

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.1127 of 2013
and
M.P.No.1 of 2013**

- 1.R.Kuppusamy
- 2.S.Shanmugam
- 3.S.S.Ravikumar
- 4.K.Murugesan
- 5.P.Subramaniam
- 6.K.P.Sakthivel
- 7.K.P.Loganathan
- 8.G.Karthikeyan
- 9.A.Samymuthu



.. Petitioners

Vs.

- 1.M.Nagaraj
- 2.M.Shanmugam
- 3.A.Sundararaj
- 4.A.Easwaran @ Parameswaran

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5.A.Nallasivam

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to defer the hearing of the injunction petition in I.A.No.170 of 2013 in O.S.No.64 of 2013 on the file of the learned First Additional District Munsif, Erode, till the disposal of the petition in I.A.No.169 of 2013 in O.S.No.64 of 2013, seeking permission to sue the suit in the representative capacity.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.R.Sunilkumar (for R1 and R2)

Mr.C.Prakasam (No Appearance)
(for R3 to R5)

ORDER

The petitioners have filed this Civil Revision Petition to differ the hearing of the injunction petition in I.A.No. 170 of 2013 in O.S.No.64 of 2013 on the file of the learned First Additional District Munsif of Erode till the disposal of the petition in I.A.No. 169 of 2013 in O.S.No.64 of 2013 seeking permission to sue the suit in the representative capacity by allowing this Civil Revision Petition.

2.The case of the revision petitioners is that they are the

defendants 1-9 in the above suit in O.S.No.64 of 2013. The said suit filed for declaration to declare the subject temple as a public temple and for permanent injunction restraining the revision petitioners from interfering with the annual festival of the subject temple was filed by the 1st and 2nd respondent herein. According to the respondents, the subject temple is a public temple belonging to all the people of Karundevanpalayam and Thambiranvasalu, Hamlet of Nanjai Uthukuli Village, Erode Taluk and it do not belong to any particular sector, hence they filed the above suit for declaration and permanent injunction in respect of subject Temple. The suit was claimed to be filed by the respondents 1 and 2 / Plaintiffs representing on behalf of the villagers of Karundevanpalayam and Thambiranvasalu, therefore the respondents 1 and 2 / plaintiffs filed an application under the Order 1 Rule 8 of CPC to conduct the suit in representative capacity against these defendants. They also filed an interlocutory application in I.A.No.170 of 2013 under Order 39 Rule 1 of CPC praying for the relief of temporary injunction pending disposal of the above suit.

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3.The revision petitioners filed counter statement interalia contending that the suit ought not to have numbered unless such permission is granted by the trial Court by allowing the application in

I.A.No.169 of 2013, filed by the respondents 1 and 2 under Order 1 Rule 8. Therefore the revision petitioners filed a memo dated 26.02.2014 before the learned trial judge to defer the hearing in the injunction petition in I.A.No.170 of 2013 until the disposal of the I.A.No.169 of 2013 filed under Order 1 Rule 8. However, the said memo was ignored by the trial judge and the I.A.No.170 of 2013 was posted for filing counter statement. The revision petitioners filed their counter statement on 28.02.2013 and on the said date the petitioners in I.A.No.170 of 2013 namely the respondents 1 and 2 herein, marked Exs.P-1 to P-5 and the petition stood adjourned to 05.03.2013 for the evidence of 1st and 2nd respondent. The learned trial judge regardless of memo, proceeded with I.A.No.170 OF 2013, despite of the objection on the procedural irregularity in hearing the injunction petition in I.A.No.170 of 2013 even before granting permission to prosecute the suit in a representative capacity.

4.I heard Mr.N.Manokaran, learned counsel appearing for the petitioners and Mr.R.Sunilkumar, learned counsel appearing for the respondents 1 and 2 and there was no representation on behalf of the respondents 3 to 5 and perused the entire records.

5.The learned counsel for the revision petitioner would submit that the injunction petition in I.A.No.170 of 2013 filed under order 39, Rule 1 CPC ought to have been heard only after the permission to prosecute the suit in a representative capacity by allowing the respondent's application in I.A.No.169 of 2013 is allowed by the Trial Court. However, the action of the learned trial judge proceeding with the I.A.No.170 of 2013 without making an order in I.A.No.169 of 2013 are unsustainable and bad in law.

6.Per contra, the learned counsel for the respondents 1 and 2 would submit that there is neither procedural violation nor irregularity committed by the trial Court in proceeding with the 1st and 2nd respondent's application in I.A.No.170 of 2013 for interim injunction.

7.On perusal of the records and on considering the relief sought by the revision petitioner in the present Civil Revision Petition, it is seen that this Civil Revision is being filed out of fantasy and the revision petitioner's state of conceiving some order at the hands of the learned trial judge. It is to be noticed that in both the applications the learned trial judge has issued due notice to the respondents therein / revision petitioners and thereupon the learned trial judge

proceeded with the interlocutory applications. Admittedly there is no order passed by the trial judge in either application.

8. Moreover, this Court is of the firm view that a party to the litigation can never dictate the Court to act in accordance with his direction. Further there can neither be any command nor any direction in any form to the trial Court by a litigant to defer a case from herein, unless the suit proceedings are stayed by an Appellate/ Revision Court. In the case on hand such an attempt is made by the revision petitioners in the form of filing "Memo" to defer the case, which is unsustainable and impermissible.

9. Therefore, this Court find no merits in the revision on hand, in the result the revision petition is dismissed. However, there is no order as to cost. Consequently, connected miscellaneous petition is closed.

Note: Issue order copy on 28.07.2017.

Internet: Yes

Index: Yes

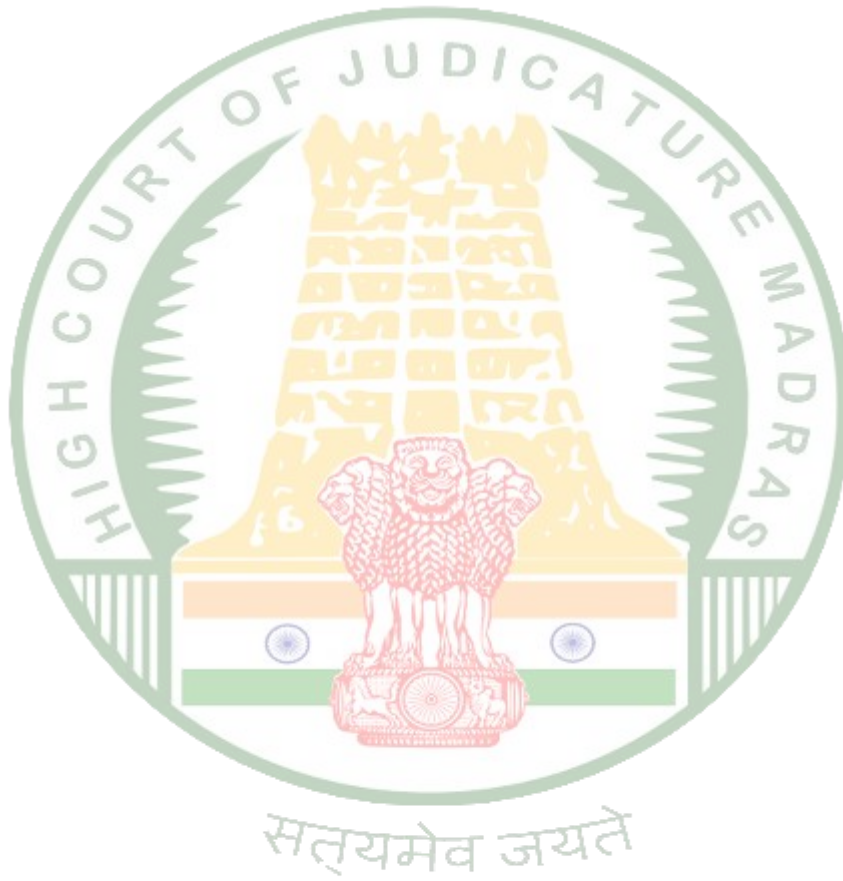
vs

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To

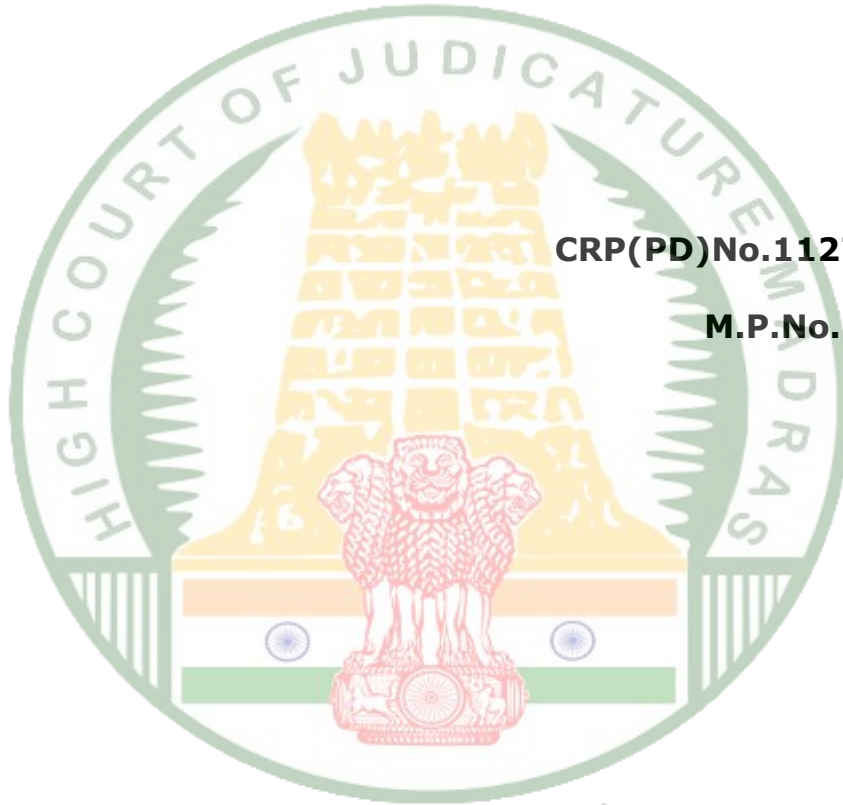
The Subordinate Judge,
Poonamallee.



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M.V.MURALIDARAN, J.

VS



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