

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

**PRESENT: Tmt. V. Vannamalar, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.**

Wednesday, the 22nd day of November 2023

I.A.No.7/2021
in
O.S.No.376/2009

Chinna Kowthi

.....Petitioner/1st Defendant

-Vs -

1. Neithavoyal Chettiar Thanner Panthal Dharmam (Charity)
Rep.by its sole Trustee T.Mohanasundaram Chettiar

.....1st Respondent/Plaintiff

2. The Assistant Executive Engineer, Tamil Nadu
Electricity Board, C.E.D.C.(North).

3. The Junior Engineer, Tamil Nadu Electricity Board,
C.E.D.C.(North).

.....Respondents 2 & 3/Defendants 2 & 3

4. The Executive Officer/Thakkar, Arulmighu
Karikrishna Perumal Thirukoil, Thiru Aayarpadi, Ponneri

.....Respondent/Proposed 4th Defendant

This petition came up for hearing on 22.11.2023, in the presence of Mr.I.Rathinavel, Mr.R.Kalamegam, learned counsels for the petitioner and Mr.R.Maharajan, learned counsel for the 1st respondent. The Respondents 2 to 4 were set exparte for non filing of their counter to this petition. Upon hearing the arguments of both sides and on perusal of the material case records and having stood over for consideration before this court till this day, this court delivers the following

ORDER

This petition has been filed by the petitioner under Order I Rule 10(2) of CPC to implead the Executive Officer/Thakkar of Arulmigu Karikrishna Perumal Thirukoil, Thiru Aayarpadi, Ponneri – 601 204 as 4th defendant in the suit in O.S.376/2009.

2. Brief averments of the affidavit filed by the petitioner are as follows:

2.1. The petitioner herein is the 1st defendant in the above suit and states that the plaintiff filed the suit for ejectment of the 1st defendant from the suit property and for delivery of possession of suit property and for damages and to disconnect the electricity service connection. The petitioner is not a tenant of plaintiff. There is no lessor - lessee relationship between the plaintiff and the petitioner. The petitioner is residing in the suit property for more than 100 years and the super structure available in suit property was constructed by the petitioner. The 1st respondent / plaintiff has no right and title over the suit property. Admittedly the petitioner is also not the owner of the suit land. Under the guise of old revenue records of the suit property that stands in the name of Thanneer Panthal, the plaintiff created a story and fabricated the documents and filed the suit as if he is the hereditary trustee of Neithavoyal Chettiar Thanneer Panthal Dharmam. The words Neithavoyal Chettiar Dharmam not found in 1912 document which is the earliest document. Pending suit the said alleged hereditary trustee T.Mohanasundaram Chettiar gave representation to the R.D.O. Ponneri to include his name as Sole Trustee, but R.D.O. Ponneri dismissed his representation. Against which he preferred an appeal before D.R.O. Thiruvallur in which D.R.O. passed an order to make entry in the revenue records as "Neithavoyal Thanner Panthal Trust represented by the Present Trustee Thiru.T.Mohanasundaram", against which one of the occupant Jeyaraman preferred an appeal before the Commissioner of Land Administration, Chepauk, Chennai in which the order of D.R.O. is set aside and the matter is remanded back for fresh enquiry. But no fresh enquiry commenced till date.

2.2. The petitioner further submits that the suit property with larger extent was belonged to Thanneer Panthal which comes under the H.R. & C.E. as Specific Endowment under section 6(1a) of the H.R.&C.E. Act. The H.R. & C.E. appointed the Executive Officer for Thanneer Panthal/Specific Endowment. As the suit property comes under the purview of H.R. & C.E. Act, there is a Specific bar under section 108 of The Tamil Nadu Hindu Religious and Charitable Endowment Act,

1959 to maintain this suit. According to the order of H.R. & C.E. vide proceeding No. 604/2015/A2 dated 08.03.2017 the said Thanneer Panthal Chathiram is part and parcel of Arulmigh Varatharaj Perumal Temple at Minjur. Therefore the plaintiff has no right to deal with the suit property against the petitioner. The concerned Executive Officer H.R. & C.E. has every right to deal with the suit property and other properties of Thanneer Panthal. Hence the said Executive Officer is a necessary party to decide the title and right of the plaintiff over the suit property. Hence it is necessary to implead the Executive officer as 4th defendant in the above suit, because H.R. & C.E., a statutory body appointed him to protect the suit property in favour of H.R. & C.E. For effective and proper adjudication the above Executive Officer is necessary to be impleaded as 4th defendant in this suit. Hence this petition.

3. Brief averments of the counter filed by the 1st respondent are as follows:

3.1 The 1st respondent/plaintiff submits that it has filed the above suit for possession of suit property from the petitioner/1st defendant and for other reliefs and that the suit property belongs to the plaintiff Trust. The properties were managed hereditarily by the fore fathers of Mohanasundaram Chettiar and at present the said Mohanasundaram Chettiar is managing the properties as a sole Trustee of the plaintiff trust.

3.2. The title deed, Inam Register, Settlement Register, Patta, Chitta and Adangal for the suit property stands in the name of the plaintiff Trust. The petitioner/1st defendant is the Trespasser in the suit property who is illegally enjoying the property for the past several years. The villagers of Neithavoyal entered into a ground rent lease agreement for 11 months in 2009 agreeing to pay the monthly rent of Rs.50/-. The tenants are in continuous default in payment of ground rent therefore the plaintiff Trust filed various suits before this court against the said tenants.

3.3. The 1st respondent further submits that the petitioner in his written statement has admitted that he is in occupation of more extent than the suit property and further

admits that he had put up pucca building and two huts with the extent 800 square feet in suit Survey No.781.

3.4. The 1st respondent submits that the petitioner / 1st defendant in his written statement has admitted that one P.Balasundaram chettiar who is the fore father of plaintiff trustee entered into several sale agreements with several persons including Chinna Naicker, father of the 1st defendant in 1960 and further claims right over the suit property by adverse possession from 1970 onwards. No adverse possession will lie against a Trust property. The petitioner / 1st defendant in his written statement has not raised any averment stating that the suit property belongs to HR&CE per contra the petitioner / 1st defendant admits the title of Balasundaram Chettiar in the written statement.

3.5. The 1st respondent further submits that when the trial in the suit was commenced on 04.01.2017 and when the suit was posted for further evidence on the side of defendants, this petition was filed by the petitioner under order 1 Rule 10(2) of CPC to implead the HR&CE as a party to the suit. When the petitioner / the 1st defendant categorically admits in his written statement that one T.Balasundara Chettiar is the title owner who has entered into sale agreements with number of parties in 1960, no question of title dispute will arise in the suit and also there is no pleadings in the written statement with regard to the HR&CE's title over the suit property. This petition is filed after completion of evidence on both side with an ulterior motive to prolong the case without any basis.

3.6. The 1st respondent further submits that the executive officer/Thakker of Arulmigu Karikrishna Thirukoil at Thiruvoyarpadi is not a competent person to represent the case. The commissioner and the Assistant commissioner of HR&CE, who are the superior authorities alone are the competent person to represent the case on behalf of HR&CE but they are not added in the petition.

3.7. The 1st respondent further states that this petition is devoid of merits and has been filed without any supporting prima facie documents and prays to dismiss the petition with costs.

4. The Respondents 2 to 4 were set exparte for non filing of their counter to this petition.

5. Neither the petitioner nor the respondents have placed any oral evidence before this court. The petitioner or the respondents 2 to 4 have not submitted any documentary evidence before this court. On the side of 1st respondent, Exhibit R1 was submitted. Now, it is the paramount duty of the court to decide whether this petition is to be allowed or not.

6. Heard both sides arguments. Records Perused.

7. On careful analysis of the material case records and on considering the arguments, this court finds that the petitioner is the 1st defendant in the suit and the suit has been filed by the 1st respondent / plaintiff for ejectment of the 1st defendant from the suit property and for delivery of possession of suit property and for damages and to disconnect the electricity service connection. The case of the petitioner is that he is not a tenant under the plaintiff trust and submits that the larger extent of the suit property belonged to Thanneer Panthal which comes under the H.R. & C.E. Board as Specific Endowment under section 6(1a) of the H.R.&C.E. Act. The H.R. & C.E. Board has appointed the Executive Officer for Thanneer Panthal/Specific Endowment. As the suit property comes under the purview of H.R. & C.E. Act, there is a Specific bar under section 108 of The Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 to maintain this suit. According to the order of the Department of H.R. & C.E. vide their proceeding No. 604/2015/A2 dated 08.03.2017 the said Thanneer Panthal Chathiram is part and parcel of Arulmigh Varatharaj Perumal Temple at Minjur. Therefore the petitioner states that the plaintiff has no right to deal with the suit property against the petitioner and states that the concerned

Executive Officer H.R. & C.E. has every right to deal with the suit property and other properties of Thanneer Panthal. The petitioner further contends that the said Executive Officer is a necessary party to decide the title and right of the plaintiff over the suit property and has filed this petition to implead the Executive officer as 4th defendant in the above suit for effective and proper adjudication of the suit.

8. On the other hand, the 1st respondent/plaintiff submits that the suit property along with other properties were managed hereditarily by the fore fathers of Mohanasundaram Chettiar and at present the said Mohanasundaram Chettiar is managing the properties as a sole Trustee of the plaintiff trust. The title deed, Inam Register, Settlement Register, Patta, Chitta and Adangal for the suit property stands in the name of the plaintiff Trust. The petitioner/1st defendant is the Trespasser in the suit property who is illegally enjoying the property for the past several years. The villagers of Niethavoyal entered into a ground rent lease agreement for 11 months in 2009 agreeing to pay the monthly rent of Rs.50/-. The tenants are in continuous default in payment of ground rent therefore the plaintiff Trust filed various suits before this court against the said tenants. The 1st respondent further contends that the petitioner in his written statement has admitted that the petitioner is in occupation of more extent than the suit property and further admits that he had put up pucca building and two huts with an extent of 800 square feet in suit Survey No.781.

9. The 1st respondent also contends that the petitioner / 1st defendant in his written statement has admitted that one P.Balasundaram chettiar who is the fore father of plaintiff trustee entered into several sale agreements with several persons including Chinna Naicker, father of the 1st defendant in 1960. The petitioner / 1st defendant in his written statement has not raised any averment stating that the suit property belongs to HR&CE Board per contra the petitioner / 1st defendant admits the title of Balasundaram Chettiar in the written statement. When the trial in the suit was commenced and when the suit was posted for further evidence on the side of defendants, this petition has been filed by the petitioner to implead the HR&CE

Board as a party to the suit with an ulterior motive to prolong the case without any basis. The 1st respondent further submits that the executive officer/Thakker of Arulmigu Karikrishna Thirukoil at Thiruvoyarpadi is not a competent person to represent the case. The Commissioner and the Assistant Commissioner of HR&CE Board who are the superior authorities alone are the competent person to represent the case on behalf of HR&CE Board but they are not added in the petition. The 1st respondent has also marked before this court Exhibit R1, an order dated 06.09.2022 passed by the Honourable High Court of Judicature at Madras in WP No. 21533 of 2017 filed by the 1st respondent herein challenging the order dated 08.03.2017 passed by the HR&CE Department appointing a fit person in respect of the plaintiff trust. In the said order, the Honourable High Court has allowed the said writ petition thereby setting aside the said order dated 08.03.2017 of the HR&CE Department.

10. On careful analysis of the above rival submissions, this court finds that when the petitioner claims to implead the 4th respondent herein as 4th defendant in the suit based on an order passed by the HR&CE department dated 08.03.2017 thereby appointing the 4th respondent as a fit person to deal with the suit property, the Exhibit R1 reveals that the said order has been set aside by the Honourable High Court , Madras by their order dated 06.09.2022 passed in WP No. 21533 of 2017. The petitioner has not submitted any document in contra to the Exhibit R1. In such an event this court views that nothing survives in this petition and thus is not inclined to allow this petition.

11. In the result, this petition is dismissed. No costs.

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 22nd day of November 2023.

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF
PONNERI**

Both sides witnesses:- NIL

Petitioner side exhibits:-

NIL

Respondents' side exhibits:-

Exhibits	Date	Description of Documents
Ex.R1	06.09.2022	Web copy of the order passed in W.P.No.21533/2017 and WMP.Nos.22513 & 22514/2017 & 38765/2018 by the Hon'ble High court, Madras

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF
PONNERI**

Fair/ Draft Order
I.A.No.7/2021
O.S.No.376/2009
Date:22.11.2023
DMC,PNI.