

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2015

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THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.4738 of 2015

and M.P.Nos.1 & 2 of 2015

Arulmighu Sri Avinashilingeswarar Temple
rep. by its Executive Officer,
Avinashi, Coimbatore

... Petitioner

vs.

Kadambadi Innothy Vagai Kongu Chettiar
Dharmaparibalana Sabai,
rep. by its President
3/18, Main Road
Avinashi, Coimbatore

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A.No.1926 of 2009 in A.S.No.28 of 2009 on the file of the Additional Sub Court, Tiruppur dated 05.12.2015.

Mrs.Hema Sampath, Senior Counsel
for Mr.S.Gunalan

For Petitioner

Mr.Isaac Mohanlal

For respondent

Mr.K.V.Dhanapalan, AGP

For HR & CE Department

ORDER

Heard Mrs.Hema Sampath, Senior Counsel appearing for the petitioner, Mr.Isaac Mohanlal, learned counsel appearing for the respondent and Mr.K.V.Dhanapalan, learned Additional Government Pleader, appearing for the HR & CE Department

2. Challenging the fair and final order passed in I.A.No.1926 of 2009 in A.S.No.28 of 2009 on the file of Additional Sub Court, Tiruppur, the 5th defendant in O.S.No.311 of 2005 on the file of the District Munsif Court, Avinashi, has filed the above Civil Revision Petition.

3. The respondent/plaintiff filed the suit in O.S.No.311 of 2005 for declaration that the suit property absolutely belongs to the respondent/plaintiff Sabai and for a consequential injunction directing the defendants 1 to 4 to issue patta in favour of the respondent/plaintiff. The suit was contested by the defendants and after trial, the Trial Court dismissed the suit.

4. Aggrieved over the dismissal of the suit in O.S.No.311 of 2005, the respondent/plaintiff preferred an appeal in A.S.No.28 of 2009 on the file of Additional Sub Court, Tiruppur.

5. The appeal was filed in the year 2009. Along with the appeal, the respondent/plaintiff filed an application in I.A.No.1926 of 2009 under Order 41 Rule 5 of Code of Civil Procedure to stay the operation of the Judgment and decree passed in O.S.No.311 of 2005 till the disposal of the appeal. Though the application was filed in the year 2009, the Lower Appellate Court has not passed any order in the said application. Instead, the application was adjourned periodically till 30.11.2015. On 30.11.2015, the Lower Appellate Court heard the arguments on the side of the respondents and posted the matter to 01.12.2015 for the appellant's arguments. On 01.12.2015, the Lower Appellate Court heard the appellant's side arguments and posted the matter to 05.12.2015 for orders. On 05.12.2015, the Lower Appellate Court allowed the application not only by granting interim stay but also granted interim injunction restraining the revision petitioner from interfering with the poojas to be performed in the temple by the revision petitioner.

6. When the suit filed by the respondent/plaintiff was dismissed by the Trial Court on merits and when there is no executable decree passed as against the respondent/plaintiff, there is absolutely no necessity for granting a stay in the first appeal. The application filed by the respondent/plaintiff itself is devoid of merits and should have been

dismissed by the Lower Appellate Court. But, the Lower Appellate Court, even without reading the prayer sought for in the application, went on to grant an interim injunction in the said application. On a reading of the order passed by the Lower Appellate Court, it is very clear that the Lower Appellate Court has not applied its mind while granting interim stay and interim injunction in the application filed by the respondent/plaintiff, which itself is not maintainable.

7. Mr.Isacc Mohanlal, learned counsel appearing for the respondent/plaintiff submitted that the respondent/plaintiff has been performing poojas for the last 109 years and therefore, they should be permitted to perform the poojas in the temple this year also.

8. Mr.K.V.Dhanapalan, learned Additional Government Pleader appearing for the HR & CE Department submitted that the performance of Poojas should be decided by the HR & CE Department alone.

9. Mrs.Hema Sampath, learned Senior Counsel appearing for the revision petitioner submitted that the order passed by the Lower Appellate Court should be set aside and that the relief sought for by the learned counsel appearing for the respondent/plaintiff before this Court can be decided only in the first appeal.

10. Mr.Isacc Mohanlal, learned counsel appearing for the respondent/plaintiff submitted that the temple festival is scheduled to be conducted on 25.12.2015.

11. As already stated, I am of the considered view that the fair and final order passed by the Additional Sub Court, Tirupppur are liable to be set aside for the reason that the application filed by the respondent/plaintiff itself is not maintainable. Even without seeking for the relief of interim injunction, the Trial Court had granted an order of interim injunction, as though the respondent/plaintiff has sought for an order of interim injunction. That apart, when the respondent/plaintiff had managed to get along with the matter even without any interim order for the past six years, all of a sudden, on 05.12.2015, the application filed by the respondent/plaintiff was allowed.

12. In these circumstances, the fair and final order passed in I.A.No.1926 of 2009 in A.S.No.28 of 2009 are set aside.

13. Taking into consideration the submissions made by the learned counsel appearing for the respondent/plaintiff that the respondent/plaintiff has been performing the poojas for the past 109

years, I give liberty to the respondent/plaintiff to give an application for performing pooja for this year to the Joint Commissioner of HR & CE Department, Coimbatore either today itself or tomorrow morning.

14. The learned Additional Government Pleader appearing for the HR & CE Department submitted that the Joint Commissioner may be directed to consider the dispute raised by the respondent/plaintiff under Section 63 B of the HR & CE Department and decide the same and further the Joint Commissioner may be directed to consider passing necessary orders before the commencement of the festival on 25.12.2015.

15. Having regard to the submissions made by the learned counsel on either side, on receipt of the application filed by the respondent/plaintiff before the Joint Commissioner, HR & CE Department, Coimbatore, the Joint Commissioner, HR & CE Department, Coimbatore, shall decide the dispute under Section 63 B of the HR & CE Act and also consider passing suitable necessary orders as an interim measure on or before 24.12.2015 on merits and in accordance with law. The Additional Sub Judge, Tiruppur is directed to dispose of the appeal in A.S.No.28 of 2009 on merits and in accordance with law, within a period for three months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

21.12.2015

Index : Yes/No
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**Note: (1) Issue the order copy today
(2) The learned AGP undertook to inform
the Joint Commissioner, Coimbatore
with regard to passing of order in this
Civil Revision Petition immediately.**

To
The Additional Sub Court, Tiruppur

M. DURAISWAMY,J.,

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