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CRP(MD)No.529 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.529 of 2022
and
CMP(MD)Nos.2308, 7241 of 2022

L.Prema

: Petitioner

Vs.

Arulmigu Harasaba Vimochana Perumal Thirukovil,
Kandiyur, Thiruvaiyaru Taluk,
Rep. by its Executive Officer

: Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the docket order passed by the learned II Additional District Judge, Thanjavur, in C.R.P.No.20 of 2017, dated 06.09.2021, confirming the order passed by the Revenue Court, Thanjavur, in P.T.No.79 of 2017, dated 04.08.2017 and set aside the same.

For Petitioner : No appearance

For Respondent : Mr.V.Chandrasekar



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ORDER

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The respondent Temple has filed an application in P.T.No.79 of 2017 under Section 19(3) of the Tamil Nadu Public Trust (Regulation & Administration) Act, 1961, before the Revenue Court, Thanjavur, for eviction of the petitioner from the property in S.No.13/1A to an extent of 0.52.5 Ares, which belongs to the Temple. The Revenue Court, by order dated 04.08.2017, allowed the petition and directed the petitioner to vacate the property. As against the same, the petitioner preferred C.R.P.No.20 of 2017 under Section 22 of the Tamil Nadu Public Trust (Regulation & Administration) Act, 1961, before the II Additional District Court, Thanjavur and the same was dismissed by order dated 06.09.2021. As against the concurrent findings of the Courts below, the petitioner has moved the present revision.

2. When the revision petition came up for hearing on 05.09.2022, the learned Counsel for the petitioner filed a memo that he has withdrawn the vakalath and is not having any instructions. Therefore, the revision petition was listed in the name of the petitioner and the learned Counsel was directed to inform the petitioner about the listing of the matter. However, there is no representation for the petitioner.



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3.The case of the petitioner is that the property in S.No.13/1A belongs to one Appavu Gounder and the petitioner, being a descendant of the said Appavu Gounder, is enjoying the property. She denies the title of the respondent and claims that the property was given to Appavu Gounder by the Thanjavur Aranmanai Devasthanam in the year 1935. She also contended that the name of the Temple was wrongly included in the patta during UDR survey and as against the same, she has also initiated a proceeding before the District Revenue Officer. By taking advantage of the patta, the respondent has also filed a suit in O.S.No.70 of 2014 before the District Munsif Court, Thiruvaiyaru, seeking a permanent injunction restraining the petitioner's son from construction and the same was dismissed as withdrawn.

4.It is the further case of the petitioner that the petition filed by the respondent under Section 19(3) of the Tamil Nadu Public Trust (Regulation & Administration) Act, 1961, before the Revenue Court is not maintainable, since there is no tenancy agreement between the parties. There is a specific provision under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, for eviction of persons in possession of Temple land. Therefore, the



petitioner, in her grounds, sought for interfering with the orders impugned on the ground of lack of jurisdiction.

5.Learned Counsel appearing for the respondent submitted that the property comprised in S.No.13/1A belongs to the Harasabhavimochana Perumal Temple situated in Kandiyur Village in Thiruvaiyur Taluk, Thanjavur District. This land was let out for cultivation to the grandfather of the petitioner and after his death, the husband of the petitioner cultivated the land, which is now in possession of the petitioner. But the petitioner has not cultivated the land for 6 years and let out the premises for a TASMACH shop by constructing a building on it. Therefore, the respondent sought eviction of the petitioner.

6.He further submitted that the survey report confirms the fact that the TASMACH shop was situated only on the land owned by the Temple. The Revenue Court, only based on the chitta, adangal and the property register, has concluded and ordered for eviction, which was also confirmed in the revision that there are no merits in the contention and that the act of allowing the property for running a TASMACH shop is atrocious. Therefore, the learned Counsel prayed for dismissal.



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7.This Court considered the submissions made by the respondent's Counsel and perused the available materials. There is no representation for the petitioner.

8.The respondent Temple filed the eviction petition under Section 19(3) of the Tamil Nadu Public Trust (Regulation & Administration) Act, 1961, stating that the petitioner has not cultivated the land for more than six years and attempted to let out the premises to a TASMAC shop by constructing a building on it. The Revenue Court, by order dated 04.08.2017, ordered for eviction and the revision preferred by the petitioner was also dismissed.

9.The respondent Temple claims that the land in S.No.13/1A is their property, based on the chitta, adangal and the property register of the Temple. The respondent relies on the lease receipts dated 28.08.1970 given by the respondent to one Appavu Gounder to establish the landlord-tenant relationship. It appears that the Courts below considered the mortgage deed dated 19.09.1919 and held that there is an admission that the property belongs to the respondent Temple. The Courts below also held that till the year 1970, Appavu Gounder continued as a cultivating tenant and no explanation is given by the petitioner as to how the patta



was changed to Appavu Gounder's name. As rightly held by the Courts below, these admissions are enough to prove the title of the Temple over the property.

10.A cultivating tenant is defined under Section 2(5) of the Tamil Nadu Public Trust (Regulation & Administration) Act, 1961 and as per the Act, any person who contributes his physical labour or that of the members of his family in cultivating under a tenancy agreement, expressly or impliedly, is a cultivating tenant. The definition also includes a person who continues to be in possession of the land and also the heir of such person, if the heir contributes his physical labour in the cultivation of such land. The definition is extracted hereunder for easy reference:-

“Cultivating tenant-

(i) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and

(ii) includes -

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land; or



(c) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land;

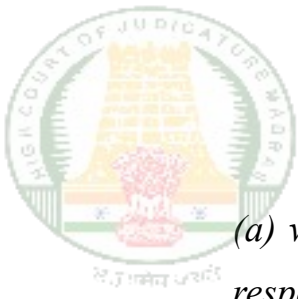
(iii) does not include a mere intermediary or his heir.”

11.The Courts below, by considering the mortgage deed dated 19.09.1919, held that the petitioner’s ancestor, Appavu Gounder, was only a cultivating tenant. Though the Temple has not produced any record or tenancy agreement for the same, the definition clause, as extracted supra, makes it clear that the tenancy has to be either express or implied. The lease receipts dated 28.08.1970 given in the name of Appavu Gounder by the respondent and the possession by the petitioner, show that the tenancy is implied here. The Tamil Nadu Public Trust (Regulation & Administration) Act, 1961, was enacted for regulating the relationship between the public trusts and their cultivating tenants. Thus, the petitioner can be sought to be evicted under the Act.

12.A tenant can be evicted on the grounds set out under Section 19 of the Act. The relevant portion is extracted as follows:-

“19. Public trust may evict cultivating tenant in certain cases.-

(1) Any public trust may evict any cultivating tenant-



(a) who, if in arrear on the date of the commencement of this Act with respect to the rent payable to the public trust, does not pay such rent within a month after such date, or who, in respect of the rent payable to the public trust after the date of the commencement of this Act, does not pay such rent within a month after such rent becomes due; or

(b) (i) who has done any act or has been guilty of any negligence which is destructive of, or injurious to, the land or any crop thereon, or

(ii) who has altogether ceased to cultivate the land; or

(c) who has used the land for any purpose not being an agricultural purpose; or

(d) who has contravened consecutively for two crops the provisions of sub-section (1) or (2) of section 27; or

(e) who has willfully denied the title of the public trust to the land.

Explanation- A denial of the public trust's title under a bona fide mistake of fact is not willful within the meaning of this clause."

13.The petitioner herein has wilfully denied the title of the public trust by referring that the land belongs to his ancestor Appavu Gounder. While denying the title, the petitioner, in the reply statement, also admitted that the property remains uncultivated, thereby, the petitioner has also failed to pay the arrears of rent to the



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respondent. Moreover, the petitioner tried to use the property for a non-agriculture purpose by constructing a building and letting it out to a TASMAL shop.

In view of all these grounds, the petitioner is liable to be evicted and there is no reason to interfere with the orders of the Courts below. Therefore, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
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13.03.2023

To

1.The II Additional District Judge,
Thanjavur.

2.The Revenue Court,
Thanjavur.



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B.PUGALENDHI, J.

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