

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2015

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THE HON'BLE Ms. JUSTICE K.B.K.VASUKI

CRP (PD) Nos.1357 and 1555 of 2004
and CMP.12877 and 14465 of 2004

CRP.1357/2004

- 1.Member Secretary
Mahe Planning Authority, Mahe.
- 2.Chief Secretary, Union Territory of
Pondicherry, Pondicherry.
- 3.The Government of India rep. by
Secretary, New Delhi.
- 4.Union of India rep. by the Director,
Local Administration Department,
Pondicherry.
- 5.Union of India rep. by the
Regional Executive Officer, Mahe.
- 6.Mahe Municipal Council rep. by
Commissioner, Mahe. Petitioners

1.Kanhayi Hamza

- 2.St.Theresa Roman Catholic Church rep.
its Parish Priest Rev. Fr. Jose Pulikkathara,
Mahe. ... Respondents

Civil Revision Petition is filed against the order dated
01.07.2004 in I.A.No.404/2002 in OS.No.35 of 1997 on the file of the
Subordinate Judge, Mahe.

CRP.1555/2004

- 1.Government of India rep. by
Secretary to Government of India
Ministry of Home Affairs (U.T)
North Block, New Delhi.
- 2.Union of India rep. by the
Chief Secretary to Government
of Pondicherry.

3.Union of India rep. by
Director of Public Works Department,
Pondicherry.

4.Union of India rep. by Director,
Local Administration Department,
Pondicherry.

5.Union of India rep. by the
Regional Executive Officer, Mahe.

6.Mahe Municipal Council rep. by
Commissioner, Mahe Municipality.

7.Government of Pondicherry rep. by
Secretary to Government of Pondicherry. ... Petitioners

vs.

St.Theresa's Roman Catholic Church,
Mahe rep. by its Parish Priest
Rev. Fr. Jose Pulikkathara, Mahe. ... Respondent

Civil Revision Petition is filed against the order dated
23.06.2004 in I.A.No.451/2002 in OS.No.43 of 1997 on the file of the
Subordinate Judge, Mahe.

For Petitioners: Mr.A.Tamilavel, GP (Pondy)

For Respondent : Mr.V.Ayyadurai

COMMON ORDER

The official defendants in both the suits are the petitioners
herein. While CRP.No.1357/2004 is filed against the order made in
I.A.No.404/2002 in O.S.No.35/1997, CRP.No.1555/2004 is arising out of
the order made in I.A.No.451/2002 in O.S.No.43/1997.

2.Both the Interlocutory Applications are filed for deciding the
issue relating to the counter claim made by the third defendant and
the issue relating to the non-maintainability of the suit as
preliminary issue. Both the applications came to be filed after the
respective pleadings were raised by the parties against the main
claim made in the suits and after the issues were framed by the trial
court for its determination in the suits on the basis of such
pleadings. Both the applications were dismissed by the trial court
mainly on the ground that the issue relating to the counter claim in
one suit and the issue relating to the non-maintainability of the
suit in other suit can be decided only after full fledged trial and
on appreciation of entire evidence adduced before the same.

3.This court finds no infirmity or irregularity in the course so adopted by the trial court. As the issue relating to counter claim made by the third defendant in O.S.No.35/1997 and the issue relating to non-maintainability of the suit in O.S.No.43 of 1997 are purely based on law and facts, the same can be decided only in the light of the evidence adduced before the court concerned, as such, the trial court has rightly rejected both the applications for taking up these issues along with other issues in the main suits.

4.As a matter of fact, this Court while disposing of CRP.No.1093/2004 arising out of the order made in I.A.No.287 of 2002 in O.S.No.43 of 1997, directed the official defendants to file additional written statement, raising all the legal and factual objections available to them against the newly added prayer and also directed the trial court to dispose of the suit as expeditiously as possible, on merits, in the light of the pleadings and additional pleadings, if any raised by the respective parties and also in the light of the entire evidence adduced by them, within the time frame fixed by this court. When such right is available to the official defendants, this Court is not inclined to interfere with the impugned orders passed by the trial court.

5.In the result, both the civil revision petitions are dismissed, however, with liberty given to the parties to contest the issues raised in both the applications along with other issues in the main suits on merits, with further direction issued to the trial court to decide all the issues on the basis of the factual and legal objections raised on both sides and also in the light of the oral and documentary evidence adduced before the same and dispose of the suits as expeditiously as possible, without being influenced by any findings rendered in the Interlocutory applications. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Mahe.

+ 2 ccs to Mr.v. Ayyadurai, Advocate Sr.22409, 22408

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