



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 14.03.2025

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.2585 of 2012
in C.S.No.178 of 2004

Arulmighu Parthasarathy Swamy
Thirukovil Triplicane
Rep. By Its Deputy Commissioner Executive Officer
Chennai 5

... Applicant

-vs-

Varadhappa Chetty and 3 Others

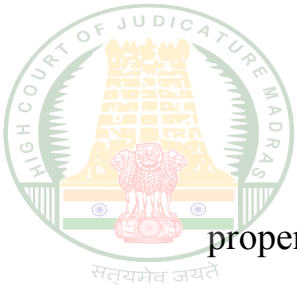
... Respondents

For Applicant : Mr.D.Rajagopal

For Respondents : Mr.Kuberan
for M/s.Rank Associates for R3 and R4
Dr.S.S.Swaminathan for R2

ORDER

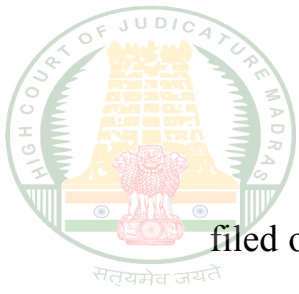
By this application, the plaintiff seeks condonation of the delay of 1813 days in filing the application to set aside the compromise decree dated 12.04.2007 in the suit. The trustees of Sri Parthasarathy Swamy Temple at Triplicane filed a suit in C.S.No.797 of 1948 seeking a declaration that the



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property described in the schedule thereto had been totally dedicated in favour of the deity. By decree issued on 22.01.1952, this Court concluded that there was no total dedication of the property in favour of the deity. However, the Court concluded that a sum of Rs.950/- was payable towards customary festivals and that a charge on the property was created as security in respect thereof.

2. Upon the demolition of the vasantha uthsava bungalow on the said property, the temple instituted C.S.No.178 of 2004 seeking a mandatory injunction to rebuild the same and for a permanent injunction restraining the defendants from carrying out any building activity on the suit schedule property. The parties entered into a memorandum of compromise and the suit was decreed in terms thereof on 10.04.2007. The memorandum of compromise provided for the earmarking of 3706 sq.ft. in the suit schedule property adjoining the T.P.Koil, Second Lane, for the purpose of performing customary festivals. The defendants agreed to put up the building thereon at their own cost. Thereafter, it appears that E.P.No.1211 of 2011 was filed by the temple. Such EP was closed after a memorandum of compliance was



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filed on or about 28.03.2012. The present application was filed in the above facts and circumstances in April 2012.

3. Learned counsel for the applicant submits that the decree in C.S.No.797 of 1948 provided for a partial dedication with a charge over the property. After submitting that the demolition of the Vasantha Uthsava Bungalow triggered the filing of C.S.No.178 of 2004, he submits that the compromise was adverse to the interest of the temple. In specific, he states that only a limited area of 3706 sq.ft was earmarked and that this is grossly insufficient to perform customary festivals.

4. As regards the reasons for delay, by referring to paragraphs 15 and 16 of the affidavit, learned counsel submits that the decree was not implemented between 2007 and 2012. He also states that several Executive Officers held charge, and that the Executive Officer who filed the application took charge on 29.10.2011 and realized that the compromise decree was totally one sided after examining relevant records. Since it was necessary to consult the advocate and obtain necessary approvals from

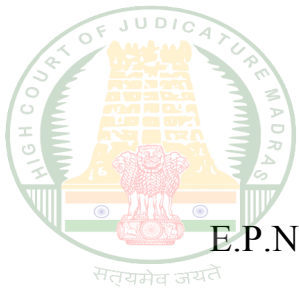


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higher officials, learned counsel submits that delay was occasioned.

Learned counsel relied on Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (the HR & CE Act) to contend that the Limitation Act, 1963 (the Limitation Act) is made inapplicable to suits filed by a religious institution for possession of immovable property or for possession of any interest in such property. According to him, both by virtue of the partial dedication and the charge created under the decree, this application is in respect of interest in such property.

5. In response to these contentions, learned counsel for the second respondent states that the customary festival could not be conducted because of the non-cooperation of the applicant. As regards the decree in C.S.No.797 of 1948, he submits that even partial dedication was not recognized and that the decree is confined to the expenditure involved in conducting the festivals. He also submits that only 2484 sq.ft. was initially offered by way of compromise. Eventually, in order to ensure that the customary festivals are duly performed about 3706 sq.ft. was agreed to be provided for such purpose. He concluded submissions by pointing out that



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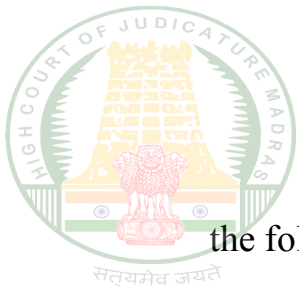
E.P.No.1211 of 2011 was closed upon the defendants filing memo of compliance on 28.03.2012.

6. Learned counsel for the third and fourth respondents referred to the correspondence preceding the execution of the memorandum of compromise. He pointed out that approval in terms of Section 43 of the HR & CE Act was duly granted by the Commissioner. Therefore, he submits that no case is made out either to condone delay or to interfere with the compromise.

7. The first question that falls for consideration is with regard to the applicability of the Limitation Act to this application. Section 109 of the Hr & CE Act reads as under:

“109. Central Act 36 of 1963 not to apply for recovery of properties of religious institution. - Nothing contained in the Limitation Act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property.”

The text of the provision makes it clear that it applies in respect of suits for



the following purposes:

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- (i) possession of immovable property belonging to any religious institution; or
 - (ii) possession of any interest in such property.

8. The present application is clearly not in the nature of a suit. On this issue, it should also be noticed that Section 109 is not a provision that excludes the applicability of the Limitation Act in respect of all proceedings relating to immovable properties in respect of which a temple asserts any rights, but is confined to the specific proceedings indicated above. Secondly, the decree in C.S.No.797 of 1948 rejected the prayer for a declaration that the property was totally dedicated to the temple. Although the decree created a charge over the property in favour of the plaintiff, it should be noticed that such charge would be triggered if amounts payable towards expenditure for the customary festivals are not paid. The present application does not proceed on that basis. Therefore, Section 109 of the HR & CE Act is not attracted as regards this application.

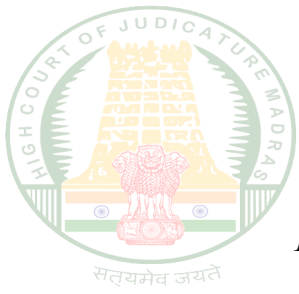


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9. In view of the above conclusion that the Limitation Act applies, the next question is whether the applicant has established sufficient cause to condone the delay of 1813 days. In the affidavit in support of the application, the applicant alleges in paragraph 10 thereof that the memorandum of compromise was executed without obtaining necessary approval or sanction from the Commissioner, HR & CE Department in terms of Section 43 of the statute. This assertion appears to be contrary to the documents on record.

10. The justification for the delay is set out in paragraphs 15 and 16 of the affidavit, which are as under:

“15. I submit that a decree in the suit was came to be passed on 12.04.2007 pursuant to the compromise memo filed by parties. The copy application for obtaining a copy of the Judgment and Decree was field on 12.04.2007 itself and the same was made ready on 09.08.2007. I submit that thereafter there were several correspondence between the parties and exchange of notices between the parties. Further Defendants did not comply with the compromise decree and the construction of

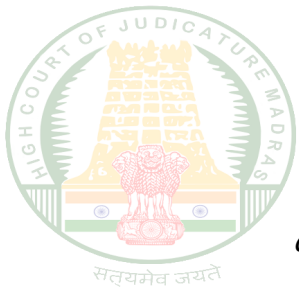


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Mandapam was not completed till date and the customary utsavam and festival in the Vasantha Utsavam Mandapam is yet to be commenced which was stopped before the demolition of Mandapam on 11.01.2004. Further though the compromise decree was dated 12.04.2007 for the past 5 years customary Utsavam in the Vasantha Utsavam Mandapam is yet to be commenced and the deity of the applicant temple is yet to be taken to the Vasantha Utsavam Mandapam.

16. I submit that so to say though the decree on compromise memo was passed on 12.04.2007 for the past 5 years the compromise decree was not at all implemented. I took charge as Executive Officer of the temple in 29.10.2011 and thereafter when the preparations for the Annual festival of the temple were taken I perused the records pertaining the Vasantha Utsavam Mandapam including the compromise decree and when the Executive Petition filed by the temple to execute the compromise decree came up for arguments I went through the entire records in the middle of April 2012 and I felt that the compromise entered into by the parties in the above suit was one sided. Thereafter I consulted out temple Advocate and also my higher officials and after obtaining necessary opinion from the temple Advocate and necessary approval from my higher officials, the above application for setting aside the compromise decree was filed on 24.04.2012 and in the process there is a



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delay of 1813 days which is neither willful nor wanton but due to the aforesaid bonafide reasons. Since the decree is null and void and the applicant being a temple, considering the same, the delay may be condoned, otherwise the temple will be put to serious prejudice and great hardship and if the compromise decree is allowed to be in force, the interest of the temple will be lost apart from causing hardship to the temple in performing the customary festival in the Vasantha Utsavam Bungalow.”

11. Paragraph 15 refers to correspondence between the parties subsequent to the decree. Thereafter, the applicant states that the compromise decree was not acted upon by the defendants. In paragraph 16, it is stated that the deponent of the affidavit took charge as the Executive Officer on 29.10.2011 and thereafter proceeded to examine the records pertaining to the Vasantha Uthsava Mandapam, including the compromise decree. It is further recorded that the deponent felt the compromise decree entered into by the parties in the above suit was one sided. It is also stated that process of consulting the temple advocates and higher officials and obtaining permission from them caused delay.



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12. As noticed earlier, the applicant executed a memorandum of compromise in the year 2007 after obtaining the sanction of the Commissioner, HR & CE Department. The execution petition filed later (E.P.No.1211 of 2011) was closed on the basis of memo of compliance dated 28.03.2012 in the presence of applicant's counsel. The filing of this application with a delay of 1813 days in these facts and circumstances for reasons such as, change in Executive Officer and delay in coordination and getting approval, does not constitute sufficient cause.

13. Therefore, this application is dismissed without any order as to costs.

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