
(2014) 12 MAD CK 0272

In the Madras High Court

Case No : C.R.P. (MD) Nos. 987 to 989 of 2010 (PD) and M.P. (MD) Nos. 1, 1 and 1 of 2014

Arulmigu Meenakshi Sundareswarar Devasthanam

APPELLANT

Vs

E.M.G. Soundarajan

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, Order 23 Rule 3, Order 41 Rule 5

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 109, 43

Citation : (2014) 12 MAD CK 0272

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Judgement

V.M. Velumani, J.—In all the CRPs., petitioner is the plaintiff in O.S. 123 of 1970 and petitioner in E.P. No. 77/2006 and respondent in E.A. No. 554 of 2009 and E.A. No. 35 of 2010 on the file of the I Additional Sub Court, Madurai. The parties are referred to as arrayed in C.R.P. (MD) No. 987 of 2010.

2. The petitioner filed O.S. 123 of 1970 against 26 persons for recovery of properties belonging to them. One E.M.G. Soundararajan now deceased was 6th defendant in the suit. The suit was decreed on 23.12.1978 against all the defendants except 7th defendant. The said Soundararajan filed A.S. No. 209 of 1979 on the file of this Court and the same was dismissed by this Court on 12.2.1986. The said Soundararajan filed R.C.M.P. No. 3891 of 1996 for reviewing the judgment dated 12.02.1986 made in A.S. No. 209 of 1979. While so at the behest of this Court the said Soundararajan and the petitioner entered into a compromise. This Court recorded the memo of compromise in the review application and passed orders in the review application on 23.04.1990. As per the memo of compromise the said Soundararajan agreed to pay Rs. 33,00,000/- to the petitioner. He has to pay a sum of Rs. 2,00,000/- on or before 15.7.1990 and a sum of Rs. 6,00,000 per year of Rs. 3,00,000/-per half year on or before 15.7.1991, 15.7.1992, 15.7.1993 and 15.7.1994 and Rs. 7,00,000/- on or before

15.7.1995. The amounts to be paid in instalments will carry interest at 12% per annum to be paid on or before 10th of every quarter i.e., once in three months. In the default clause it has been agreed that if the said Soundararajan commits default for more than a year he must surrender possession of the land to the petitioner.

3. The said Soundararajan defaulted the payment of instalments. The petitioner filed E.P. No. 111 of 1994 for recovery of possession. The said E.P. was dismissed in view of stay granted by this Court in CMP No. 5991 of 1994 in AAO No. 435 of 1994. The said AAO was dismissed on 6.11.1995. The petitioner again filed execution petition for recovery of possession which was numbered as E.P. No. 77 of 2006. The Soundararajan filed counter affidavit opposing the same on the ground that E.P. is time barred. The said Soundararajan died on 24.3.2007. The first respondent claims that she is legally wedded wife while 5th respondent claims that she alone is legally wedded wife of the said Soundararajan. Both first and fifth respondents and their children are impleaded as respondents 1 to 8. Respondents 9 & 10 were impleaded as they claim to be trustees of suit property entitled to manage it. After being impleaded the respondents 1 to 8 filed counter affidavit. The respondents sought for dismissal of E.P. mainly on the ground that the said E.P. was barred by limitation.

4. The respondents 2 and 3 filed E.A. No. 554 of 2009 to take maintainability of E.P. as a preliminary issue. They also stated that the executing court condoned the delay of 275 days and subsequently 335 days in re-presenting the E.P. without any notice to them. The petitioner filed counter affidavit stating that E.P. was filed in time and it is not barred by limitation and in any event as per Section 109 of the HR & CE Act, the provisions of Limitation Act are not applicable for recovery of properties belonging to the petitioner temple. The respondents 2 & 3 also filed E.A. No. 113 of 1999 for permission to deposit Rs. 31,00,000/- being the balance amount payable by their father. According to them their father was always ready and willing to pay the instalments without any default but he was prevented from making any payment as per orders of this court made in CMP No. 5991/1994 in AAO No. 435 of 1994. After the death of their father they are always ready and willing to pay the balance amount in one lump sum. They claimed that they are not liable to pay any interest as their father was prevented from paying instalments by order of this court and petitioner did not make any demand for payment of amount and did not take any action for more than 12 years. The executing court by the order dated 18.11.2009, allowed the said application. The respondents 2 and 3 deposited a sum of Rs. 31,00,000/- on 25.11.2009.

5. The petitioner filed C.R.P. Nos. 1982 and 1983 of 2009 challenging the above said order. This court by the order dated 01.12.2009 disposed both the CRPs with the direction to the lower court to dispose E.P. No. 77 of 2006 without being influenced by deposit. Respondents 3 & 4 filed E.A. No. 35 of 2010 to record full satisfaction as they have paid the entire amount. In view of this application the

petitioner filed review application No. 48 & 49 of 2010 for clarification. This Court by the order dated 26.4.2010 disposed the applications holding that there is no necessity for any clarification as the earlier order directed the lower Court to decide the E.P., on merits.

6. The learned Judge heard the arguments in E.P. No. 77 of 2006, E.A. No. 554 of 2009 and E.A. No. 35 of 2010. The learned Judge dismissed the E.P. No. 77 of 2006 and allowed E.A. No. 554 of 2009 and E.A. No. 35 of 2010 and recorded full satisfaction.

7. Against these orders petitioner has filed the above 3 CRPs.

8. Heard Mr. A.R.L. Sundaresan, learned Senior Counsel for Mr. S. Manohar, learned counsel appearing for the petitioner, Mr. R. Janakiramulu, learned counsel appearing for R1, Mr. G. Prabhu Rajadurai, learned counsel appearing for R2 & R3, Mr. M. Vallinayagam, learned Senior Counsel Assisted by Mr. D. Nallathambi, learned counsel appearing for R4, Mr. V. Janakiramulu, learned counsel appearing for respondents 5 to 8 and Mr. J. Barathan, learned counsel appearing for R9 and Mr. V. Meenakshi Sundaram, learned counsel appearing for the petitioner in M.P. (MD) Nos. 1 to 1 of 2014.

9. The learned Senior counsel appearing for the petitioner argued that:-

a) the learned I Additional Subordinate Judge, Madurai erred in dismissing the E.P., as barred by limitation. The learned Judge committed irregularity by taking the year when E.P., was numbered as date of filing instead of actual date of filing of E.P. Admittedly, on two occasions delay of 275 days and 335 days in representation were condoned. The learned Judge having noted this fact erred in holding that the E.P. was filed beyond the time limit prescribed in the Limitation Act. The learned judge failed to consider the averments of petitioner that E.P. was filed in time and it is not barred by limitation. Further the learned counsel for the petitioner argued that the learned Judge did not give any reason for not accepting the contention of petitioner that as per Section 109 of HR & CE Act, the provisions of Limitation Act are not applicable to legal proceedings for recovery of properties belonging to the temples like petitioner;

b) the present E.P., is continuation of earlier E.P. No. 111 of 1994 filed on 18.12.1996 by the petitioner. The said E.P., was dismissed, in view of stay granted by this Court in C.M.P. No. 5991 of 1994 in AAO. No. 435 of 1994. The order in earlier E.P., whether closing or dismissing will automatically be revoked and E.P., will be revived and subsequent E.P., will only be continuation of earlier E.P.;

c) the respondents have participated in the present E.P. They have filed various applications and raised untenable grounds with a view of drag on the proceedings and wriggle out of their liability under the decree. Having fully participated in the E.P., proceedings, it is not open to the respondents to raise a plea that the E.P., is not maintainable or barred by limitation;

d) the provisions of Limitation Act is not applicable to suits for recovery of properties belonging to the temple in view of Section 109 of HR & CE Act. The execution petition is continuation of the suit to implement the decree obtained by the temple. In view of operation of Section 109 of the Act, the submissions of respondents that E.P., is time barred, is not maintainable;

e) the learned Sub Judge having taken note of condonation of delay of 275 days and 335 days erred in holding that the E.P., was barred by limitation. The learned Judge has rightly rejected the contention of the respondents that without notice to opposite party, delay in representation cannot be condoned. The learned Judge erred in taking the year when the E.P., was numbered as date of filing. The learned Judge ought to have taken the original date of filing of E.P., for deciding the issue of Limitation. The respondents having taken a stand that delay in representation was condoned without notice to them cannot raise a plea that applications to condone the delay in re-presentation were not numbered and no order was passed condoning the delay. Further before numbering the E.P., and taking it on file, the respondents have no locus standi to object to any procedure or orders passed by Court. The learned Senior Counsel also argued that Courts have power to condone the delay in representation even without an application;

f) the respondents have made frivolous and defamatory allegations that the petitioner had played fraud on Court, which is without basis and has to be rejected in limine;

g) the petitioner is entitled to engage any Advocate from its panel. The respondents have no right to object to the appearance of any one of the panel advocates of petitioner and procedure to be followed by present counsel for petitioner;

h) the learned Sub Judge erred in recording full satisfaction. The learned Judge did not have jurisdiction to record full satisfaction. This Court directed E.P., to be proceeded with on merits. The learned Judge travelled beyond the decree and order of this Court. By the order dated 23.04.2010 made in R.C.M.P. No. 3891 of 1986 in A.S. No. 209 of 1979, this Court granted time till 15.07.1995 for payment and in default to surrender possession to petitioner. The orders in AAO. No. 435 of 1994 was vacated and therefore, the contention that the compromise decree was not acted upon is unacceptable. The executing Court cannot go beyond the decree and cannot extend the time for payment and record full satisfaction. The executing Court exceeded its jurisdiction in allowing the application to record full satisfaction;

i) as far as order passed in E.A. No. 554 of 2009 is concerned the learned counsel argued that in E.P. proceedings question of deciding the issue of limitation as preliminary issue does not arise. Once the learned Judge decides the issue of limitation consequential order follows either ordering the recovery of property or dismissing the E.P.; and

j) as far as the order passed in E.A. No. 35 of 2010, the learned Senior counsel

for the petitioner argued that the learned Judge did not apply his mind and in a mechanical manner passed order. The learned Judge failed to consider as to whether the default committed attracts interest as ordered by this Court. The learned judge also erred in accepting the contention of respondents that father of respondents could not pay the instalments due to order passed by this Court restraining him from paying the instalment is correct or not. The learned Judge failed to consider the fact that even after vacating the interim order by this Court, neither EMG Soundararajan or his legal heirs paid or took steps to pay the amounts to the petitioner.

10. The learned Senior counsel appearing for the petitioner relied on following Judgments:-

- i) 2006 (5) CTC 649 Annamalai vs. Nagoorgani and another
- ii) Durgesh Sharma Vs. Jayshree,
- iii) Madhwacharya Vs. Shivarama Shetty and others,
- iv) The Executive Officer, Sri Soundereswarar Devasthanam Vs. G. Kuppuswamy Mudaliar, M. Sambandam, K. Panchatcharam and S. Lakshmi @ Jeevanarayanan,
- v) Rajapalayam Town Amman Pottal Middle North Street Pallar Common Fund and another Vs. Rajapalayam Town Amman Pottal Street Devandra Kula Velalar Community and 4 others,
- vi) V.S. Palanichamy Chettiar Firm Vs. C. Alagappan and Another,
- vii) The G.M. Heavy Vehicles Factory & anr. Vs. T. Shadrak 1978 T.L.N.J. 332.
- (viii) Samuel alias Manas and Another Vs. Dasamma Nadathy and Others, .
- ix) Y. Cusbar Vs. K. Subbarayan, 1993 T.L.N.J. 375 DB
- x) Madhwacharya Vs. Shivarama Shetty and others,
- xi) A/M Kolavizhi Amman"s case. 2008 (3) L.W. 1083.
- xii) Kalia Pillai (died) and Others Vs. Kathayee ammal Dharmam (Charities) and Others,
- xiii) Subbuthai & ors. vs. Sri Sundara Vinayagar Deity or Sundara Vinayagar Koil, Vellore through its Trustee Sivasubramania Pillai, 46, Sannathi Street, Srivaikundam and another 1998 (2) M.L.J. 272
- xiv) Sri Athmanathaswamy Devasthanam, Avidyarkoil Vs. K.G. Varadachariar and Others,
- xv) Unreported judgment in Thiruvaduthurai Adeenam Vs. Velammal & Ors. C.M.A. No. 351/1985
- xvi) Y.B. Patil and Others Vs. Y.L. Patil,

xvii) A.A. Gopalakrishnan Vs. Cochin Devaswom Board and Others,
xviii) Rajendra Prasad Gupta Vs. Prakash Chandra Mishra and Others,
xix) Ramdas Bansal (D) Vs. Kharag Singh Baid and Others,
xx) Satyawati Vs. Rajinder Singh and Another,
xxi) Chidambaram Chettiar Vs. Periyasamy Chettiar,
xxii) K.S.R.M. Sivasubramaniam Chettiar Vs. Murugesu Mudaliar and Another,
xxiii) Karuppaiya Muthuraja Vs. V. Karuppaiya Muthuraja and Perumal Muthuraja,
xxiv) Turaga Hanumantha Rao Vs. The Official Receiver and Others,
xxv) M. Marudanayagam Pillai Vs. P.M. Krishnaswami Naidu (died) and Others,
xxvi) Babu Lal Vs. Hazari Lal Kishori Lal and Others,
xxvii) 2000(III) CTC 11 Saravanan, S. v. The Chief Judge Court of Small Causes
xxviii) Lakshminarayanan Vs. Vaigundanamamani and another,
xxix) CMA 351 of 1985 (Unreported)

xxx) Vadlamanneti Damodara Rao Vs. The Official Receiver, Kistna and Another,

11. Per contra, the learned counsel appearing for the first respondent argued that:-

a) the suit property originally belonged to Ondimuthu Pillai Trust, which was conducting festival one day in the Tamil Month of Aavani in a year in the Mandapam situate in South Veli Street. The Mandapam was in a dilapidated condition and Sub Division Magistrate, Madurai by the order dated 30.03.1920 made in C.M.P. No. 10/1919 directed the owner to carryout necessary repairs and fence the Mandapam. In order to carryout the repairs, construct the Mandapam and to perform Urchavam, the suit property was sold to E.M. Gopalakrishnan and his brother. Thereafter, the Aavani Urchavam is being celebrated regularly. In the suit property there are two cinema theatres and suit property belongs to E.M. Gopalakrishna Cone Trust and the income is spent for education and for Charity and other purpose mentioned in the trust deed. The respondents 2 to 4 are the present trustees;

b) Aavani Moola Urchavam is conducted only for one day in the Tamil Month of Aavani. Even though other properties are available, the petitioner wants to take possession of the property mentioned in the E.P., alone;

c) the petitioner has not filed E.P., against all the necessary and proper parties. As per Order 21 Rule 11 CPC all the parties must be impleaded as parties. E.P., is liable to be struck off on this ground;

d) two applications to condone the delay of 275 days and 335 days in

representing the execution petition were not numbered and no orders were passed. There is a long gap in between filing and representation from the year 2002 to 2006 and it was not explained. As far as the application to condone the delay of 335 days no number was given in the certified copy furnished in the year 2009;

e) no notice was given to the respondents in the application to condone the delay in representation. The number of days of delay mentioned as 335 is not correct;

f) if possession is ordered, the petitioner has to pay several crores of rupees to the respondents as per order passed in R.C.M.P. No. 3891 of 1986. The respondents have made an offer to pay interest at 24% per annum on the amount mentioned in the said order which works out to Rs. 2 crores and 50 lakhs. The respondents have deposited 31 lakhs. E.M.G. Soundararajan deposited 4,60,000/-. Thus in total the petitioner will get Rs. 2 crores 85 lakhs which the petitioner can accept; and

g) there are number of court seals affixed in E.P., from 1998 to 2006. There is no endorsement for representation and return. The seals might not have been affixed on the date mentioned therein. This is abuse of process of Court. There is no valid representation. The representation in the year 2005 can be considered only as fresh filing. Hence, E.P., is barred by limitation.

12. The learned counsel for the first respondent relied on the following judgment-;

i) State of Haryana and Another Vs. Kartar Singh (D) Through L.Rs.,

13. The learned counsel appearing for respondents 2 & 3 argued that order of this Court dated 23.04.1990 made in RCMP No. 3891 of 1986 in A.S. No. 209 of 1979 is only recording an agreement arrived at and entered between parties and it cannot be executed. He further argued that Section 109 of HR & CE Act applies only to filing of suit for recovery of properties belonging to temple and it will not apply to filing of execution proceedings. Only Article 96 of Limitation Act applies for filing of Execution proceedings. The second respondent filed an affidavit stating that he is willing to pay interest at 24% p.a., from the date of order passed in RCMP No. 3891 of 1986 till today which comes to Rs. 2,50,00,000/- and already a sum of Rs. 35,50,000/- was deposited. This offer according to the second respondent is without prejudice to the contentions on merit and to show their readiness and bonafide of their offer.

14. The learned counsel for respondents 2 & 3 relied on the following judgments:-

i) Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others,

ii) Ruby Sales and Services (P) Ltd. and Another Vs. State of Maharashtra and Others,

15. The learned Senior Counsel appearing for the fourth respondent argued that:-

a) the petitioner Devasthanam filed O.S. No. 123 of 1970 against 26 persons for recovery of properties mentioned therein. The suit was dismissed against the 7th defendant and property in Door No. 20-A. The 6th defendant EMG. Soundararajan filed A.S. No. 209 of 1979 which was dismissed. He filed RCMP No. 3891 of 1986 in A.S. No. 209/79. Memo of compromise was filed by EMG Soundarajan and petitioner which included property in Door. No. 20-A also. The other defendants were not parties. This Court recorded the compromise memo and passed orders. The petitioner presented execution petition on 18.12.1996 against EMG Soundararajan only as the same was presented on the basis of terms of joint memo recorded on 23.04.1990. E.P., was filed for possession of property in Door No. 20-A and also two cinema theatres situate in Door Nos. 20 and 20-A. The E.P., has been filed based on clause 5 of Joint memo and hence there cannot be any execution in respect of Door No. 16 to 19. The petitioner is not entitled to file E.P., to implement Clause 5 of joint compromise memo in view of Section 43 of HR & CE Act 1959. As per the said Section no suit or appeal can be withdrawn or compromised without previous sanction of Commissioner of HR & CE Department. The word shall used in the Section is only mandatory and failure to comply with the requirements of Section 43 will render the resulting action inoperative and totally void. Even though court below has dismissed the petition on other ground, the order of rejection has to be sustained on this point also;

b) the order dismissing E.P., is sustainable as fraud has been played in numbering the E.P., There is no endorsement for return of E.P., papers and representation. There is no order condoning delay of 275 days and 335 days in representation. There cannot be any oral order and order must be in writing. There is no endorsement regarding return of papers after 04.09.1998 till submitted on 30.04.2001 and between 30.04.2001 and 16.06.2005. Thus there is no endorsement of return from 04.09.1998 till 16.06.2005 and therefore, no representation during this period;

c) the application for condoning the delay of 335 days in representation was not numbered till 2009. When the papers were examined in this Court E.A. No. 554 of 2004 was found in the said application and the said E.A., does not relate to the E.P., in question. Thus fraud has been played on Court. The participation of respondents in the proceedings will not validate the proceedings. The Apex Court has held that fraud vitiates the Court proceedings. On this ground also the order of lower Court has to be sustained;

d) the E.P., is barred by limitation as per Section 136 of Limitation Act. The time for execution of a decree is 12 years. The suit was decreed on 23.12.1978. No stay was granted in appeal filed by EMG Soundararajan Pillai. As per Order 41 Rule 5 CPC appeal will not operate as stay. The time for execution of decree has started on 23.09.1978. Hence, Execution Petition filed on 10.12.1996 is beyond 12 years and barred by limitation;

e) the petitioner has not filed E.P., to execute the decree of trial court dated

23.12.1978 confirmed by appellate Court on 12.02.1986. The petitioner has filed E.P., only against 6th defendant including property in Door No. 20A. Therefore, the petitioner cannot calculate the time for filing execution petition from the date of appellate Court judgment and decree dated 12.02.1986 applying the doctrine of merger;

f) the application to condone the delay in representation can be considered liberally than the application to condone the delay in filing. It is also well settled that the prejudice that may be caused to the opposite party has to be considered while passing orders in condoning the delay in representation;

g) the proceeding in condoning the delay in representation is between the court and applicant and there is no necessity to issue notice to other side. But it has been held that if the application to condone the delay is filed beyond the period of limitation then notice must be given to other side. It is further submitted that no order condoning the delay has been passed;

h) the return and representation of E.P., papers are between the Court and the applicant. Hence, the petitioner has to explain the irregularities. The contention of the petitioner that respondents cannot question the irregularities prior to numbering the execution petition is unsustainable and untenable; and

i) the respondent as devotees of Goddess Meenakshi without prejudice to their contention are offering interest at 24% p.a., on the principal amount mentioned in the joint memo till date which works out to Rs. 2 crores 50 lakhs. The petitioner can very well accept this offer instead of taking possession of land building and pay Rs. 25 crores.

16. The learned Senior counsel for fourth respondent relied on the following judgments:-

i) M/s. Olympic Cards Limited Vs. Standard Chartered Bank, Small Medium Enterprises Banking Consumer Banking,

ii) P. Sangili And Ors. Vs. Ramakrishnan and Ors. on 19 July 1973.

iii) Competent Authority Vs. Barangore Jute Factory and Others,

iv) A. Nawab John and Others Vs. V.N. Subramaniam,

v) Mrs. Zulaiha Syed Mohideen vs. D. Visalakshi Ammal (Deceased) on 22 October, 2013.

17. The learned counsel for the respondents 5 to 8 argued that

a) the E.P., is not maintainable either in law or on facts;

b) barred by limitation;

c) the property belongs to E.M. Gopalakrishna Cone Trust;

d) the suit filed against EMG Soundararajan in his individual capacity is not

maintainable. Similarly the joint memo filed by him in his individual capacity is not binding on the trust and compromise decree is not executable;

e) the said EMG Soundararajan died intestate and respondents 1 to 8 have become trustees of EM. Gopalakrishna cone trust; and

f) the learned counsel submitted the details of dispute that exist between the respondents 1 to 4 and respondents 5 to 8. EMG Soundarajan could not pay the instalments as the first respondent as guardian of 4th respondent filed O.S. No. 1502 of 1991 against the petitioner and EMG Soundarajan, without any locus standi and obtained ex-parte injunction and prevented EMG Soundarajan from acting as per compromise decree. The non payment of instalments accrued due to malafide intention of first respondent.

18. The learned counsel for the 9th respondent argued that:-

a) E.P., is not maintainable. This is a question of law which can be raised for the first time in CRP as consideration of filing of E.P., returns by Court and representation by petitioner are sufficient to decide the question of maintainability as per the law and they do not require any fresh oral or documentary evidence;

b) the E.P., was presented on 10.12.1996. In the E.P., papers there are 12 court seals with dates were affixed. This shows that E.P., papers were represented on 11 occasions. The dates of return should indicate that execution petition was returned with specific orders of return showing defects. But the docket sheets did not disclose such particulars. The petitioner has also did not represent the E.P., papers within time limit granted and did not file application to condone the delay, when the papers were represented beyond time granted. These facts revealed that fraud had been played on Court and Court seals had been fraudulently obtained;

c) two applications have been filed for condoning the delay. Both the applications had been marked as Ex. R1 & R2 in E.A. No. 554 of 2009. Both applications were not numbered and no order has been passed condoning the delay. When the E.P., papers were verified in this Court it is seen that number 554 of 2009 has been written in purple ink in the E.A. The said number does not relate to E.P., in question as it relates to E.P. No. 253 of 2000 in O.S. No. 140 of 1998;

d) though execution petition was presented on 10.12.1996 it will not save limitation as no order has been passed condoning the delay;

e) the petitioner is seeking execution beyond the decree. The suit O.S. No. 123/1970 was dismissed in respect of property bearing Door No. 20-A Ondimuthu Pillai lane, South Veli Street, Madurai. The petitioner willfully and wantonly included Door No. 20-A also. The executing court ought to have rejected inclusion of said property;

f) the suit and execution petition had not been filed by juristic personality. The

Idols of Meenakshi and Sundareswarar are juristic personality recognized by law and this country. Hence, the execution petition filed by Arulmigu Meenakshi Sunareswarar Devasthanam is not maintainable;

g) E.P., has been filed without any decree;

h) the petitioner did not get consent from previous counsel to engage the present counsel;

i) in view of Section of 136 of Limitation Act, Section 109 of the HR & CE is not applicable to execution petition. Section 109 of the HR & CE Act applies only to suits.

19. The learned counsel relied on the following judgments:

i) Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass and Others,

ii) Ram Jankijee Deities and Others Vs. State of Bihar and Others,

iii) Bala Shankar Maha Shankar Bhattjee and others Vs. Charity Commissioner, Gujarat State,

iv) AIR 1981 SC 798 (Radhakanta Deb v. Commissioner Hindu Religious Endowments, Orissa)

v) J.P. Builders and Another Vs. A. Ramadas Rao and Another,

vi) Sheikh Noor and Another Vs. Sheikh G.S. Ibrahim (dead) by Lrs.,

vii) Tarini Kamal Pandit and Others Vs. Prafulla Kumar Chatterjee (Dead) by Legal Representatives,

viii) Collector of Central Excise, Ahmedabad Vs. Pioma Industries and Imperial Soda Factory,

ix) Paul Industries (India) Vs. Union of India (UOI),

x) Mohd. Laiquiddin and Another Vs. Kamala Devi Misra (Dead) by L.Rs. and Others,

xi) The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao,

xii) Smt. Badami (Deceased) By her L.Rs. Vs. Bhali,

xiii) A.V. Papayya Sastry and Others Vs. Government of A.P. and Others,

xiv) Commissioner of Customs, Kandla Vs. Essar Oil Limited and Others,

xv) Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Others,

xvi) Ganpatbhai Mahijibhai Solanki Vs. State of Gujarat and Others,

xvii) Hamza Haji Vs. State of Kerala and Another,

xviii) Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others,

20. One Ondimuthu alias N.O. Muthu, a third party has filed M.P. (MD) Nos. 1 to 1 of 2014 in all the three CRPs. for impleading him as 11th respondent. According to him, without impleading property bearing Door No. 193, South Veli Street, Ondimuthu Maistry Lane, Madurai Town, is sought to be taken possession. The petitioner in C.R. Ps. filed counter affidavits stating that the property bearing Door No. 193, South Veli Street, Ondimuthu Maistry Lane, Madurai, is not sought to be taken possession in E.P. No. 77 of 2006. On the other hand, E.P. No. 440 of 1990 has been filed against the petitioner in M.P. (MD) Nos. 1 to 1 of 2014/3rd party to recover the property bearing Door No. 193, South Veli Street, Ondimuthu Maistry Lane, Madurai.

21. In view of the facts stated by the petitioner in the C.R. Ps., the 3rd party is not a necessary and proper party to the C.R. Ps. Hence, all the three Miscellaneous Petitions are dismissed.

22. I have carefully considered all the materials on record, judgments relied on by the counsel for the petitioner and respondents and the arguments of the learned counsel for the petitioner and the respondents.

23. Number of judgments referred to above have been relied on by counsel for petitioner as well as respondents. For each and every point more than one judgment has been relied on. I am not extracting the paragraphs relied on by counsel as it will be sufficient to note the following principles laid down in the above judgments.

a) A question of law can be raised for the first time even before the Apex Court provided no fresh or further oral or documentary evidence is required.

b) Idol of a temple is juristic person.

c) Fraud played on Court vitiates the entire proceedings.

d) All the orders passed without complying with Section 43 of the HR & CE Act is nullity.

e) As per Section 109 of the HR & CE Act, the provisions of Limitation Act are not applicable to suits in respect of properties of temple.

f) Application to condone the delay in representation has to be considered more liberally than application to condone the delay in filing.

g) While considering the application to condone the delay in representation any accrued interest or prejudice to opposite party has to be considered.

h) No necessity to give notice to respondents in application to condone the delay in representation.

i) The subsequent execution petition to implement same decree will be in continuation of earlier E.P. When the earlier E.P., was closed or dismissed.

j) The principles of res judicata applies to subsequent stage in the same proceedings.

k) A consent decree does not operate as res judicata because a consent decree is merely a record of consent between parties to a suit, to which seal of the court is super added.

l) The agreement in the shape of consent decree remains as an agreement and the same can be set aside on any of the grounds which will invalidate the agreement.

24. The following points are to be decided in the CRP on merits.

a) Whether O.S. No. 123/1970 initiated against EMG Soundararajan in his individual capacity is proper and valid and whether decree passed in the suit is executable.

b) Whether compromise decree passed by this Court is nullity or valid and executable.

c) Whether E.P., is barred by limitation.

d) Whether lower Court committed irregularity and exceeded its jurisdiction by permitting the respondents to deposit Rs. 31 lakhs and recording full satisfaction.

25. The respondents have alleged that property in question belongs to E.M. Gopalakrishna cone Trust and EMG Soundararajan as a trustee was managing the trust and its properties. Hence, the suit filed against EMG Soundararajan is not maintainable and the decree cannot be executed. From the judgment dated 23.12.1978 made in O.S. No. 123 of 1970 it is seen that on the suit property among other properties an absolute endowment had been created in favour of the petitioner herein. The owners also agreed that petitioner is entitled to take possession of properties if the owners failed to conduct the festival or alienate, the properties in any way including by creating a Othi (Lease). Admittedly, the owners alienated the properties by perpetual lease to third party. Perpetual lease was given to E.M. Gopalakrishna cone and his brother in respect of property in question. This is in violation of absolute endowment created in favour of petitioner. In view of this violation the perpetual lease given to EMG Gopalakrishna Cone and his brother is invalid and is not binding on the petitioner. The subsequent partition between the Gopalakrishna Cone and his brother and creation of Trust are non est in law and are nullity. Therefore, the respondents' contention that the petitioner ought to have sued EMG Soundararajan as a trustee of EMG Gopalakrishna Trust and suing him in his individual capacity is not maintainable and the decree obtained against EMG Soundarajan is not binding on the trust and not executable are untenable and un-sustainable.

26. The respondents secondly contended that compromise decree passed by this Court is a nullity and cannot be executed. According to respondents, Section 43 of HR & CE Act is a mandatory provision and any compromise of suit, appeal etc.,

without prior sanction from Commissioner HR & CE department is a nullity. According to respondents in the present case, no sanction was obtained before entering into settlement with EMG Soundararajan. This makes the compromise decree a nullity as per the Judgment of Division Bench of this Court. The respondents have contended that this plea is a pure question of law and can be decided based on the available materials on record and no fresh oral or documentary evidence is required. This contention of respondents is not tenable and sustainable. A reading of compromise decree shows that the settlement was entered into at the behest of this Court. A compromise memo was filed only after negotiation. Whether the petitioner obtained prior sanction of Commissioner or not is a question of fact. The petitioner is entitled to let in evidence both oral and documentary to prove that prior sanction was obtained from Commissioner. The respondents having failed to raise this issue before the execution Court is not entitled to raise the same in this Court as this issue can be decided only by fresh and additional evidence.

27. Further this Court has held that idol of temple is a minor and Courts must consider whether alienation of temple property is absolutely necessary. The said decision of this Court makes it clear that there is no prohibition to alienate the property of temple but Courts must safeguard the interest of the temple. In the present case, this Court in review application filed by EMG Soundararajan was of the view that it will be in the interest of parties to settle the matter. In deference of the views of this Court, the parties negotiated and settled the matter. This Court recorded the memo of compromise and passed appropriate orders. This Court made sufficient safeguard to protect interest of petitioner.

28. It is strange that private individuals who are benefited by compromise decree have come forward with a plea that compromise is a nullity. Usually it is the department and subsequent trustee or Executive Officer challenge alienation or compromise decree. In the present case, EMG Soundararajan and subsequently his legal heirs are enjoying the property in question without paying any compensation. As I have held that this issue cannot be decided based on the available record, the contention of the respondents that compromise decree is nullity is untenable and it is devoid of merits.

29. The execution petition was filed on 10.12.1996 as admitted by respondents in their counter affidavit. The contention of the respondents is that E.P., papers were allegedly returned on 12 occasions as could be seen from the seal of the Court found in E.P., papers. Verification of E.P., papers reveal that necessary particulars like date of return, reason for return and date of representation were not found. This creates a doubt whether really E.P., papers were returned and represented as per the Court seal found in E.P., papers. Further there is a long gap of number of years which was not explained by the petitioner. The return and representation is between the Court and counsel for petitioner. It is the duty of the counsel for petitioner to explain the various irregularities found in E.P., papers. As the counsel for the petitioner failed to explain, it is clear that

petitioner has played fraud on Court. This contention of respondents has no force. The respondents are making various allegations with regard to numbering of E.P. They made serious allegations of fraud alleged to have been played on Court, and the Court seal would not have been put on the dates found in the Court seal. These allegations are not substantiated by any acceptable materials. These allegations are made on surmises, assumption and without any basis. Hence, this contention of fraud played by the petitioner is untenable and unacceptable.

30. The third contention of respondents is that without notice to them, the delay in representation of 275 days and 335 days were condoned. It is well settled that in application to condone the delay in representation notice need not be given to respondents. The learned Subordinate Judge on considering the judgment cited and relied on by the counsel for petitioner held that notice need not be given to opposite party in application to condone delay in representation. There is no irregularity or illegality in the said finding warranting interference by this Court.

31. The fourth contention of the respondent is that applications for condonation of delay had not been numbered and no order has been passed condoning the delay and argued that records in E.P., court clearly revealed that this contention of respondents is correct. This contention is untenable. The respondents are trying to take advantage of non availability of records in the E.P., Court. The respondents cannot blow hot and cold. They cannot be permitted to take both pleas in this Court that E.P., Court erred in condoning the delay without notice to them as well as no order was passed condoning the delay. In this regard, the contention made by learned Senior counsel for the petitioner that the principles of res judicata is applicable even to the subsequent stage in the same proceedings has considerable force and the judgments relied on by the Senior Counsel for the petitioner for this principle are applicable to the facts of the present case.

32. The learned Senior counsel appearing for petitioner contended that the present E.P., cannot be considered as fresh E.P. The petitioner already filed E.P. No. 111 of 1994. The said E.P., was dismissed as respondents 9 and 10 obtained injunction from this Court in CMP No. 5991 of 1994 in AAO No. 435 of 1994. The learned Senior Counsel for petitioner relied on three judgments rendered by the Division Bench of this Court wherein it has been held that subsequent E.P., is continuation of earlier E.P., even if the earlier E.P., was "closed" or "dismissed". These judgments of Division Bench are applicable to the facts of the present case and E.P. No. 77 of 2006 is only continuation of earlier E.P., To decide the question of Limitation the crucial date is when E.P., was filed. Once, the delay in representation is condoned, the date of original filing of E.P., has to be taken as date of filing for the purpose of limitation. In the present case, originally E.P. No. 111 of 1994 was filed. It was dismissed in view of stay granted by this Court. Subsequently the present E.P., was filed on 10.12.1996 which was numbered in

the year 2006. Once the E.P., has been numbered after rectifying the defects pointed out by the Registry, the date of original filing namely 10.12.1996 is the date for deciding the issue of Limitation. As the E.P. has been filed within 12 years of compromise decree, the E.P. is not barred by Limitation. The learned Judge erred in taking the year of numbering as date of filing and erred in holding that the E.P., was barred by Limitation.

33. The learned Senior Counsel for the petitioner contended that Section 109 of HR & CE Act applies to filing of E.P. also in respect of properties of temple and there is no time limit for filing E.P. The learned Senior counsel for the petitioner relied on various judgments referred to above to substantiate this principles of law.

34. Per contra, the learned counsel for the respondents argued that Section 109 of the Act applies only to filing of suit and cannot be extended to filing of E.P. According to counsel for the respondents an E.P., to implement the decree must be filed within 12 years from the date of decree.

35. I have carefully considered both the rival submissions. Once no limitation can be pleaded by a party in a suit in respect of property of Temple, the said principle is applicable even for filing of Execution proceedings also.

36. The counsel for respondents have argued that the petitioner has filed E.P.,

a) without copy of decree;

b) consent of earlier counsel was not obtained for the appearance of present counsel;

these contentions are untenable. The Execution Court has verified the petition filed by the petitioner and numbered the same when it was found to be in order. The respondents are not entitled to raise these contentions as the E.P., filed by petitioner was found to be in order as per law.

37. The counsel for respondents 2 and 3 has not made out any case for setting aside the compromise arrived at between the EMG. Soundararajan and petitioner. The counsel has not given any reason as to why the compromise between EMG. Soundarajan and petitioner cannot be executed. From the order dated 23.04.1990 it is seen that the compromise was arrived at the behest of this Court. Only after this Court was satisfied that compromise is in the interest of both the parties, the same was recorded and order dated 23.04.1990 was passed. As per Order XXIII Rule 3 of C.P.C., when a compromise or an agreement is filed into Court, the Court has to be satisfied with regard to the said agreement or compromise. Once the Court is satisfied, the Court can record the said agreement or compromise and pass an order. The said order is a decree as per Order XXIII Rule 3 CPC and agreement or compromise forms part of the decree. In view of this provision the compromise recorded by this Court on 23.04.1990 is a decree and can be executed.

38. As far as the contention of the respondents 2 and 3 that E.P., is barred by limitation is untenable and I have already rejected the same in previous paragraphs by giving reasons based on record.

39. As far as order passed in E.A. No. 35 of 2010 is concerned the learned judge failed to consider as to whether the respondents 2 & 3 are liable to pay interest on 31,00,000/-deposited by them in Court. Admittedly the installments were not paid by the father of the respondents 2 & 3 within the time limit prescribed by this Court. According to respondents 2 & 3 their father was ready to pay the installments, but could not pay the amounts due to orders passed by this Court, restraining him to pay the amounts. The learned Judge ought to have seen when this Court passed order restraining father of respondents 2 & 3 from paying the amounts and whether their father paid installments that fell due before the order of this Court, restraining him from paying the installments. Similarly, the learned Judge failed to see as to when the order of this Court restraining father of respondents 2 & 3 was set aside and after that as to whether he paid the installments. Without considering these facts the learned Judge has recorded full satisfaction in the E.P., For these reasons, I hold that the impugned order of the learned Judge made in E.A. No. 35 of 2010 in E.A. 77 of 2006 Is liable to be set aside.

40. All the Civil Revision Petitions are allowed holding that.

a) the suit in O.S. No. 123 of 1970 was properly initiated against EMG Soundararajan as E.M. Gopalakrishna cone did not acquire any valid title over the suit property and the suit properties are not the properties of E.M. Gopalakrishna Cone Trust;

b) the judgment and decree passed in O.S. No. 123 of 1970 is valid and legal;

c) the compromise decree dated 23.04.1990 passed in Review application RCMP No. 3891 of 1986 in A.S. No. 209 of 1979 is not a nullity. The said decree is valid and executable;

d) the second E.P. No. 77 of 2006 is continuation of earlier E.P. No. 111 of 1994;

e) E.P. No. 77 of 2006 was initiated within the time prescribed by Limitation Act and it is not barred by Limitation; and

f) the respondents having admitted that compromise decree has become final as no appeal has been filed in Apex Court and binding on the petitioner and respondents, are not entitled to plead that the said compromise decree is nullity. The respondents having got permission to deposit Rs. 31 lakhs and having deposited the said amount and got an order of full satisfaction cannot now plead that compromise decree is nullity.

41. In the result, the three impugned orders of the learned Judge are set aside. The E.P., is restored to file and the petitioner is entitled to take possession of properties mentioned in compromise decree. The order of the learned Judge

recording full satisfaction is set aside.

42. The learned Subordinate Judge is directed to appoint a Senior Member of Bar as Advocate Commissioner to ascertain the value of superstructure standing in the property and file report with regard to superstructure. The Advocate Commissioner is permitted to take Assistance of Public Works Department Engineer not below the rank of Executive Engineer or Chartered Engineer and ascertain the value of superstructure and file the report within three months from the date of appointment. On such report, the petitioner is directed to deposit the said amount to the credit of E.P. No. 77 of 2006. The petitioner is permitted to deduct the remuneration of Advocate Commissioner and Chartered Engineer paid by them from the value of superstructure and fixtures and deposit the balance amount into the Court to the credit of E.P. No. 77 of 2006. On receipt of such report, the learned Sub Judge is directed to pass necessary consequential orders.

43. The learned Subordinate Judge is directed to complete the entire process within six months from the date of receipt of a copy of this order as the proceedings are pending from the year 1970.

44. For the reasons stated above, all the three C.R. Ps. are allowed. No costs. Connected, M.P. (MD) Nos. 1 to 1 of 2014 are dismissed.