



C.R.P(MD)Nos.228 & 355 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)Nos.228 & 355 of 2019
and
C.M.P(MD)Nos.1080 & 1722 of 2019

C.R.P(MD)No.228 of 2019:

1.M.K.Mustafa (Died)

2.M.K.Sultan

3.M.K.Ismail

4.M.K.Siraj

... Petitioners / Respondents 5-8/
Defendants 5-8

5.Sarifa Begum

6.Abdul Majeeth

7.Safeka Banu

8.Saleema

... Proposed Petitioners

*(Petitioners 5 to 8 are impleaded by this Court by an order, dated
04.04.2024 in C.M.P(MD)No.5117 of 2024)*

Vs.

1.Arulmigu Kallalagar Thirukovil

Devasthanam,

Represented by its Executive Officer/Deputy Commissioner,

Alagar Kovil, Madurai.

M.N.Ramasamy (Died).



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2.R.Syedambukani

3.P.Nagarajan

4.K.P.M.Abdul Ajees

5.Vasanth Ramasamy

6.Sarath Ramasamy

Represented through his power of Attorney

Vasanth Ramasamy.

... Respondents 2-7/Respondent 2-4, 9&10/
Defendants 2-4, 9&10

PRAYER: Civil Revision Petition is filed under Article 227 of Code of Civil Procedure, to reverse and set aside the fair and decreetal order, dated 09.07.2018 in I.A.No.115 of 2018 in O.S.No.357 of 2003 on the file of Principal Sub Court, Madurai.

For Petitioner : Mr.S.Ramesh

For R1 : Mr.G.Ramapandiyan

For R3 : Mr.M.Thiruannvukkarasu

C.R.P(MD)No.355 of 2019:

P.Nagarajan

... Petitioner / 3rd Respondent/
3rd Defendant

Vs.

1.Arulmigu Kallalagar Thirukovil

Devasthanam,

Represented by its Deputy Commissioner, HR & CE,
M.N.Ramasamy (Died)



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2.R.Seithambukkani

3.K.P.M.Abdul Ajiesh

4.Musthafa

5.M.K.Sulthan

6.M.K.Ismail

7.M.K.Seraju

8.Vasanth Ramasamy

9.Sarath Ramasamy

Represented by his Power Agent

Vasanth Ramasamy

... Respondents 2-9/Respondent 2, 4 - 9/

Defendants 2, 4 - 9

PRAYER: Civil Revision Petition is filed under Article 227 of Code of Civil Procedure, to set aside the order and decree made in I.A.No.115 of 2018 in O.S.No.357 of 2003, dated 09.07.2018 on the file of the Principal Sub Court, Madurai.

For Petitioner : Mr.M.Thiruannvukkarasu

For R1 : Mr.M.Thiruannvukkarasu

For R5-R7 : Mr.S.Ramesh

ORDER

The 3rd defendant in O.S.No.357 of 2003 on the file of the Principal Sub Court, Madurai had filed C.R.P(MD)No.355 of 2019



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challenging the order passed in I.A.No.115 of 2018. Challenging the same order, the defendants 5 to 8 in the said suit have filed C.R.P(MD)No.228 of 2019.

2. The 1st respondent in the revision petitions as plaintiff had filed O.S.No.357 of 2003 on the file of Principal Sub Court, Madurai for the relief of declaring certain sale deeds as null and void and for a direction to the 3rd defendant to deliver peaceful possession of the suit rear portion of the 1st item and defendants 5 to 8 to deliver second item of the suit schedule properties. Pending suit, since the plaintiff had not taken steps to serve the 2nd and 4th defendants, the suit was dismissed as against these defendants on 27.07.2004. Thereafter, the other defendants have filed written statement and the suit was pending for arguments of the defendants. At that stage, the plaintiff temple had filed I.A.No.115 of 2018 to condone the delay of 4897 days in restoring the suit as against the 2nd and 4th defendants. The other defendants have filed a detailed counter disputing the reasons assigned in the condone delay affidavit. The trial Court being satisfied with the reasons stated in the condone delay affidavit, had proceeded to allow the application on payment of cost. Challenging the same, these two revisions have been filed by the 3rd defendant and defendants 5 to 8.



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3. The learned counsels appearing for the revision petitioners have submitted that the suit having been dismissed as against the 2nd and 4th defendant on 27.07.2004, any application to restore the suit ought to have been filed within a period of 3 years as contemplated under Article 137 of the Limitation Act. The present application having been filed after more than 13 years, is barred by limitation. The learned counsels appearing for the petitioners further relied upon Order 9 Rule 5 of Code of Civil Procedure and contended that when summons to some of the defendants returned unserved, the plaintiff should apply for issuance of fresh summons within a period of 7 days and in case of failure, the Court shall have to make an order that the suit be dismissed as against such defendants. However, the plaintiff can approach the Court again if satisfactory reasons are assigned as contemplated under Order 9 Rule 5 (a), (b) and (c) of Code of Civil Procedure. Therefore, according to the learned counsels appearing for the petitioners, the plaintiff temple having not taken any steps for reissuance of summons within a period of 7 days, the suit having been dismissed, they are not entitled to again seek for restoration of the suit as against defendants 2 and 4. Their only remedy is to file an independent suit as against the defendants 2 and 4 subject to the law of limitation.



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4. The learned counsels appearing for the petitioners have further contended that the reasons assigned by the plaintiff for the huge delay of 4897 days is not believable and they were very well aware that the suit has already been dismissed as against defendants 2 and 4. When the plaintiff has not properly explained the delay, the Court ought not to have condoned the delay of payment of cost.

5. Per contra, the learned counsel appearing for the respondent / plaintiff had contended that one of the defendants was served and he had remained *ex parte*. However, the advocate clerk has noted that the defendants 2 and 4 have also been served and they remained *ex parte*. This mistake was found out only after the plaintiff's side arguments were over and the case was posted for arguments on the side of the defendants. There was no willful default on the part of the plaintiff in restoring the suit as against the defendants 2 and 4. The trial Court after exercising its discretion, has condoned the delay on payment of cost. Hence, this Court may not interfere in the said discretionary order.

6. I have carefully considered the submissions made on either side and perused the material records.



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7. The primary contention of the learned counsels appearing for the revision petitioners is that the application for restoration of the suit as against the defendants 2 and 4, having been filed 3 years beyond the period of limitation as contemplated under Article 137 of Limitation Act is barred by limitation. Of course, this argument is very attractive. However, in a case filed by a religious institution for recovery of possession in view of Section 109 of the Hindu Religious and Charitable Endowments Act, there is no limitation for filing a suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property. Therefore, the question of invoking Article 137 of Limitation Act would not arise. However, the learned counsels appearing for the revision petitioners contended that it is their specific case that it is not a property of a religious institution and therefore, Hindu Religious and Charitable Endowments Act would not be applicable. This Court is of the view that this issue has to be decided by the trial Court after hearing both the parties. Therefore, this Court is not inclined to go into the said issue.

8. The next contention of the learned counsels appearing for the petitioners is that in view of Order 9 Rule 5 of C.P.C, the plaintiff having



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not filed application for issuance of fresh summons within a period of 7 days, the Court should have ordered the dismissal of the suit and the question of restoration of the said suit would not arise beyond that point. They have also pointed out that Order 9 Rule 5 (2) contemplates filing of an independent suit by the plaintiff subject to the law of limitation. This Court has earlier expressed its opinion that in view of Section 109 of the Hindu Religious and Charitable Endowments Act, the temple would be in a position to file a suit for recovery of possession even as on today. Therefore, no prejudice would be caused to the defendants, in case if the suit is restored. That apart, the suit has been restored as against the defendants 2 and 4 and they have not chosen to challenge the said order. The 3rd defendant and the defendants 5 to 8 have alone challenged the order of restoration of suit as against the defendants 2 and 4. In fact, the defendants 2 and 4 would be the real aggrieved persons in view of the restoration of the suit as against them after a period of 14 years. When they have not chosen to challenge the said order, the present revision petition filed by the other defendants is not maintainable.

9. The trial Court has exercised its discretion and condoned the delay on payment of cost. This Court does not find any merit to interfere



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in the said order. Both the Civil Revision Petitions stand dismissed. The parties are at liberty to raise all the defenses before the trial Court. The trial Court is directed to decide the issue on merits without being influenced by any one of the observations made by this Court.

10. With the said observations, both the Civil Revision Petitions stand dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

04.04.2024

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

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To

- 1.The Principal Sub Court,
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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