



Rev.Appln No. 229 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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C.Neelavathi

... Review Applicant

Vs.

Sri Kasiviswanatha Swamy Devasthanam
is a Religious and Public institution
rep by its Hereditary Trustees
1.A.Vinayagam
2.A.Viswanathan
3.K.A.Natarajan

..Respondents

PRAYER : This review application has been filed under Order XLVII Rule 1 r/w Section 114 of CPC, to review the order dated 08.11.2023 in CRP. No. 3812 of 2023 passed.

For review applicant : Mr.M.G.K.Thamizh Arasan

For Respondent : Mr.M.A.Lakshmipathi



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JUDGMENT

The review application has been filed to review the order dated 08.11.2023 passed in CRP. No. 3812 of 2023.

2. The review applicant is the judgment debtor, who filed E.A No. 3195 of 2018 in E.P No. 2703 of 2017 under Section 47 of CPC, stating that the decree is inexecutable. The said application was contested by the decree holder stating that the petitioner/judgement debtor/defendant is the tenant in the properties belongs to the respondent Sri Kasiviswanatha Swamy temple (in short "temple") as the petitioner failed to pay the rent hence the temple filed the suit in O.S No. 737 of 2014 for recovery of arrears of rent and to the evict the petitioner from the petitioned mentioned property with an extent of 1356 square feet in RS No. 150 on which super structure bearing present No.57, Vadamalai Meistry Street, Konidthoppu, Chennai - 79. In the said suit, the review applicant herein/judgement debtor filed the written statement and but he remains exparte and exparte decree was passed. Considering the evidence as well as the documents filed by the plaintiff/respondent herein the Trial Court granted decree for recovery of



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possession. Thereafter, the defendant filed the application to set aside the exparte decree but the same was dismissed. Against which he preferred an CRP No. 2006 of 2018 before this Court and the same was dismissed. As on date, decree passed by the Trial Court is in force to execute the decree temple/plaintiff filed EP No. 2703 of 2017, on receipt of the notice the defendant/Review applicant herein filed application under Section 47 of CPC challenging the validity of the decree and it could not executable.

3. The decree holder raised objection stating that the Temple is the absolute owner of the property. In fact, the judgement debtor/review applicant had earlier filed suit in O.S No. 6298 of 2013 for permanent injunction wherein she adtmits that she is tenant of the property. Subsequently, the said suit was dismissed. In fact, the mother-in-law/Meenakshiammal of the defendant/review applicant has already filed suit in O.S No. 5763 of 2016 for declaration of title in respect of the same property and the same was dismissed. Aggrieved by the judgment and decree the said Meenakshiammal preferred an appeal in As No. 367 of 1982 and AS No. 359 of 1982 and all the appeals were dismissed. As on date, property stands in the name of the decree holder/Temple and declared the temple as absolute owner of the property said decree is still in force.



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Therefore, the decree holder raised objection before the executing Court.

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4. The judgement debtor/review applicant claiming that suit property is absolutely belongs to MuthuManickam through settlement deed executed by his father in the year 1937, after the death of the Muthumanickam his wife Meenakshiammal enjoyed the property, after her death her legal heir and daughter-in-law/judgement debtor as absolute owner of the property. Besides, suppressing the above, decree holder approached the Court and obtained decree as such is inexecutable one. Therefore, he prayed to reject the execution application.

5. Considering the above, the Court below observed that in earlier suit Meenakshiammal/mother-in-law of the judgment debtor claimed herself as tenant in respect of the property and suit in O.S No. 268 of 2013 was marked as Ex.R6 and also the decree is still in force since CRP filed by the defendant challenging the condonation of delay has not been accepted by this Court. As on date, decree is in force, same is to be executable one. The trial judge based on the earlier suit filed by the Meenakshi Ammal decreed title over the schedule mentioned property which was dismissed. Against which appeal was filed and the same was dismissed in the year 1984 itself through which claim of Meenakshiammal was not accepted by this Court



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and the title claimed by the Meenakshi Ammal also dismissed by this Court. Challenging the same, she filed the petition before the Court below.

On hearing both sides the Court below dismissed the appeal. Challenging the same, the petitioner preferred an CRP before this Court and this Court confirmed the findings of the executing Court and disagreed with the claim of the judgment debtor.

6. Now, the learned counsel to review the order of this Court filed the additional documents sale deed stands in the name of the Muthumanickam and he relied the patta issued in the name of the Maeenakshi Ammal/mother-in-law of the petitioner in the year 1968, which was not been properly appreciated by this Court. He stated that patta recognized her title hence the order of this Court to be revisited. Therefore, he filed this present petition.

7. The learned counsel for the decree holder submits that patta granted in favour of the Meenakshi Ammal was set aside by the revenue authorities by conducting enquiry on 23.05.2007 thereby patta was cancelled by the revenue authorities.

8. Heard both sides



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9. On perusal of the order dated 30.05.2017, appellant Neelavathy also appeared for the enquiry before the revenue officials. Furthermore, as per the permanent land record MeenakshiAmmal recorded as tenant moreover settlement deed relied by them was perused by this Court which clearly reveals that sale deed dated 03.09.1937 which was marked as Ex.B1 in B schedule property which is under dispute, in Door No. 1/20 Old S.No. 56/97 described as 17 East West 50 ft North South 20 ft that super structure was given right. Therefore, title deed relied by the judgment debtor clearly shows that land is not belongs to them, super structure alone is belongs to them. Temple is in possession of the property, as permanent hereditary trustee plaintiff and their ancestors as trustee maintaining temple properties and also the declaration relief claimed by the mother-in-law of the judgment debtor was dismissed by this Court. As on date, they have no title and also patta stands in the name also been cancelled by the revenue authorities. As per the permanent land record, property stands in the name of the Ramasamy Muthaliar, who is founder of the Temple. In earlier proceedings in AS No. 358, 359 of 1982 already this Court made observations that the



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judgment debtor has no right or title over the land in which they are entitle only for super structure. As on date, judgement is still in force against which they are not filed any appeal and not set aside by any Court of law. They are claiming patta stands in their name but the patta is not a document for title and same also already cancelled. As observed earlier, the judgement rendered by this Court is not been challenged, present application is abusing process of law as there is no ambiguity in earlier order. Accordingly, this application is dismissed as no merits.

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T.V.THAMILSELVI,J.

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To
1.The Section Officer,
V.R Section.

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