



CRP(MD).Nos.1487 and 1488 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2023

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THE HON'BLE MR.JUSTICE **C.KUMARAPPAN**

CRP(NPD)(MD).Nos.1487 and 1488 of 2017

Arulmigu Subramaniaswamy Thirukoil,
Thirupparankudram Madurai,
through the Executive Officer

Petitioner in both CRPs

Vs.

Rajeswarai

Respondent in
CRP(MD).No1487 /2017

1.Ramu @ Ramalakshmi
2.Santhi
3.Pothumponnu
4.Rajeswari

Respondents in
CRP(MD).No1488 /2017

PRAYER in CRP(MD).No.1487 of 2017 : Civil Revision Petition filed under Section 115 C.P.C., to set aside the order passed in E.A.No.66 of 2017 in E.P.No.44 of 1997 in O.S.No.363 of 1988, dated 17.04.2017 on the file of the Subordinate Court, Sivagangai.



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PRAYER in CRP(MD).No.1488 of 2017 : Civil Revision Petition filed under Section 115 C.P.C., to set aside the order passed in E.P.No.44 of 1997 in O.S.No.363 of 1988, dated 17.04.2017 on the file of the Subordinate Court, Sivagangai.

For Petitioner : Mr.S.Manohar in both CRPs

For Respondents : No appearance in both CRPs

COMMON ORDER

The revision petitioner is the plaintiff before the trial Court. The plaintiff is the Idol of the Arulmigu Subramaniaswamy Thirukoil, Thirupparrankundram, Madurai. The respondent herein is the petitioner / defendant.

2. It appears that the plaintiff temple has filed a suit against the father-in-law of the respondent in CRP(MD).No.1487 of 2017 for recovery of sum of Rs.26,995/- on account of supply of Gingelly bags. It appears that a decree was passed in the said suit on 22.09.1988. It appears that in pursuance of the decree, the temple has filed an execution petition in E.P.No.44 of 1997 for attaching the schedule mentioned properties.



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While Execution Petition was pending, the defendant viz., Muthaiah has died. Hence, his legal heirs were added as the respondents 2 to 5 in the Execution petition. While so, the 5th respondent in the Execution Petition, who is the daughter-in-law of the deceased defendant Muthaiah has filed an application in E.A.No.66 of 2017 under Section 60(1)(c) of CPC, challenging the execution proceedings against the petition mentioned properties, contending that she being the labourer, has been residing in the petition mentioned property, hence, she filed an application to exempt the petition mentioned property from the sale against the lessee.

3. The said application was strongly resisted by the temple by contending that the said Rajeswari is not at all a labourer and that the petition mentioned property is not an exempted property as defined under Section 60(1)(c) of CPC, and further submitted that as on date of the filing of the above application, there was a due to the tune of Rs.1,02,815.60/-. However, the said Rajeswari has paid only Rs.47,790/-. Therefore, would submit that the defense putforth by the petitioner Rajeswari cannot be accepted at all and prayed for dismissal of the application filed under Section 60(1)(c) of CPC.



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On hearing either side, the Court below vide order, dated 17.04.2017, has allowed the application filed under Section 60(1)(c) and has ultimately found that the petitioner Rajeswari is an agricultural labourer and that she being a women, she could not be arrested and hence, E.P.No.44 of 1997 was closed.

4. Aggrieved with the order passed in the application filed under Section 60(1)(c) of CPC and also the closure of the Execution Petition, two Civil Revision Petitions have been filed by the plaintiff temple. CRP(MD).No.1487 of 2017 has been filed against the order passed in E.A.No.66 of 2017, and another CRP(MD).No.1488 of 2017 is filed against the order of closure of Execution Petition in E.P.No.44 of 1997.

5. The learned counsel appearing for the petitioner herein / temple, would vehemently submits that the Court below without any basis and only based upon the averments in the affidavit, has allowed the application. It is also the submission of the learned counsel for the petitioner that originally the Judgment Debtor Muthaiah, did not take such a defense. Therefore, their legal heirs are not entitled to take such defense that too after a lapse of 20 years.



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6. Though the learned counsel appearing for the respondents present, he is not in a position to answer the queries of the Court and would submit that he has no instruction from his client.

7. This Court has carefully gone through the records and the order of the Court below. Even according to the observations made in paragraph No. 7, the petitioner is not permanently residing in the petition mentioned properties even on the date of filing of application. According to her she was temporarily residing with her parents. Therefore, the finding of the trial Court is without any supporting evidence, not even oral evidence of the petitioner. This Court failed to understand as to how learned Judge arrived such a conclusion.

8. Therefore, in substance, the order of the Court below do not contain any basis to arrive at a conclusion that the petition mentioned property is the permanent residence of the labourer. It is pertinent to mention here that not even a scrap of paper has been marked or produced before the Court below in this regard. Hence, this Court finds no merit in the order passed by the learned Trial Judge. However, to meet the ends of



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justice, this Court while inclined to allow this Civil Revision Petition, wants to direct the learned Trial Judge to decide the application in E.A.No. 66 of 2017, afresh according to law. Hence, the order passed in E.A.No. 66 of 2017 is ordered to be set aside by allowing the CRP(MD).No.1487 of 2017. As a Consequence, the other CRP(MD).No.1488 of 2017 is also allowed and E.P.No.44 of 1997 is ordered to be reopened and restored to file. No costs.

9. In the result, both the Civil Revision Petitions are allowed. The Court below is directed to dispose of both E.P as well as E.A., as indicated herein above. As the matter is of the year 1997, considering the long pendency of the matter, both the parties are directed to appear before the Court below on 21.08.2023. In the meanwhile, Registry is directed to re-direct all the necessary papers to the trial Court.

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Index : Yes / No
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To

The Subordinate Court, Sivagangai.



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