



C.R.P.No.777 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.09.2023

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.777 of 2020
and C.M.P.No.4177 of 2020

Deivasigamani Sadhavarthi Trust,
rep. by its Managing Trustee P.Girija
W/o.Late Parthiban
No.8/ A, Manali Estate, Pudupalayam,
Cuddalore - 1.

... Petitioner

-VS-

1.S.Srinivasan

2.S.Kannan (Died)

3.Bharath Petroleum Corporation Limited,
No.1, Ranganathan Garden,
1/2, 11th Main Road, Anna Nagar,
Chennai - 600 040.

4.A.R.Dhamodara Mudaliar

5.Meenakshi

6.Kavitha Kannan

7.Iswarya Kannan

8.Minor Soundharya Kannan

1/11



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9.Minor Parameswar Kannan

10.Andal Damodaran

11.Aswath Narayan

12.Sathyanarayanan

13.Kalpana Sabanayagam

... Respondents

(Respondents 5 to 9 brought on record as LR's of the deceased R2 viz., S.Kannan vide Court order dated 23.01.2023 made in C.M.P.Nos.872, 874 and 877 of 2023 in C.R.P.No.777 of 2020 by VBSJ. Respondents 8 and 9 Minor represented by mother and natural guardian R6 Kavitha Kannan)

(Respondents 10 to 13 brought on record as LR's of the Respondent 4 viz., A.R.Dhamodara Mudaliar vide Court order dated 08.08.2023 made in C.M.P.Nos.904 to 906 of 2023 in C.R.P.No.777 of 2020 by VLNJ)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to set aside the order and decretal order dated 07.08.2019 made in I.A.No.52 of 2019 in O.S.No.119 of 2003 on the file of the Court of the Ist Additional Sub Judge, Cuddalore.



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For Petitioner : Mr.T.P.Manoharan,
Senior counsel

For Respondents : Mr.T.R.Rajagopalan
1 and 2

For Respondent 3: Mr.O.S.Karthikeyan

ORDER

This Civil Revision Petition has been filed to set aside the order and decretal order dated 07.08.2019 made in I.A.No.52 of 2019 in O.S.No.119 of 2003 on the file of the Court of the Ist Additional Sub Judge, Cuddalore.

2. A third party is the civil revision petitioner. O.S.No.119 of 2003 has a chequered history. The respondents 1 and 2 are the plaintiffs in O.S.No.119 of 2003. They presented a suit against the 3rd and 4th respondents. According to respondents 1 and 2, the property originally belonged to Deivasigamani Sadhavarthi trust. The property was purchased by them pursuant to a judgment and decree



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in O.S.No.14 of 1997 under the provisions of the Public Trust Act on 06.08.1999. According to them, the property had been leased out to defendants therein and consequently, they filed a suit for ejectment.

3. The suit was dismissed by the Trial Court holding that the plaintiffs do not have title. This judgment was rendered on 30.08.2005, against which the first appeal was preferred in A.S.No.02 of 2007 on the file of the Additional District Judge, Fast Track Court-II, Cuddalore. By judgment dated 15.02.2010, the said first appeal was dismissed. Aggrieved by the same, the respondents 1 and 2 preferred the Second Appeal in S.A.No.680 of 2011. The second appeal came up for disposal before this Court on 06.11.2017. At the time of disposal, this Court held as follows:

"11. Since there is material irregularity in deciding a non issue, without giving opportunity to the parties to adduce evidence, a clear miscarriage of justice had occasioned. Further, while deciding the



issue of delivery of possession, it is unnecessary to go into the validity of the decree passed by the Court, which has attained finality and also the validity of the title which is an admitted fact by the contesting respondents. Therefore also, this Court is inclined to set aside the order impugned in this Second Appeal.

12. In such circumstances, this Court, without going into the other aspects on merits, set aside the decree and judgment passed by the Courts below and remits the matter to the Trial Court for being tried afresh by framing suitable issues. The Trial Court is further directed to complete the trial within a period of six months from the date of receipt of a copy of this order."

4. On the basis of the order passed by this Court, O.S.No.119 of 2003 stood restored on the file of the Ist Additional Sub Court, Cuddalore. In these proceedings, the civil revision petitioner wanted to implead itself.



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WEB COPY 5. The said application came to be dismissed by the Trial Court in and by way of an order dated 07.08.2019. Challenging the same, the present revision petition has been filed.

6. I heard Mr.T.P.Manoharan, learned senior counsel appearing for Mr.K.P.Jotheeswaran and Mr.T.R.Rajagopalan, learned senior counsel appearing on behalf of Mr.D.Ravichandran.

7. Mr.T.P.Manoharan would submit

(i) that the decree, on the basis of which the property was purchased in O.S.No.14 of 1997 on the file of the District Court is a nullity because the proceedings were initiated in July and the entire proceedings, concluded by August.

(ii) Pointing out the tearing hurry in the disposal of the proceedings, he would question the jurisdiction of the District Court to grant decree and thereby plead the decree is a nullity.



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(iii) He submits that this Court has to exercise its *parens patriae* jurisdiction and permit the Trust to implead in the present suit.

8. Mr.T.R.Rajagopalan, learned senior counsel appearing for the respondent submit, all these submissions are beyond the scope of the application to implead and he would submit that these pleadings were taken in O.S.No.52 of 2014 on the file of the Additional District Judge, Cuddalore and that suit was dismissed for default.

9. In response Mr.T.P.Manoharan would submit that they have taken out an application for restoration of the suit in O.S.No.52 of 2014.

10. The issue that have to be considered in the present application is whether the trust is a proper and necessary party in O.S.No.119 of 2003. This Court in Second appeal has held that in a suit for ejectment, the question of title is alien. It has specifically held



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that the decree has been set aside and the issue on validity of the title, which is an admitted fact between the parties to the suit cannot be gone into in this proceeding. It has held that title is a non issue in this suit. If I were to permit the impleading of the trust and permit it to raise the issue of title, I would be indirectly re-writing the judgment in S.A.No.680 of 2011.

11. Furthermore in a suit for ejectment, the presence of a third party is totally unnecessary. In an ejectment suit against a tenant, title is not a question. The only issue is whether the plaintiff as a landlord is entitled to possession of the property from the tenant.

12. Therefore, the presence of the petitioner in this proceedings which is not based on the question of title but on the relationship of the landlord and tenant, is not necessary. Whatever remedy the petitioner has, it has to be worked out in O.S.No.52 of 2014 on the file of the Additional District Judge, Cuddalore. In case the petitioner



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succeeds in the suit, all the consequence which arise out of the said proceedings will follow including taking of possession of the suit property from the plaintiff in the present suit.

13. Accordingly, C.R.P.No.777 of 2020 is dismissed. No Costs.

Consequently, the connected C.M.P.No.4177 of 2020 is closed.

26.09.2023

rna/shl

Index : Yes / No

Internet : Yes / No

To

The Ist Additional Sub Judge,
Cuddalore.



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V.LAKSHMINARAYANAN.J.

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