildar, Salem.



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D.KRISHNAKUMAR, J.

and

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