



C.R.P(MD)No.1634 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)No.1634 of 2019

and

C.M.P(MD)No.8544 of 2019

Poochikalai

... Petitioner/1st defendant

.VS.

Arulmigu Soola Pidariamman
and Pattavan Temple Poosari
Poochikalai (died)

1.Palanichamy

....1st Respondent/Plaintiff

2.Poochikalai

S/o.Villi Ambalam

3.Poochikalai

S/o.Poochi Ambalam

4.Chinnachamy

....Respondents/2 to 4 defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the judgment and decree in O.S.No. 256 of 2009 on the file of the Additional District Munsif Court, Manaparai.



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For Petitioner
For R1 & R2
For R3 & R4

:Mr.R.G.Shankar Ganesh
:Ex-parte
:No appearance

ORDER

The revision is filed at the instance of the first defendant. The suit in O.S.No.256 of 2009 has been filed by Arulmigu Soola Pidariamman and Pattavan Temple Poosari Poochikalai (died) and the first respondent, who claims to be a hereditary Poosari of Arulmigu Soola Pidariamman and Pattavan Temple.

2. The revision petitioner as the first defendant filed a written statement and contested the suit. The suit came to be decreed by the trial Court. As against which, the revision petitioner has also preferred an appeal in A.S.No.164 of 2018, which is pending before the II Additional Subordinate Judge, Trichirappalli. In the said appeal, one of the grounds raised by the revision petitioner is that after coming into force of the amended Tamilnadu Act 2/1971 under the Hindu Religious and Charitable Endowments Act, the right of hereditary trusteeship can be claimed only under Section 63 (b) of HR & CE Act, that too, before the



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competent authority under the Act and therefore, the suit filed by the plaintiffs could not have been entertained.

3. Pending the said appeal, the revision petitioner has chosen to prefer the present revision to strike off the judgment and decree, dated 11.07.2018, which was already challenged by way of an appeal in A.S.No.164 of 2018.

4. The grounds raised in the revision are that the judgment of the trial Court is not only barred by law but also without authority and the trial court ought to have applied the ratio of the judgment of the Hon'ble Supreme Court in *Sessammal and others Vs.State of Tamil Nadu* reported in **1972(2) SCC (11)** and dismissed the suit and further that, even under the HR & CE Act 22/59, the Joint Commissioner does not have power to declare a person as a hereditary poosari to a temple. Consequently, the Civil Court lacks jurisdiction to entertain the suit and being a legal plea, the petitioner was well within his rights to raise the same by way of the present revision.

5. Heard the learned counsel appearing for the petitioner.



6. The learned counsel for the petitioner would refer to the judgment of the Hon'ble Supreme Court in ***Rafique Bibi (D) By Lrs. vs. Sayed Waliuddin (D) By Lrs.*** reported in ***2003(6) Supreme 300***, where, the Hon'ble Supreme Court has held that, the lack of jurisdiction in a Court passing the decree must be patent on its face in order to enable the executing Court to be entitled to take cognizance of such nullity based on want of jurisdiction and that the same would be an exception to the normal rule that an executing Court cannot go behind the decree. He would also rely on the judgment of the Hon'ble Supreme Court in ***Balvant N.Viswamitra vs. Yadav Sadshiv Mule (D) Through Lrs.*** reported in ***AIR 2004-SC 4377***, where, the Hon'ble Supreme Court held that when a Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, *non est* and void *ab initio*. A defect of jurisdiction of the Court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order and such defect has always been treated as basic and fundamental and a decree or order passed by a Court or an authority having no jurisdiction, is a nullity and that validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.



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7. Here, admittedly, the revision petitioner has already challenged the said decree on the ground it is a nullity as already discussed in ground-C in its appeal suit. The said ground was not taken before the trial Court. The revision petitioner did not canvass the point and he met the plain allegations only on the facts and not on this issue. No doubt, the counsel is right in contending that a question of law can be canvassed before the appellate Court, even if not taken before the Trial Court.

8. Considering the facts and circumstances of the present case and in the light of the appeal filed by the revision petitioner being pending for final adjudication, the present revision to strike off the judgment and decree cannot be entertained by this Court under Article 227 of the Constitution of India. The revision petitioner is always entitled to contend the ground of nullity of decree before the appellate Court, where, his appeal is pending and get the judgment and decree of the trial Court set aside. Pending the said appeal, that too, when the legal plea was not even addressed before the trial Court, it would not be appropriate to invoke under Article 227 of the Constitution of India and strike off the judgment and decree as null and void and without authority.



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9. In the result, the Civil Revision Petition is dismissed. However, the revision petitioner shall be at liberty to raise these legal issues before the appellate Court in A.S.No.164 of 2018, on the file of the II Additional Subordinate Judge, Tiruchirappalli. The appellate Court shall permit the revision petitioner to canvass all the legal grounds attacking the very jurisdiction of the Civil Court in entertaining the suit filed by the plaintiff and shall dispose of the appeal as expeditiously as possible at any rate, on or before 28.02.2024. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
AM

01.11.2023

To

1. The Additional District Munsif Court,
Manaparai.
2. The II Additional Sub-Court,
Tiruchirappalli.



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P.B.BALAJI,J.

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