

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
01.04.2026PRONOUNCED ON
21.04.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CRP No. 1252 of 2020
and CMP.No.6798 of 2020

Arulmigu Ranganathaswamy Thirukkoil
Rep.By Its Executive Officer, Having Office At
No. 48, Mulla Sahib Street, Chennai-600079

..Petitioner(s)

Vs

1. Yasodammal
2. S.Subburatnam
3. S.Govindarajulu
4. S.Parthasarathy
5. S.Rangabashyam
6. S.Bhoopathy
7. S.Premakumari
8. M.Kishore Kumar
(Respondents 2 to 7 set ex-parte
in I.A.No.13205 of 2013 in the lower Court)

..Respondent(s)

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree passed in CMA.No.97 of 2015 on 04.03.2019 on the file of the Additional Judge-IV, City Civil Court, Chennai reversing the orders passed in I.A.No.13205 of 2013 in OS.No.4857 of 1997 on the file of the Assistant Judge-II, City Civil Court, Chennai by allowing the Civil Revision and confirming the Lower Court order and pass such other order.

For Petitioner(s):

Mr.D.R.Sivakumar
for Mr.S.D.Ramalingam



For Respondent(s):

R1 – Not ready in notice
RR2 to 7 – Given
Mr.S.Rameshkumar for R8

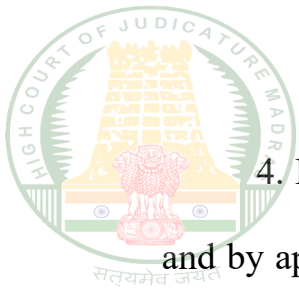
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ORDER

Civil Revision has been filed challenging the judgment and decree passed in CMA.No.97 of 2015 on 04.03.2019 on the file of the Additional Judge-IV, City Civil Court, Chennai reversing the orders passed in I.A.No.13205 of 2013 in OS.No.4857 of 1997 on the file of the Assistant Judge-II, City Civil Court, Chennai.

2. Heard Mr.D.R.Sivakumar, learned counsel appearing on behalf of Mr.S.D.Ramalingam, learned counsel for the petitioner and Mr.S.Rameshkumar, learned counsel appearing on behalf of the eighth respondent.

3. The learned counsel for the Petitioner would submit that a suit filed by the Petitioner seeking a declaration that the sale deed executed by Respondents 1 to 7 herein, in favour of the 8th Respondent is null and void, and for other reliefs, was dismissed for default. The same was sought to be restored by taking necessary applications, which was also allowed by the Trial Court, but was set aside in appeal on the sole ground that the Petitioner had not filed an application to condone the delay in filing an application to set aside the order dismissing the suit for default.



4. He would submit that the Petitioner is a temple represented by its idol, and by application of Section 109 of the HR&CE Act, there is no limitation, as the Limitation Act has been excluded in cases where action have been initiated for recovery of property belonging to the temple. However, the appellate court, without appreciating Section 109 of the Act, had allowed the appeal by setting aside the order of restoring the suit on the ground that the application to condone delay had not been filed.

5. He would submit that the property originally belonged to the mother of the first Respondent, who had executed a will bequeathing the properties in favour of the temple, but life estate to the first Respondent and her children, who are Respondents 2 to 7 was given with no right to alienate the properties, However Respondents 1 to 7 have alienated the property in favour of the 8th Respondent, which is void. Relying upon Section 109, he would submit that recovery of the immovable property would also include all other proceedings arising out of such suit. Therefore, he prays this Court to set aside the order impugned and restore the suit.

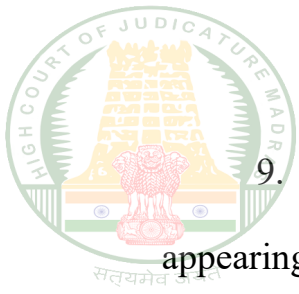
6. Countering his arguments, the learned counsel appearing for the Respondent would submit that the suit was originally dismissed in the year 2007, and the application had been filed beyond the period of 30 days, which required an application to condone the delay. He would submit that the



exemption, applies only to initiate proceedings. The interlocutory application to restore the suit had been filed only in the year 2013. For filing an application under Order 9, Rule 9, the law of limitation would have to be necessarily applied.

7. He would submit that further, the suit itself is without a cause of action, as the claim of the Petitioner is based upon a will which had hitherto not been probated. Without probate of the will, the Petitioner did not have a cause of action for the reliefs claimed in the suit. No reasons for the delay had also been stated in the affidavit filed by the Petitioner to restore the suit. By implication of Section 213 of the Indian Succession Act, the Petitioner cannot claim to have a valid cause of action to institute the suit. Hence, he prays this Court to dismiss the revision.

8. In reply, the learned counsel for the Petitioner would submit that immediately on the dismissal of the suit for non-prosecution, an application had been filed. However, the same was numbered only in the year 2013, for which the Petitioner cannot be found fault with. He would also submit that the testamentary original suit which relates to the probate of the will is also pending before this Court.



9. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

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10. The issue revolves upon Section 109 of the HR&CE Act, which excludes application of the Limitation Act, 1963. Section 109 of the Act reads thus:-

“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”

Section 109 of the Act would indicate that for recovery of the property belonging to a temple, the application of the Limitation Act, 1963, has been excluded. The said provision has been understood by this Court as well as the Apex Court to entitle a temple to sue for recovery of the property, even beyond the period of limitation as the religious institution is represented by an idol, which has always been considered as a minor. The Limitation Act itself provides a three years' limitation for a minor to sue for the property from the date of such minor attaining majority. As the idol is considered to be a minor, a situation does not arise when it reaches majority and hence, there can be no limitation for a minor to sue for its property.

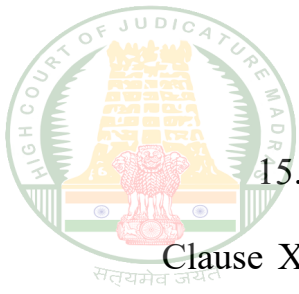


11. Further Limitation Act has been excluded to be applied to suit for possession of immovable property belonging to a religious institution and including any interest in the same. Hence what has been excluded cannot be restricted to initiation alone but in all other aspect in the suit instituted by religious institution.

12. For the aforesaid reasons, this Court is of the view that the appellate court had wholly misconstrued the provisions of Section 109 and has misled itself to conclude that an application by the temple to restore the suit without an application to condone the delay would not be maintainable.

13. The revision petition stands allowed and the order made in CMA stands set aside. As a sequel, the order made in IA stands restored and, as a consequence, the suit also stands restored to the file of the Trial Court. Consequently, connected miscellaneous petition is also closed. However, there shall be no order as to costs.

14. During the course of the hearing, it had been brought to the notice of the Court that the Petitioner had taken out an application to probate the will, in which a caveat had been filed by the 8th Respondent, and now stand converted as TOS No. 33 of 2007. In this case, it is considered that the suit could also be tried along with the TOS.



15. In such view of the matter, this Court, in exercise of its power under Clause XIII of the Letters Patent Act, withdraws the suit in O.S. No.4857 of 1997 pending on the file of the 2nd Assistant City Civil Judge, Chennai, and transfers the same to the file of this Court to be tried along with TOS No. 33 of 2007.

16. The Registry shall expedite the process of withdrawal and transfer for tagging the present suit along with TOS No. 33 of 2007.

21.04.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GBA

To

1. The Additional Judge- IV,
City Civil Court, Chennai
2. The Assistant Judge – II,
City Civil Court, Chennai
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.



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K.KUMARESH BABU, J.

GBA

A Pre-delivery order made in
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