

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 15.12.2023

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THE HONOURABLE MRS. JUSTICE T.V. THAMIL SELVI

Civil Revision Petition No.4492 of 2023

and

CMP.No.27018 of 2023

T.Poongodi

.. Petitioner

Versus

The Fit Person

Arulmigu Moovendar Adhi Narayana

Perumal Thirukoil (Arulmigukoora

Vinayagar Thirukoil) Nasiyanur

Erode District and Taluk.

.. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Decreetal Order in I.A. No. 72 of 2021 in O.S. No. 412 of 2020 dated 19.04.2023 on the file of the Principal District Judge, Erode.

For Petitioner : Mr. Sunny Sheen for
Ms.V. Srimathi

For Respondent : No appearance

ORDER

The petitioner has filed this petition to set aside the Fair and Decreetal Order in I.A.No.72 of 2021 in O.S.No.412 of 2020 dated 19.04.2023 on the file of the Principal District Judge, Erode.



declare that the plaintiff temple is the owner of the suit property and for consequential injunction restraining the defendants from altering the physical features of the suit property and to direct them to deliver vacant possession.

3. The revision petitioner/8th defendant filed his written statement repudiating the plaint averments. It was also stated in the written statement that the suit, as filed by the Thakkar/Executive Officer of the temple is not maintainable in view of Rule 4 (b) (iii) of the Conditions of Appointment of Executive Officers Rules, 2015. Apart from filing the written statement, the 8th defendant has also filed an interlocutory application under Order VII Rule 11 (a) and (d) of CPC to reject the plaint stating that there is no no cause of action to prefer and the suit is barred by limitation. It is also stated that the defendants 1 to 7, who are the legal heirs of Sengodam already approached the Revenue Divisional Officer and prayed for issuing patta in their name. It is also stated that the revision petitioner/eighth defendant also purchased the suit property from the defendants 1 to 7 and she is the absolute owner of the suit property. Furthermore under Section 46 of the Act, 1963 the order of the Settlement Thasildar granting Ryotwari patta would attain finality and as such, the present suit without any appeal to the authority under the Act 1963, is not maintainable after five decades. Accordingly, the revision petitioner/8th



defendant prayed for rejecting the plaint.

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4. The trial Court dismissed the application to reject the plaint by referring to Ex.R3, an order passed by the Commissioner, HR & CE Department ratifying the presentation of the plaint by the plaintiff. The Court below also held that Rule 4 (b)(ii) of the Conditions for Appointment of Executive Officer Rules, 2015 always does not require approval of the competent authority to institute a suit. The court below also stated that even assuming that the defendants 1 to 7 have approached the revenue department, in the plaint, it was specifically stated that the sale in favour of the revision petitioner/eighth defendant was made by suppressing the title of the plaintiff temple and therefore, the plaintiff has filed the suit for declaration and other consequential relief. In the light of such averment in the plaint, the trial court held that the application to reject the plaint is not maintainable and dismissed the same.

5. The learned counsel for the revision petitioner submitted that already the revision petitioner filed written statement before the trial Court, but as on date trial has not begun. The foremost objection of the revision petitioner is that already patta was granted to the vendor/defendants 1 to 7 and the



Temple has not questioned the grant of patta in favour of her vendor. If at all the plaintiff has any grievance it has to be worked out only before the competent revenue authority and the suit is not maintainable.

6. But admittedly as per the plaint averments the suit is filed to declare the title of the plaintiff temple, for which the Civil Court is having jurisdiction. According to the plaintiff, the patta was granted in favour of the defendants 1 to 7 erroneously and therefore, the suit was filed for a declaration. The issuance of patta by the Settlement Thasildar is not disputed by the plaintiff however, it was only stated that proper notice was not served on the plaintiff while granting patta in their favour. Similarly, the question of limitation will also not arise when the plaintiff temple has no knowledge about the patta issued to the defendants 1 to 7. In any event, the questions involved in the present dispute is a mixed question of fact as well as law and it has to be adjudicated only at the time of trial. The learned trial Judge has rightly passed the order dismissing the application filed by the revision petitioner/eighth defendant to reject the plaint filed by the plaintiff/respondent herein, which needs no interference by this Court.

7. Accordingly, Civil Revision Petition is dismissed as no merits.



Liberty is granted to the petitioner to work out her remedy before the trial Court. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

15.12.2023

Index : Yes/No

Speaking order / Non speaking order

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To

1. The Fit Person

Arulmigu Moovendar Adhi Narayana
Perumal Thirukoil (Arulmigukoora
Vinayagar Thirukoil) Nasiyanur
Erode District and Taluk.

2. The Principal District Judge, Erode.

3. The Section Officer, VR Section,
High Court of Madras.



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T.V.THAMIL SELVI, J.

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