



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-01-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CRP No.3269 of 2022

And

CMP No.17357 of 2022

R.Thangavel

... Petitioner

VS.

The Executive Officer,
Arulmigu Soleeswaraswamy Temple,
Kovai Road,
Perundurai.

... Respondent

The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 24.03.2022 passed in IA No.3 of 2019 in IA No.709 of 2017 in OS No.37 of 2017 on the file of the District Munsif Court at Perundurai.

For Petitioner : Mr.D.Baskar

For Respondent : Mr.K.Ganesan



ORDER

The present Civil Revision is filed to set aside the order dated 24.03.2022 passed in IA No.3 of 2019 in IA No.709 of 2017 in OS No.37 of 2017 on the file of the District Munsif Court at Perundurai.

2. The revision petitioner, who is the plaintiff, has instituted the suit for injunction restraining the respondent-Temple from interfering with his peaceful possession of the Temple property. During the pendency of the suit, the respondent-Executive Officer of the Temple filed IA No.7 of 2019 in IA No.709 of 2017 under Section 151 of the Code of Civil Procedure to permit the Temple to file additional affidavit in IA No.709 of 2017, which was filed under Order VII, Rule 11 CPC to reject the plaint.

3. It is not in dispute that the revision petitioner is the tenant and is in occupation of the Temple premises administered by the respondent-Arulmigu Soleeswaraswamy Temple, Perundurai. The Interlocutory Application was filed to reject the plaint.



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4. As far as the petition filed under Order VII, Rule 11 Code of Civil Procedure is concerned, it is relevant to consider that there is an express bar of suits under Section 108 of the Hindu Religious and Charitable Endowments Act, 1959. When there is an express bar under the Special Act, no suit is maintainable under Section 9 of the Code of Civil Procedure. Section 108 of the Hindu Religious and Charitable Endowments Act, 1959 reads as under:-

“108. Bar of suits in respect of administration or management of religious institutions, etc.—No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act.”

5. In the present case, the learned counsel for the respondent brought to the notice of this Court that the respondent-Temple has already taken possession of the subject property and the revision petitioner is not in



possession. However, the said statement is disputed by the learned counsel for the revision petitioner.

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6. Be that as it may, this Court is of the considered opinion that if there is no valid lease under the provisions of the Hindu Religious and Charitable Endowments Act, 1959, the person, who is in occupation of the Temple property is to be construed as an encroacher and liable to be evicted under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959. In the present case, Section 78 proceeding was initiated and he was evicted is the contention raised on behalf of the respondent.

7. This being the facts and circumstances, this Court is of the considered opinion that the plaint filed by the revision petitioner in OS No.37 of 2017 is not maintainable in view of the express bar under Section 108 of the Hindu Religious and Charitable Endowments Act, 1959.

8. If at all the petitioner is aggrieved against the eviction proceedings or otherwise, he has to exhaust the alternate remedy contemplated under the provisions of the Act. The Civil Courts are not



empowered to grant the relief of injunction. Since there is no valid lease agreement exist between the parties, the revision petitioner is not entitled for any relief and consequently, this Court is inclined to strike off the suit itself.

9. In view of the express bar under the provisions of the Act, this Court is of the considered opinion that the parties need not necessarily be driven for adjudication in respect of the Interlocutory Applications filed, it will unnecessarily cause prejudice to either of the parties and more-so, the present Civil Revision Petition is filed under Article 227 of the Constitution of India and again sending the parties back to the Trial Court would become unnecessary.

10. Accordingly, the suit filed by the revision petitioner in OS No.7 of 2007 is struck off. The revision petitioner is at liberty to approach the Competent Authorities under the provisions of the Hindu Religious and Charitable Endowments Act, 1959 if any grievance exists.

11. With the abovesaid liberty, the present Civil Revision Petition stands disposed of. However, there shall be no order as to costs.



Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order



To

1. The District Munsif,
District Munsif Court,
Perundurai.

2. The Executive Officer,
Arulmigu Soleeswaraswamy Temple,
Kovai Road,
Perundurai.

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S.M.SUBRAMANIAM, J.

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