



CR.P.(MD)No.3170 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31/01/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.3170 of 2023

and

CMP (MD) No.16335 of 2023

1.R.Rengasamy
2.V.Elumalai
3.S.Govindaraj
4.Periakkal
5.Ramya
6.Pavitha
7.Yamuna
8.Keerthika
9.Logeswaran : Petitioners/Appellants
(8th and 9th petitioners 1-3 & 5-10/
are declared as major and Petitioners 1-3 & 5/
guardianship of their mother Plaintiffs 1-3 & 5-10
4th petitioner is discharged
vide court order, dated
07/11/2023 made in
CMP (MD) Nos.15074 and 15075
of 2023 in CRP (MD) SR No.24680
of 2023)

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Srirangam, Trichy-6.

G.Balasubramanian (Died)

3.Vijayakumar
4.R.Srinivasan : Respondents 1-4/
Respondents 1,2,5,6/
Respondents 1,2,5,6/
Defendants 1,2,5,6



CR.P.(MD)No.3170 of 2023

Muthammal (Died)

5.B.Poongothai

6.B.Ramamoorthy

7.Kalai Kavery

: Respondents 5-7/
Respondents 8-10/
Lrs of 4th Respondent/
Lrs of 4th Defendant

8.Anjalai

9.Renganathan

10.Jothika

: Respondents 8-10/
Respondents 11-13/
Lrs of 4th Respondent/
Lrs of 4th Defendant

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code to set aside the fair and decretal order, dated 07/12/2022 passed in CMA No.2 of 2019 on the file of the Principal District Judge, Tiruchirappalli, confirming the fair and decretal order, dated 27/08/2018 passed in I.A No.1014 of 2020 in O.S No. 350 of 2006 on the file of the II Additional Subordinate Judge, Tiruchirappalli.

For Petitioners : M/s.J.Anandhavalli

For R1 and R2 : Mr.M.Ramesh
Government Advocate (Civil)

For R3, R5 to R10 : No appearance

For 4th Respondent : Mr.C.Vakeeswaran

ORDER

This civil revision petition has been filed seeking to set the fair and decretal order, dated 07/12/2022 passed in CMA No.2 of 2019 on the file of the Principal District Judge, Tiruchirappalli, confirming the fair and



CR.P.(MD)No.3170 of 2023

decretal order, dated 27/08/2018 passed in I.A No.1014 of 2020 in O.S No.350 of 2006 on the file of the II Additional Subordinate Judge, Tiruchirappalli.

2.The facts in brief:-

A suit in O.S No.350 of 2006 was filed by the petitioners against the respondents herein and allowed the suit to be dismissed for default, on 15/09/2010. To set aside the dismissal, IA No.1014 of 2010 was filed by the petitioners, which came to be dismissed by the trial court, by order, dated 27/08/2018. Against which, CMA No. 2 of 2019 was preferred before the Principal District Judge, Trichy. But the same result followed. The same was dismissed, confirming the order passed by the trial court.

3.Against which, this civil revision petition has been preferred.

4.This is the classic case of perpetual litigation. To understand the history of the litigation, we shall fall back upon the pleadings, which was one of the relevant factor, which has arisen for consideration for deciding this petition.



5. 'A' schedule mentioned in the property is a temple called 'Sri Pattavan Kovil'. 'B' schedule property belongs to one Vadamalai Muthiriyar and Karuppanna Muthiriyar by way of purchase in the year 1928. 'B' schedule properties were endowed in favour of the temple, on 23/05/1930. The temple was represented by the Manager called 'Krishna Muthiriyar'. In the settlement deed, 'A' schedule property namely Temple was described as 'Family Deity'. By virtue of the settlement deed, the properties were delivered to the then Manager to manage the properties. The successors were permitted to maintain the properties endowed for the benefit of the temple. So no one has any right over 'B' schedule properties except the Manager and that too to manage the properties. The petitioners namely the plaintiffs in the suit stated that they are descendents of Krishna Muthiriyar, who is the manager as noted above. The defendants 3 to 7 described as descendents of Vadamalai Muthiriyar and Karuppanna Muthiriyar. Krishna Muthiriyar died in the year 1940.

6. A suit in O.S No.1687 of 1970 was filed by the defendants before the District Munsif Court, Trichy stating that they are in possession and sought for permanent injunction against the plaintiffs as if they are interfering. That suit was dismissed. Against which,



CR.P.(MD)No.3170 of 2023

AS No.53 of 1094 was filed before the Sub Court, Trichy.

That was allowed. But regarding the title, it was kept open. Against which, SA No.2464 of 1974 was filed before this court. That was dismissed.

7. Another round of litigation was started between the parties by way of filing O.S No.867 of 1984 before the Principal District Munsif Court, Trichy, again, seeking for permanent injunction. Before that, the defendants filed O.P No.185 of 1983 before the District Court, Trichy seeking permission to sell the properties. In that petition, neither the HR & CE Department, nor the plaintiffs were impleaded. That petition was ordered by the District Court, Trichy. So the plaintiffs filed a suit in OS No.867 of 1984 before the District Munsif Court, Trichy seeking permanent injunction restraining them from encumbering 'B' schedule properties. That suit was decreed. What happened to O.S No.903 of 1989 is not clear on record.

8. Another round of litigation was started. The defendants filed O.A No.15 of 1992 before the Joint Director, HR & CE Department, Trichy for declaration that Sri Pattavan Kovil namely 'A' schedule property is not a temple within the meaning of section 63(A) of the HR & CE



CR.P.(MD)No.3170 of 2023

Act. It is stated that it is a private temple. It is also stated that originally the manager namely Krishna Muthiraiyar delivered the possession of 'B' schedule properties to them for management. That O.A No.15 of 1992 was also allowed.

9. Another round of litigation started in the form of filing the suit in O.S No.867 of 1984 by the plaintiffs before the District Munsif Court, Trichy, again, for permanent injunction not to encumber the properties. In O.A No.15 of 1992, the plaintiffs impleaded themselves objecting the claim. A new stand was taken by the defendants stating that 'A' schedule property is not a temple and it is a Samathi. Against the order passed by the 2nd defendant in allowing the petition, AP No.11 of 2002 was filed before the Commissioner of HR & CE Department, Chennai. The appeal was dismissed. Against the order, another statutory appeal under section 70 of the HR & CE Act was filed. So the suit is filed to set aside the order passed in AP No.11 of 2002, dated 05/05/2006 by the Commissioner, HR & CE Department and for declaration. Now this is the history of the case, as mentioned, in the plaint pleadings.



CR.P.(MD)No.3170 of 2023

10.As mentioned above, the suit was filed in the year 2010. Statements were filed by the defendants, issues framed and posted for trial not once, but repeatedly. It was posted for trial, on 08/01/2009. Allowing the case to be dismissed for default, IA No.1068 of 2009 was filed. It was allowed, on 17/02/2010. Again, it was adjourned to 15/09/2010 for trial. It was also allowed to be dismissed for default. Another application was filed in IA No.1014 of 2010, which is now under challenge.

11.The record of proceedings is not stopped with that.

12.Reading of the order passed by the trial court does indicate the following facts:-

On 01/10/2017, the suit was dismissed for default for non payment of batta; That was allowed on petition; In the intervening period, WP No.9706 of 2008 was filed by one of the plaintiffs to set aside the order of DRO in respect of patta proceedings; A direction was issued in that matter to dispose of the suit after restoring the same to the file within a period of three months; So the suit was restored to file; Another direction was issued



CR.P.(MD)No.3170 of 2023

by this court in Crl.MP No.1380 of 2010 on the basis of the petition filed by the 4th respondent herein to dispose the suit on or before 20th October. Those directions were not complied.

13.Apart from that, another important fact was brought to the notice of this court during the hearing that the petitioners/plaintiffs already sold the property to third parties.

14.According to the learned counsel appearing for the 4th respondent, the petitioners are not existing interest in the subject matter, but whereas the contention on the part of the petitioners is that even though, they sold the property, the purchaser abandoned that right, title and possession and the petitioners are continued to be in possession of the properties. So they do not lost any interest in the subject matter.

15.It is the counter allegation that the respondents namely the private respondents sold the property in violation of the endowment made by the original settlor. Only they violated the conditions.



CR.P.(MD)No.3170 of 2023

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16. In response to this, it was contended by the respondents namely the private respondents that only after getting proper permission from the competent court, the properties were sold by them. So the third party's right also intervened. At this length of time, since the petitioners lost interest in the subject matter, that may also be taken into account by this court. He would rely upon the order of the Coordinate Bench of this court in the case of ***Padmavathy and others Vs. D. Mariappan (CRP (MD) No. 2953 of 2011, dated 04/06/2015)***.

17. To know the present position, the petitioners were directed to produce the copies of the sale deeds. They also produced the same in the form of typed set of papers.

18. I am not going to that aspect for the simple reason that this civil revision petition can be disposed of on the question involved, without touching upon the merits of the suit.

19. Now coming back to the record of proceedings, as indicated in the order, in pursuance of the order passed by this court in CrI.OP(MD)No.1380 of 2010, dated 02/08/2010, the case was posted for trial, on 25/08/2010



CR.P.(MD)No.3170 of 2023

with a specific direction that there will be no further adjournment. On that day, it was adjourned to 30/08/2010 with the same order. Later it was posted, on 03/09/2010. Then to 07/09/2010, then to 15/09/2010. Only on 15/09/2010, it was dismissed for default.

20.It is seen that after the order passed by this court, the petitioners have shown callous interest in commencing the trial. From 02/08/2010, the case was adjourned to various dates as indicated above. So the plaintiffs ought to have commenced to examine the witnesses. But they failed.

21.Now the reason assigned by the petitioners that their non-appearance is due to the 3rd plaintiff sister's mother-in-law's death, on 06/09/2010. Because of that, they could not appear. To evidence the same, they also produced the copy of the death certificate. But the trial court recorded a finding that even though, the death occurred, on 06/09/2010, no proper explanation was offered by the petitioners for their failure before that date. Even in spite of their ability to appear on 15/09/2010, it was the observation of the trial court that they would have informed the counsel. But they failed to do so. So the reasons assigned by the



CR.P.(MD)No.3170 of 2023

petitioners were absolutely out of place and cannot be accepted.

22.Now reply argument of the learned counsel appearing for the petitioners, he would submit that the property belongs to the temple. The respondents are trying to alienate the properties.

23.This court assumed the character of *parens patriae* jurisdiction, since sufficient reasons are assigned by them for their non appearance, it ought to have been accepted by the trial court. But the trial court went on discussing about the past conduct of the petitioners. According to them, those absences were condoned. Neither the trial court, nor the private respondents herein can fall back upon the past conduct to decide the present case.

24.Apart from that, it is also submitted that there is no reason for making the case pending. The changing stands of the respondents must also be taken into account by this court.



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25.No doubt that in respect of the temple properties, the court must assume the jurisdiction of *parens patriae*. But the long history, as indicated above, will show that the parties want to keep the property and litigation forever.

26.The issue started in 1970, in the form of O.S No. 1687 of 1970, has not resolved the issue even after a lapse of 54 years. So this is the reason for me to make an observation in the opening paragraph in the discussion that it is a classic case of perpetual litigation. Considering all those facts the oldness of the matter only, repeatedly directions were issued by this court.

27.As mentioned above, the petitioners have shown callous attitude toward the directions. Such a tendency on the part of the litigants should not be permitted to perpetuate. If such sort of attempts are permitted, it will amount to clear abuse of process of court and law. At no stretch of imagination, the attitude of the petitioners can be justified. Even though, the death occurred, on 06/09/2010, but their appearance ought to have made on 15/09/2010 or at least would have informed the counsel to report their inability before the court. There was no reason that too explaining their absence on



CR.P.(MD)No.3170 of 2023

the previous hearings, in spite of repeated adjournments with stringent conditions. The past conduct of the petitioners is also relevant factor. The past conduct will indicate their attitude. Here, they have failed to prosecute the matter several times. They ought to have been vigilant. But as mentioned above, in spite of directions issued by this court, they have shown indifferent attitude. So I am of the considered view that the stand taken by the trial court, as affirmed, does not suffer from any illegality or irregularity warranting interference by this court. I find no reason to differ from the view taken by the courts.

28.In the result, this civil revision petition fails and the same is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

31/01/2024

Index:Yes/No
Internet:Yes/No
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CR.P.(MD)No.3170 of 2023

To,

1.The Principal District Judge,
Trichy.

2.The II Additional Sub Judge,
Trichy.



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CR.P.(MD)No.3170 of 2023

G.ILANGOVAN, J

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C.R.P (MD) No. 3170 of 2023

31/01/2024