



C.R.P(MD)No.551 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2024

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THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.551 of 2021

and

C.M.P(MD)No.2951 of 2021

The Executive Officer,
Arulmigu Kaalakastheeswarar Temple,
Abirami Ammal Temple,
Dindigul.

... Petitioner/Petitioner/
5th Defendant

Vs.

Subash Chandhra Bose

... Respondent/Respondent/
Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 10.12.2020 made in I.A.No.200 of 2020 in O.S.No.783 of 2014 on the file of Principal District Munsif Court, Dindigul.

For Petitioner : Mr.R.G.Shankar Ganesh

For Respondent : M/s.N.Krishnaveni
Senior Counsel
for Mr.K.Bala Sivasubramanian



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ORDER

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This civil revision petition came to be filed by the 5th defendant in O.S.No.783 of 2014, which was one for permanent injunction on the file of Principal District Munsif at Dindigul.

2. In the said suit, I.A.No.200 of 2020 came to be filed by the 5th defendant Temple seeking to dismiss the original suit in O.S.No.783 of 2014 as infructuous. The same was dismissed by an order, dated 10.12.2020. Assailing the same, this civil revision petition came to be filed.

3. The learned counsel appearing for the petitioner submitted that the suit property consist of an area of 2,400 square feet comprised in Survey No.507 of Seelapadi Village, Dindigul Taluk, Dindigul District.

4. For the sake of convenience, the parties herein are referred as per the rank in original suit.

5. The plaintiff claiming to have purchased the suit property from one Seeniammal and Akkammal on 08.09.1997, has filed the suit for



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permanent injunction with respect to the suit property as against 5 defendants. The 5th defendant is the Executive Officer of the Abirami Amman Temple at Dindigul. The 5th defendant had filed I.A.No.200 of 2020 seeking to dismiss the suit as infructuous on the basis of the judgment of the Hon'ble Division Bench of this Court in W.A(MD)Nos. 558 to 578 of 2016, dated 25.07.2017, in which the Hon'ble Division Bench of this Court had given liberty to the 5th respondent to proceed against the plaintiff herein and one Shanmugam under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959. Pursuant to the said judgment, the 5th respondent Temple had proceeded as against the plaintiff herein under Section 17 of the Hindu Religious and Charitable Endowments Act, 1959. On completion of the summary proceedings of the department under Section 78 of Hindu Religious and Charitable Endowments Act, 1959, on 26.03.2018, the Assistant Commissioner of Hindu Religious and Charitable Endowments Department, Dindigul had issued a notice under Sections 78 and 79 of Hindu Religious and Charitable Endowments Act, 1959 requiring the plaintiff to remove the encroachments. Following which, under proceedings dated 19.04.2018, the 5th respondent claiming that the encroachment made by the plaintiff has been removed, as a result of which, the suit has become infructuous



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and has filed an application under I.A.No.200 of 2020.

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6. The learned counsel for the petitioner submitted that, the learned Trial Court on scrutinizing the order, dated 19.04.2018 under Section 78 proceedings, has come to the conclusion that the said order do not reveal the identity of the property with respect to the encroachment, as to which part of 2400 square feet of property comprised in total extent of 3 acres 82 cents in Survey No.507 of Seelapadi village came to be removed by the 5th defendant and dismissed the same. The Trial Court ought not to have read the said order alone, but it should have been considered the same in conjunction with the proceedings of the Assistant Commissioner of the Hindu Religious and Charitable Endowments Department, Dindigul, bearing Na.Ka.No.2805/2015-1/A3, dated 26.03.2018 which has clearly stated that the removal of encroachment is with respect to the unauthorized encroachment made by the plaintiff herein. In view of the same, there is no cloud in which portion of the total 3 acres 82 cents land in Survey No.507 of Seelapadi village has been removed. It should be precisely understood that, the portion which has been encroached upon by the plaintiff which was in the possession of the plaintiff was removed. On that basis, the learned counsel for the petitioner submitted that he was



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not able to produce several documents before the Trial Court to prove that the suit had become infructuous and on that basis, he pressed for remanding back the Interlocutory Application before the learned Trial Judge for reconsideration, thereby giving him opportunity to produce the documents which ever he intend to mark before the Trial Court.

7. Per contra, the learned Senior Counsel appearing for the respondents categorically submitted that, it is not necessary for interfering with the orders passed by the Trial Court. When the Trial Court has categorically come out with its observation that the identity of the property which has been claimed to have been dealt with by the 5th respondent Temple under Section 78 of the Hindu Religious and Charitable Endowments Department as far as the total extent of 3 acre and 82 cents in Survey No.507 of Seelapadi village is not clear, in the absence of clarity in the identification of the property in which the encroachment is claimed to have removed by the 5th defendant and also as to the fact the encroachment was with respect to which person is also not clear in the said order, it is not necessary to interfere with the order passed by the Trial Court.



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8. It was also brought to the notice of this Court by the learned Senior Counsel that the trial has already been opened by the Trial Court and P.W.1 to P.W.5 have been examined on 25.08.2021, 15.02.2022, 22.07.2022, 06.11.2022 and 15.06.2023 respectively and the plaintiffs' side evidence has already been closed and the suit is already posted for defendants' side evidence. If at all the defendants have anything to substantiate before the Trial Court, they can very well proceed to conduct the suit through appropriate evidence before the Trial Court and pressed for dismissal of the civil revision petition.

9. Heard the learned counsel for the petitioner and the learned senior counsel for the respondent.

10. The learned counsel appearing for the petitioner drew my attention to yet another order passed by the Trial Court in yet another Interlocutory Application in I.A.No.2232 of 2018 which was preferred by the 5th defendant Temple to implead the proposed defendants 6 to 9 in the Original Suit and drew my attention that the said application came to be dismissed on 26.09.2019 by the Trial Court giving liberty to the 5th respondent to file an application seeking to dismiss the suit as



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infructuous. The learned counsel had categorically contended that only in view of the said observation made by the Trial Court in I.A.No.2232 of 2018, 5th defendant has no other option rather filing the said application.

11. However, a careful reading of the said order would reveal that the Trial Court had given an option of not only filing an application to dismiss the suit as infructuous, but also had given an option to the 5th defendant to conduct the trial and give quietus to the facts in issue. A careful perusal of the judgment of the Hon'ble Division Bench in W.A(MD)Nos.558 to 578 of 2016, dated 25.07.2017 would throw light on the fact that all the parties were given liberty to take appropriate action as per law. However, even before the said judgment came to be passed by the Hon'ble Division Bench of this Court, O.S.No.783 of 2014 was already pending before the Trial Court.

12. In view of the concrete direction given by the Trial Court in I.A.No.2232 of 2018 to the 5th defendant for conducting the case diligently, I find that it is not necessary to interfere with the impugned order passed by the Trial Court in I.A.No.200 of 2020. Accordingly, this civil revision petition is dismissed. However, the Trial Court is directed



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to conclude the trial of O.S.No.783 of 2014 as expeditiously as possible within a period of six (6) months from the date of receipt of copy of this order. The 5th defendant is given liberty to file an application to recall P.W.1 and re-examine him.

13. With the said observations, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.07.2024

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

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To

1.ThePrincipal District Munsif Court,
Dindigul.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI,J.

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Order made in
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