

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.4466 of 2014  
and  
M.P.No.1 of 2014

N.Ayyappasamy  
S/o.Late Nachimuthu

... Petitioner

vs

- 1.Arulmighu Selva Vinayagar and  
Arulmighu Mahaliamman Thirukovil Trust,  
Chenniyavalasu,  
represented by its President C.Venkatachalam
- 2.C.Venkatachalam  
S/o.N.Chenniamalai Gounder
- 3.K.Palanisamy  
S/o.Karuppanna Gounder
- 4.State of Tamil Nadu  
represented by District Collector,  
Erode District.
- 5.The Commissioner,  
Hindu Religious Charitable and Endowment Department,  
Nungambakkam,  
Chennai - 600 034.
- 6.The Joint Commissioner,  
Hindu Religious Charitable and Endowment Department,  
Erode.

7.The Executive Officer,  
Arulmighu Subramaniasamy Thirukoil,  
Chennimalai.

8.Sivachalam  
S/o.Periyasamy Nadar

9.Gunasekaran  
S/o.Karuppusamy Naicker

10.C.Palanisamy  
S/o.Chinnasamy Gounder

11.M.Senthil  
S/o.Muthusamy Gounder

12.R.Balasubramani  
S/o.C.Ramasamy

13.P.Subramani  
S/o.Palanisamy Nadar

14.C.Arumugam  
S/o.Chinnappa Gounder

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned Sub Judge, Perundurai, Erode District, passed in I.A.No.222 of 2014 in O.S.No.26 of 2014 on 15.10.2014.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.N.Manokaran [R1, R2, R3, R8 to R14]  
No appearance [R4 to R6]  
No appearance [R7]

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**ORDER**

This revision arises against the order of learned Sub Judge, Perundurai, Erode District, passed in I.A.No.222 of 2014 in O.S.No.26 of 2014 on 15.10.2014.

2. Respondents 1 to 3 filed O.S.No.26 of 2014 on the file of learned Sub Judge, Perundurai, Erode District, seeking the following reliefs:

- (a) declaring that the 1<sup>st</sup> plaintiff suit temples are denomination temples of Kongu Vellalar, Nadar and Boyar community people of Chenniyavalasu village in view of Article 26 of Constitution of India; and
- (b) restraining the defendants, their subordinates, men, agents etc., from in any way and in any manner either interfering or obstructing the peaceful administration of the 1<sup>st</sup> plaintiff suit temples by means of permanent injunction.

3. Petitioner/third party moved I.A.No.222 of 2014 praying that he may be impleaded as party/12<sup>th</sup> defendant in the suit. He contended that the temple was not a private one and was constructed in the year 2008 by collecting money from the members of the entire community and that he complained against mal-administration and mismanagement thereof to the authorities. On enquiry, a fit person was appointed to manage the temple vide

proceedings in Nada.Na.Ka.2539/2013/A3 dated 12.07.2013. A challenge thereto was made in W.P.No.21922 of 2013, which is pending. Contending that it was at his instance that a fit person was appointed and therefore, the second respondent ought to have added him as a party defendant in the suit and towards bringing to the notice of the Court the true facts, petitioner has sought to be impleaded as party defendant. Such application was contested by respondents 1 to 3/plaintiffs. The Court below, under the impugned order, dismissed such application. Hence, this revision.

4. Heard learned counsel for petitioner and learned counsel for respondents 1, 2, 3, 8 to 14.

5. The Court below has dismissed the application informing that the petitioner has not mentioned as to how he is entitled to be impleaded as party defendant in the suit. Merely because the petitioner is a party to a writ proceeding, he cannot be impleaded as party defendant in the suit. Further, the plaintiffs has filed the suit against persons who have interfered with the management of the temple. Therefore, the plaintiffs would have added the petitioner as defendant if he had done so.

6. The decision of a Division Bench of this Court in ***Robust Hotels (P) Ltd. and others v. E.I.H. Limited [2010 (6) CTC 192]*** informs as follows:

“20. A proper and necessary party to a Suit is a party whose presence and participation is absolutely necessary for a final adjudication of the *lis*. *It is immaterial as to the extent of relief sought for against it or the subject of controversy involved in the Suit. In case it is demonstrated that any decision made in the Suit would prejudicially affect the interest of a particular person, he should be treated as a necessary party.*

21. Rule 10(2) of the Code of Civil Procedure is nothing but incorporation of the Principles of Natural Justice. In case the Court is satisfied that a person is a necessary party to enable it to adjudicate upon and settle all the questions involved in the Suit, Court has no other alternative than to order impleading of such party. The Court has to take overall view of the matter for the purpose of arriving at a definite conclusion one way or the other. Court exercises wide discretion in such matters. It is true that such discretion should be exercised in a reasonable manner. The discretion should be exercised in accordance with the settled legal principles. The Court should arrive at a decision at the initial stage itself as to whether the proposed party is a necessary party in whose absence, no effective decree could be passed. While considering the issue regarding impleadment, the *bona fides* of the party filing such Application to implead and the stage of the suit are also relevant facts. But delay cannot be the sole determining factor to decide such Application, in view of the express provision, which says that the party could take steps

*for impleading at any stage of the Suit.*

23. In *Razia Begum v. Sahebzadi Anwar Begum*, 1959 SCR 1111 : AIR 958 SC 886, the Supreme Court observed that where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy. The Supreme Court said:

*“14. As a result of these considerations, we have arrived at the following conclusions:*

*(1) That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the Court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 115 of the Code;*

*(2) That in a Suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;*

*(3) Where the subject-matter of a litigation, is a declaration as regards status or a legal character,*

*the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy.””*

7. In the attendant facts and circumstances of the case, this Court is of the view that sub paragraph 3 of paragraph 14 of the judgment of the Apex Court in ***Razia Begum v. Sahebzadi Anwar Begum [1959 SCR 1111]*** would apply.

For the aforesaid reason, the Civil Revision Petition is allowed. The order of learned Sub Judge, Perundurai, Erode District, passed in I.A.No.222 of 2014 in O.S.No.26 of 2014 on 15.10.2014, is set aside. As a consequence, the petitioner is impleaded as party defendant in the suit. No costs. Consequently, connected miscellaneous petition is closed.

**19.07.2016**

Index:yes/no  
Internet:yes  
gm

To  
The Sub Judge,  
Perundurai,  
Erode District.

C.T.SELVAM, J

gm

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