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C.R.P.(PD).No.4630 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4630 of 2024

and

C.M.P.No.25903 of 2024

R.Nachimuthu

... Petitioner

..Vs..

Arulmigu Lakshminarayanaswamy and
Kasi Visweswarasamy Thirukoil,
Rep. by its Executive Officer,
K.Subramanian
Kumarapalayam,
Thiruchengode Taluk.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to Memo Order dated 04.09.2024 in O.S.No.188 of 2020 on the file of the District Munsif Court, Kumarapalayam and set aside the same.

For Petitioner : Mr.T.Gowthaman
For Ms.S.Karpagapriya

For Respondent : Mr.R.Bharanidharan



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ORDER

This Civil Revision Petition arises against the order passed by the learned District Munsif, Kumarapalayam in O.S.No.188 of 2020 dated 04.09.2024

2. O.S.No.188 of 2020 has been languishing before the Court for the past 33 years. Originally, it was presented before the learned District Munsif at Tiruchengode, as O.S.No.718 of 1987. Today, in its new avatar, it is pending as O.S.No.188 of 2020 before the learned District Munsif at Kumarapalayam.

3. Previously, I had passed an order in C.R.P.No.2821 of 2023 permitting an amendment, that was sought for by the respondent herein. I also gave a direction of expeditious disposal of the suit. After the suit had been taken up for trial, the sole defendant filed a memo stating that, he is giving up the plea of adverse possession that he had taken in his written



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statement. The learned District Munsif at Kumarapalayam dismissed the said memo. Hence, this revision.

4. On considering the fact that, the matter has been pending for the past 40 years, when the matter came up for admission, on 19.11.2024, I requested Ms.S.Karpagapriya to serve the entire papers on the counsel, who represented the plaintiff in C.R.P.No.2821 of 2023. The papers have been served and Mr.R.Karthikeyan and Mr.R.Bharanidharan have entered appearance for the respondents.

5. I took up the matter for disposal today.

6. I heard Mr.T.Gowthaman for the civil revision petitioner and Mr.R.Bharanidharan for the respondents.

7. Mr.R.Bharanidharan raised a preliminary objection. He argues that a plea taken in the written statement cannot be given up by way of memo. Therefore, he argues the order passed by the learned District Munsif is



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correct. I am afraid, I am not in agreement with Mr.R.Bharanidharan as this position has already been settled by the ***Hon'ble Mr. Justice S.S.Subramani*** in ***Mangayarkarasi vs. Suseela and Others AIR 2000 Madras 266***. The learned Judge had held that a counsel, who is an agent for the party, can make statements within the authority given to him. By filing a memo for giving up a plea, a counsel is acting within his authority. Therefore, the first plea of Mr.R.Bharanidharan stands rejected.

8. Going into the merits of the case, Mr.T.Gowthaman pointing out that, a memo had been filed by the defendant stating that, he is giving up the plea of adverse possession. The memo has been signed by the counsel for the defendant. It is settled position of law and does not require much of elaboration that a defendant can take contradictory pleas. The only bar is that, when the matter is taken up for trial, he has to elect to stand by one of the several pleas taken by him.

9. The defendant, in this case, has taken a plea that the Temple is not



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the owner of the property. He is not giving up that plea. The second plea that he has taken is that, the property belongs to one Aasu Ganapathy Iyer and that on his death, it vested with his son Krishnamoorthy Iyer. The latter had leased the suit property to the defendants' father and continued the lease with the defendant. This plea is also not been given up by the defendant. In addition, the defendant, in order to defeat the case of the plaintiff, had taken a plea of adverse possession. That plea alone is being given up. A plea of adverse possession and the plea of setting up a title in favour of the third party are contradictory. Therefore, the defendant necessarily has to elect and accordingly he has elected to stand by his second plea, namely the property vested with Aasu Ganapathy Iyer.

10. The fear expressed by Mr.R.Bharanidharan that the defendant, at later date, might take a plea that he had not authorized his counsel to file such memo, is also unfounded. This is because the defendant Nachimuthu has filed an affidavit before this Court pleading that he is withdrawing the plea of adverse possession in the written statement in order to maintain



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consistency. Therefore, it is not possible for the defendant to raise a plea that his Advocate had unauthorizedly filed the memo on the basis of which, an order came to be passed by the learned Trial Judge.

11. I have to take note of the solemn affidavit filed before this Court and Mr.T.Gowthaman stands by the said affidavit. Therefore, it will not be open to the defendant to plead adverse possession during the course of trial.

12. In the light of the above discussion, this Civil Revision Petition succeeds. The order passed by the learned District Munsif at Kumarapalayam in O.S.No.188 of 2020 dated 04.09.2024 is set aside. It is made clear that, the defendant will not be entitled to take the plea of adverse possession during the course of trial or at the time of arguments or put questions in cross examination to the plaintiff regarding this plea. In case, he has done it, the learned Trial Judge shall ignore the same. This is because the defendant having given up the plea, cannot let in evidence on that aspect. The learned District Munsif is requested to take note of the long pendency of



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the suit and dispose of the same, on or before 24.01.2025. He shall submit a report of compliance to this Court. No costs. Consequently, the connected miscellaneous petition stands closed.

26.11.2024

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Index : Yes/No

Internet : Yes/No

Neutral Citation Case: Yes/No

To

1. The District Munsif, Kumarapalayam.

V.LAKSHMINARAYANAN, J.



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