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C.R.P.(NPD)No.122 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.122 of 2017

and

C.M.P.No.552 of 2017

K.Shanmugavel Mudaliar
Managing Hereditary Trustee
Arulmigu Agastheeswarar and Allied Temple
8/426-A, Pozhichalur Main Road
Pozhichalur, Chennai-600 074.

.. Petitioner

VS

V.S.Sundaraja Gurukkal (died)

1.S.Jayakumar
2.S.Ramesh
3.S.Suresh
4.S.Susila Ravichandran
5.Jayanthi Mohan
6.Hemalatha Sridharan

.. Respondents

(Respondents 1 to 6 brought on record as the legal heirs of the respondent viz., V.S.Sundaraja Gurukkal vide order of this Court dated 22.08.2023 made in C.M.P.Nos.16638, 16640 & 16643 of 2023)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.09.2016



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made in I.A.No.1006/2015 in I.A.No.116/2015 in O.S.No.282/2014 on
the file of the Additional District Munsif Court, Alandur.

For Petitioner : Mr.Naveen Kumar Murthi

For Respondent : Mr.J.Ram

ORDER

The civil revision petitioner is the plaintiff. O.S.No.282 of 2014 is a suit presented by the Hereditary Trustee of a temple. The relief that he has sought for is,

(i) for permanent injunction restraining the 1st defendant not to put up any construction;

(ii) to remove the unauthorised construction made by the 1st defendant;

(iii) restraining the 2nd defendant from recognising the unauthorised construction put up by way of levying of property tax;

(iv) for mandatory injunction directing the 2nd defendant to correct the property receipts in the name of the temple and for other consequential reliefs.



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2. The 1st defendant took out an application in I.A.No.116 of 2015 in O.S.No.282 of 2014 for rejection of plaint. The ground on which he wanted the plaint to be rejected was that the Civil Court has no jurisdiction to order eviction or for the relief aforesaid on the ground, the said relief can be obtained under Section 77 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The learned trial Judge was persuaded to accept the argument and rejected the plaint holding that the Civil Court cannot grant a decree as sought for and that there is no cause of action.

3. A review application was moved by the plaintiff in I.A.No.1006 of 2015 in I.A.No.116 of 2015 stating that the rejection of plaint is bad as the Civil Court possess the jurisdiction. Several other grounds were raised, which are not germane to the disposal of the revision.

4. I have heard Mr.Naveen Kumar Murthi and Mr.J.Ram, the learned counsel for the respective parties and carefully perused the records.



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5. Originally, this Court had taken a view that Section 78 of the HR and CE Act is a bar for presentation of a suit as it is a special enactment. The view taken by the learned single Judge was overruled by a Division Bench of this Court by their Lordships Hon'ble Mrs.Justice R.Banumathi and Mr.Justice M.M.Sundresh in ***A.N.Kumar vs. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai, represented by its Executive Officer, (Assistant Commissioner), Thiruvannamalai and others, 2011 (2) LW 1***. This Court held that the Civil Court does not lose jurisdiction by virtue of Section 78 of the HR and CE Act and the Court continues to retain the jurisdiction.

6. In the light of the clear and categorical view of this Court that the Civil Court has jurisdiction, the order passed by the trial Court holding that the suit is not maintainable has to be set aside. Accordingly, I.A.No.1006 of 2015 in I.A.No.116 of 2015 in O.S.No.282 of 2014, dated 30.09.2016 is set aside as it suffers from error apparent on the face of the record. The review is granted. The order passed in I.A.No.116 of 2015 in O.S.No.282 of 2014, dated 04.08.2015 is set aside. The suit is restored on to the file of the learned Additional District Munsif at Alandur.



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7. The suit having been restored, both the parties are entitled to place their submissions on the merits of the case. I make it clear that I have decided only on the jurisdiction of the Civil Court following the judgment of the Division Bench of this Court and I have not gone into the merits of the claims made by one party against the other.

8. The learned Additional District Munsif at Alandur is requested to take up the suit in O.S.No.282 of 2014 and dispose of the same as expeditiously as possible, since the suit is more than five years old.

9. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.08.2023

(2/2)

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

kj/rjr

To

The Additional District Munsif Court, Alandur.



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V. LAKSHMINARAYANAN,J.

kj/rjr

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