
(1988) 08 MAD CK 0034
In the Madras High Court
Case No : C.R.P. No. 927 of 1988

Murugesan Pillai

APPELLANT

Vs

The Idol Arulthiru Kannika Parameswari Temple, Thuraiyur

RESPONDENT

Date of Decision : 26-08-1988

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 29

Citation : (1988) 08 MAD CK 0034

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant; T.R. Mani, for the Respondent

Judgement

Sathiadev, J.—Judgment debtor in O.S. No. 228 of 1975 on the file of the District Munsif's Court, Thuraiyur, is the petitioner herein. The decree-holder is the respondent. The revision petition is preferred against the order dated 30-7-1987 in E.P. No. 55 of 1985 in O.S. No. 228 of 1975, which was filed by the decree-holder, to execute the ejectment decree obtained by it. Admittedly, judgment debtor was the tenant of the decree-holder. I.A. No. 198 of 1986 was filed by the judgment debtor claiming that the decree is not executable, because of G.O. Ms. No. 2000. Home dated 16-8-1976, and hence E.P. No. 55 of 1985 is liable to be dismissed. These two I.As. were heard together and disposed of by a common judgment. Proceedings which had preceded this order would be relevant and they are as follows: O.S. No. 228 of 1975 was filed in the District Munsif's Court, Thuraiyur, claiming that the suit property had been leased out to the defendant and that it is required for the purpose of cue idol. It was decreed on 30-6-1988 Judgment debtor filed A.S. No. 2 of 1979 on the file of the Subordinate Court, Trichy, and it was dismissed on 27-3-1979. He then filed S.A. No. 1135 of 1979 and it was also dismissed on 29-6-1979. Then he filed writ petition in the Supreme Court against the notification in G.O. Ms. No. 1998 and it was rejected. The decision in this regard is reported in S. Kandaswamy Chettiar Vs. State of Tamil Nadu and Another, . Thereafter, he filed O.S. No. 26 of 1985, for the issue

of a mandatory injunction to direct the decree-holder to execute a lease deed and not to execute the decree in O.S. No. 228 of 1975. In that suit he filed I.A. No. 608 of 1985 for interim injunction to interdict the decree being executed. It was dismissed. He then filed C.M.A. No. 33 of 1985 in Sub-Court, Trichy, against that order, and it was also dismissed. It is thereafter, E.P. No. 55 of 1985 was filed by decree-holder, for delivery of possession of property. Pursuant to the order passed directing delivery by 1-9-1987; this revision petition is filed.

2. Mr. R. Singaravelan, learned counsel for judgment debtor, submits that decree holder having claimed in more than one proceeding that it is a private female, and on that basis having secured a decree in the year 1976; the decree obtained by it is no longer executable Mr. T.R. Mani, learned counsel for decree holder, would state that the temple being a private temple and thus objection having not been canvassed either in the suit or in the appeal or second appeal; it is not now open to the judgment debtor to raise this point, in opposition to the execution coition filed by it. The suit was filed in 1975 for ejectment because G.O. Ms. No. 1998. Home dated 12-8-1974 was to the effect that all the buildings owned by the Hindu, Christian and Muslim religious Trusts and Charitable institutions are outside the applicability of Tamil Nadu Act 18 of 1960. It was a notification issued under S. 29 of Tamil Nadu Act 18 of 1960 exempting buildings of those categories. Therefore, when the suit was filed for ejectment, it was maintainable, because properties held by both private and public temples were uncovered by the provisions of the Act. By the time, the decree was passed, G.O. Ms. 2000, Home dated 16-8-1976 had come into force replacing the earlier G.O. It was issued under S.29 of Tamil Nadu Act 18 of 1960 exempting "all the buildings owned by the Hindu, Christian and Muslim Religious Public Trusts and Public Charitable Trusts from all the provisions of the said Act". Therefore, Tamil Nadu Act 18 of 1960 became applicable to properties held by Private Trusts, on and from 15-8-1976. It is, thereafter on 13-6-1978 the decree was passed in the suit. It was confirmed in second appeal. It has been held in more than one decision that, in spite of Tamil Nadu Act 18 of 1960 being in force, it will still be open to Courts to pass a decree for ejectment, but it cannot be executed, so long as the Act is in force. The preceding Act to Tamil Nadu Act 18 of 1960 was enacted as a temporary legislation. The Court below has already referred to the relevant decisions on this aspect, they being Haji Mohammed v. Globe Theatres AIR 1956 Mad. 216, and Ramachandra Chettiar v. Lakshminarayanawami Chettiar 89 L.W. 487= 1979 2 M.L.J. 107. This proposition of law is not disputed and, therefore there is no need to refer to the contents of these decisions. That was the reason why the proceedings continued further and culminated in the decision in S.A. No. 1135 of 1979. Hence it was not then necessary for the judgment-debtor to raise this plea, which he had now taken in execution proceedings.

3. The next point to be considered is, whether the decree-holder temple is a public or a private temple? From and out of materials available, for the limited purpose in this petition, it has to be seen, whether it is a public temple, as now

claimed in execution proceedings. No oral evidence is let in execution proceedings. In O.S. No. 437 of 1982 filed in the District Munsif's Court. Thuraiyur, by the decree holder against the Commissioner and Assistant Commissioner, H.R. & C.E., and it was claimed in Paragraph 7 of the plaint as follows:

The said temple has been covered with very big compound walls and the same is also closed with an iron gate and locked by the plaintiffs. Only at the request of the community people the said temple will be opened for performing poojas and other auspicious functions. In the said temple no other community temple is allowed to worship. There are no hundis and there are no archana tickets because it was constructed for the purpose of Arya Vysya Community only. The said temple from its inception has been in the absolute and exclusive possession and enjoyment as a denomination of the Arya Vysya Community and the other communities were kept away from the temple premises.

Again in Para 9, it is stated:

While so, the 2nd defendant under a mistaken impression that said temple is a public Institution and they are trying to institute proceedings under S.49 read with S.47 of Tamil Nadu H.R. and C.E. Act, Madras (Act 22 of 1959).

It was filed for a declaration that the temple is a denominational temple belonging to the Arya Vysya Community residing at Thuraiyur town. This specific and categoric stand had been taken in the plaint, after the suit against judgment debtor had been decreed in 1978 and it is stated that it is still pending disposal. Not stopping with this, again as against the judgment debtor, it had taken the same categoric stand in the written statement filed in O.S. No. 26 of 1985 to the following effect:

The averments in para 4 of plaint is not fully correct. It is patently false to state that plaintiff was bona fide contesting the suit and the validity of G.O. Ms. No. 1998 in writ proceedings. 1st defendant temple is a private temple and H.R. & C.E. Department of Tamil Nadu Government has no right to interfere with the affairs of 1st defendant temple and said Department has no right to fix rent for suit property as averred in plaint. The said H.R. & C.E. Department of Tamil Nadu Government attempted to interfere with the affairs of 1st defendant temple and 1st defendant temple has filed a suit for declaration and injunction in O.S. 437/82 on the file of this Hon'ble Court and the same is pending disposal. In fact, 1st defendant also obtained an ad interim order of injunction against the said H.R. & C.E. Department from interfering with the affairs and administration of 1st defendant temple. Hence, H.R. & C.E. authorities have no right to fix any rent for suit property.

Mr. T.R. Mani, learned counsel for decree-bolder in turn would rely upon the stand put forth in the additional counter filed by judgment debtor in E.P. No. 55 of 1985, wherein he has stated that plaintiff/petitioner temple is not at all denominational temple and it is a public temple.

4. While the decree-holder in the pleadings filed by it in two suits having categorically claimed that it is a "private temple", the present contention that a mistake had crept in, cannot be accepted. If really there was a mistake committed, certainly in the pending suit filed against Board, amendments would have been effected. Yet, to get over these admissions which would be binding upon decree-holder, Mr. T.R. Mani would rely upon the general presumption that all Hindu temples in this part of the country are presumed to be public, unless otherwise made out (Paragraph 424 in Mulla's Hindu Law, 15th Edition at page 544). Such a presumption would not be available in the instant case, because contrary to the said presumption; decree holder had taken a specific stand that the temple is a "private temple", in a plaint and in a written statement filed in the suit preferred by judgment-debtor.

5. He would then contend that, when denominational character is claimed, it could be only with reference to the rights of a section of the public and, therefore, it could not be a private temple, and in his words "it being mofussil pleadings", the purport of the law had not been properly considered while drafting the plaint in O.S. No. 437 of 1982. Assuming it to be so, in the written statement filed in O.S. No. 26 of 1985, no such situation arose, and having stated in Paragraph 4 that it is a "private temple", it is bound by the claim so made against judgment debtor, for the purposes of the execution petition. Hence, being bound by the pleadings in more than one proceeding, it is to be treated as a private temple and, therefore, after G.O. Ms. No. 2000 coming into force, in law the decree obtained would remain inexecutable, so long as Tamil Nadu Act 18 of 1960 is in force. As for the reliance placed on V.M. Modi v. R.A. Rahman 1970 S.C. 1475, this is not a case of going behind a decree, but the question is, whether the decree as it stands could be executed, because of Tamil Nadu Act 18 of 1960. It is because of the supervening circumstances which had come into existence after the filing of the suit, On and from 16-8-1976, no tenant in the occupation of a property belonging to a "private temple" could be evicted, except by resorting to Tamil Nadu Act 18 of 1960. Therefore, the Court below was in error in ordering eviction by 1-9-1987, and hence the said order is set aside. The decree holder will be liable to restore the possession of the judgment debtor within one week of the receipt of the steno copy of this order. If not so done, on the Executing Court being moved, it shall with the aid of Police, take over possession of the petition premises and deliver it to the judgment debtor by 22-9-1988. Hence, this revision petition is allowed with costs. Counsel fee Rs. 250.