



C.R.P.(PD).No.1501 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(PD).No.1501 of 2023
and C.M.P.No.9919 of 2023**

A/M Vridhagireeswarar Temple,
Vridhachalam rep. by its
Executive Officer,
Vridhachalam Town & Taluk,
Cuddalore

.. Petitioner

Versus

Chinnapillai @ Mariappan

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order, dated in I.A.No.341 of 2021 in O.S.No.91 of 2019 on the file of the Principal Sub Court, Vridhachalam.

For Petitioner : Mrs.Hema Sampath,
Senior Counsel,
for Mrs.R.Meenal

For Respondent : Mrs.A.S.Manisha,
for Mrs.P.Veena Suresh



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ORDER

This Civil Revision Petition arises against the order of the learned Principal Subordinate Judge at Virudhachalam in I.A.No.341 of 2021 in O.S.No.91 of 2019.

2. O.S.No.91 of 2019 seems to have originally been filed before the learned Principal District Munsif at Virudhachalam as O.S.No.30 of 2017. The reliefs that have been sought for are multifold not only against the civil revision petitioner, who is the eighth defendant in the suit, but, also against several other defendants. In the said proceeding, the civil revision petitioner/eighth defendant took out an application for rejection of plaint. This application was received in I.A.No.341 of 2021. The basis, on which, the suit was sought to be rejected was that__

- (i) The jurisdiction of the Civil Court was barred by virtue of Section 79(2) of the HR & CE Act;
- (ii) The suit is hit by *Doctrine of Lis Pendens*;
- (iii) Possession had been taken by the temple/eighth defendant;



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(iv) The claim of the respondent/plaintiff that the property was sold is hit by Section 34 of HR & CE Act and the suit for mandatory injunction alone is not maintainable since there is no relief of title.

3. After receipt of a counter from the respondent/plaintiff, the learned Judge dismissed the application stating that__

(i) Whether the possession has been taken by the temple is a matter which requires to be proved at the time of trial;

(ii) The suit, having been presented in the year 2016, will not bar by virtue of an order passed subsequently.

Against which, the present petition is filed.

4. Heard Mrs.Hema Sampath, learned Senior Counsel for Mrs.R.Meenal, learned Counsel for the petitioner/eighth defendant and Mrs.A.S.Manisha, learned Counsel for Mrs.P.Veena Suresh, learned Counsel for the respondent/plaintiff and gone through the records.

5. At the outset, I am surprised that the learned Subordinate Judge permitted the eighth defendant, who is applicant in the petition for rejection



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of plaint, to mark documents during the course of an enquiry in the application. For a Court dealing with an application for rejection of plaint, it is concerned only with the plaint and plaint documents alone. The defence raised by the defendant or the documents relied upon by him are absolutely irrelevant for the purpose of disposal.

6. The first point of Mrs.Hema Sampath is that the suit is barred by virtue of Section 79 of the HR & CE Act. She would rely upon the order of eviction that had been passed by the Joint Commissioner, HR & CE, Villupuram in order to substantiate this plea. As per Sections 78 and 79, if an order of eviction is passed, the remedy of a person who has suffered such an order is to seek for declaration of his/her title to the suit property and this bar operates as against lessee or mortgagee.

7. A reading of the plaint shows that the respondent/plaintiff claims that he had purchased the property under unregistered sale deeds from one Srinivasan and thereafter, through one Gopal Gounder. The suit, having been presented on 12.12.2016, it is much prior to the passing of the order on 04.07.2018. Hence, the bar under Section 79 would not operate. On the



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aspect of *lis pendens*, I have to point out that in order for *lis pendens* to apply, a *lis* must be initiated before a Court by presentation of a plaint. The Joint Commissioner, HR & CE is, at best, a special tribunal for the purpose of dealing with matters covered under Sections 78 and 79. He is certainly not a Civil Court and a petition for eviction presented by the Executive Officer of a temple cannot be treated as a plaint. Therefore, the issue of *lis pendens* also would not arise.

8. The next plea that a suit for bare mandatory injunction is not maintainable without the relief of declaration. This is not a ground which can be invoked as per Order VII Rule 11 of the Code of Civil Procedure. Certainly, it is a defence available to the defendant to get the suit dismissed, but, it cannot be a ground for rejection of a plaint. A suit for bare mandatory injunction is maintainable since the plaintiff requests the Court to exercise the powers vested in it under Section 39 of the Specific Relief Act. Whether the suit will be finally decreed or not is not for me to consider at this stage.



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9. Furthermore, whether the alleged sale in favour of the plaintiff is valid or not also cannot be probed at present. This is because at the time of rejection of plaint, all that the Court considers is the plaint and being a plea in demurrer, it takes the averments to be true. Therefore, I am not inclined to interfere with the order of the learned Principal Subordinate Judge at Virudhachalam. The parties necessarily would have to undergo the ordeal of trial since there are disputed questions of facts.

10. At this stage, Mrs.Hema Sampath would point out that the learned Judge has rendered a finding stating that whether the actual possession was taken by the civil revision petitioner temple will have to be decided at the time of trial. She states that this will put the temple into jeopardy. I do not think that this finding is binding at the time of final disposal. It is a finding which has been rendered only for the purpose of disposal of the application filed by the civil revision petitioner. An application for rejection of plaint certainly does not operate as *res judicata* at the time of final disposal.

11. If the pleadings are complete, the learned Trial Judge shall take into consideration that the suit has been pending for the past seven years



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and apply the appropriate direction given by this Court for the suits pending over 5 years and expedite the suit. The Trial Court is requested to dispose of the same as expeditiously as possible.

12. In the light of the above discussion, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.08.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Principal Sub Judge,
Vridhachalam.



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V.LAKSHMINARAYANAN, J.

grs

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