



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4288 of 2022

and

C.M.P.No.22498 of 2022

J.Sekar

... Petitioner

Vs.

1.Om Sri Ananda Sairam
Dhyanakoodam,
Rep by its Secretary C.Vijarangan
A registered trust having office at
No.75/2, Perumal Chetty Street,
Thiruvallur,
Thiruvallur Distirct.

2.The Executive Officer / Fit Person
Arulmigu Ramar Bajanai Temple,
Tiruvallur.

... Respondent

[R-2 suo-moto impleaded by order dated 09.01.2023
in C.R.P.No.4288 of 2022]

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint I.A.No.5 of 2021 in O.S.No.108 of 2018 pending on the file of Additional District Munsif Court, Tiruvallur dated 29.07.2022.



For Petitioner

: Mr.M..P.Saravanan

For R2

: Mr.N.R.R.Arun Natarajan
Special Government Pleader
[HR & CE]**ORDER**

The Civil Revision Petition has been instituted under Article 227 of the Constitution of India to strike off the plaint I.A.No.5 of 2021 in O.S.No.108 of 2018.

2. The 1st respondent instituted the Suit in O.S.No.108 of 2018 to evict the revision petitioner from the Suit Schedule Property. During the pendency of the Suit, the revision petitioner filed I.A.No.5 of 2021 in O.S.No.108 of 2018 under Order VII Rule 11 of CPC to reject the plaint. The Trial Court adjudicated the issues and dismissed the Interlocutory Application mainly on the ground that the plaint discloses cause of action and the relationship of tenant-landlord is also stated in the plaint. Therefore, the issues are to be adjudicated by way of trial. Challenging the said order, which is passed in the Interlocutory Application, the present Civil Revision Petition has been filed.



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3. The learned counsel for the petitioner mainly contended that the Suit itself is not maintainable in view of the fact that the property belongs to the Temple and that is under the control of the HR and CE Department, Government of Tamil Nadu. The petitioner is paying the rent to the Temple and receiving receipts. While so, the Suit instituted by the respondent, who is not the owner of the property is liable to be rejected. Thus, the trial Court has not considered the preliminary issues raised in this regard and rejected the Interlocutory Application filed under Order VII Rule 11 of CPC.

4. In view of the fact that the petitioner states that the property belong to the Temple, the Executive Officer, Arulmigu Ramar Bajanai Temple, Thiruvallur has been suo-moto impleaded as 2nd respondent in the present civil revision petition.

5. The learned Special Government Pleader appearing on behalf of the 2nd respondent / Temple, on getting instructions from the department made a submission that already the issues regarding the title had been decided in AS.No.449 of 1998 and the High Court of Madras passed an order on 22.04.2008 as follows



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“7. It is not in dispute that the land in which 'Ramar Bajanai Koodam' is situated was owned by Sadasivam Chetty, grandfather of the plaintiff. The case of the plaintiff is that it is a private property of the plaintiff's family for their exclusive worship and there is no public worship and it does not come under the purview of the Act 22 of 1959. It is needless to say that the burden is on the plaintiff to prove the case pleaded by him. In the present suit, the plaintiff has filed only three documents on his side. Exs.A1 is the Advocate's notice dated 19.02.1996 issued by the plaintiff to the defendant and Exs.A2 and A3 are the order and decretal order of the Appellate Authority viz., the defendant, dated 26.02.1990 in A.P.No.56 of 1987 respectively. In Ex.A2 order, the Appellate Authority considered the document filed by the plaintiff herein, which is of the year 1926 and held that the Bajanai Koodam was in existence as early as on 1926 and was managed by five trustees, of whom, the grandfather of the plaintiff, namely, Sadasivam Chetty was one of the trustees and he had dedicated some properties purchased by him in favour of 'Ramar Bajanai Koodam' by specifically mentioning in the document that the properties were dedicated for



charitable purposes to 'Ramar Bajanai Koodam' and he and his descendants have no right whatsoever on the said properties gifted by him and relying on the above recitals, the Appellate Authority has concluded that 'Ramar Bajanai Koodam' is a 'religious institution' as defined under the Act."

Therefore, the subject property belongs to the temple and thus, the Suit itself is not maintainable under Section 108 of the HR and CE Act.

6. The learned Special Government Pleader further brought to the notice of this Court regarding the order passed in W.P.No.41014 of 2016 dated 03.08.2022, wherein, this Court reiterated that the subject property belongs to temple and a fit person was allowed to be appointed. The relevant paragraphs passed in the Writ Petition reads as under:

49. The Court considered the evidences on records before it and came to a conclusion that the respondent-Society consists of Hindus and Non-Hindus and some of the Non-Hindus have been members of the Executive Committee and also have acted as Vice-President for long periods.



50. *The above decision therefore cannot be applied to the facts of the present case. There, the question was “whether the Sai Mandir, Mylapore was a temple within the meaning of Section 6(20) of the Madras Hindu Religious and Charitable Endowments Act, 1959”. Where as in the present case, the character of the worship in the property has been altered.*

51. *Facts of record indicate that late Sadhasiva Chettiar did not have any issues. It is not clear when the endowed properties came under the control of the descendants of late Rajagopala Chettiar, the brother of Late Sadhasiva Chettiar.*

52. *To give a semblance of legitimacy to their design, a Trust was registered vide Trust Deed dated 31.10.2011 in the name of the petitioner authored by Mrs.M.C.Kasturi W/o.M.Chokkalingam. Mrs M.C.Kasturi appears to be the wife of the grandson of late Rajagopala Chettiar the brother of late Sadhasiva Chettiar.*

53. *There are indications that there was collection of entry amounts from the public. Therefore, I do not find any case has been made*



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out for interference with the impugned order of the second respondent. I am of the view that this is a fit case for appointing a fit person as the attempt of the petitioners is to usurp and privatize the endowed property.

54. Therefore, there is also no merit in the challenge to the impugned order of the second respondent appointing a Fit Person. Further, the issue has already been decided by this Court vide order dated 22.04.2008 in A.S.No.449 of 1998 filed by one Mothi V.Arumugam against the Judgment and Decree dated 25.09.1996 in O.S.No.160 of 1990.

7. In view of the fact that the Suit schedule property belongs to Temple, no suit is maintainable, in view of the express bar under Section 108 of the HR&CE Act. The respondent No.1 has suppressed these facts in the Suit instituted for eviction of the petitioner. The revision petitioner states that he is paying monthly rent to the Temple and thus, the Temple Authorities are bound to regulate the lease between the revision petitioner and the Temple in accordance with the provisions of the Act and Rules.



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8. In the plaint, the respondent has stated that there is an interim stay in force in W.P.No.41014 of 2016. However, the learned Special Government Pleader brought to the notice of this Court that final order had already been passed on 03.08.2022 in the W.P.No.41014 of 2016. Thus, the said submission is untenable and further, the Suit itself is not maintainable under Section 9 of CPC, in view of the express bar under the provision of the HR&CE Act.

9. Accordingly, the fair and decreetal order passed in I.A.No.5 of 2021 in O.S.No.108 of 2018 dated 29.07.2022 is set aside and the plaint is struck off and consequently, this Civil Revision Petition stands allowed. Connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

09.01.2023
(2/2)

Jeni

Index : Yes

Neutral Citation : Yes

Speaking order

Note: Registry is directed to carry out the necessary amendments.



To

The Judge,
Additional District Munsif Court,
Tiruvallur.

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S.M.SUBRAMANIAM, J.

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