

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.09.2016

DELIVERED ON : 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) Nos.1405 and 1406 of 2016

1.N.K.Ramanuja Thathachariar

2.N.R.Seshadri

... Petitioners in both cases

vs

1.Krishnaswamy Thatachariar

2.N.V.Ranganathan

3.V.Gopalan

4.K.S.Varadhan

5.V.Govindan

... Respondents in C.R.P.No.1405/16

6.S.Veeraraghava Thathachariar ... 6th respondent in C.R.P.No.1405/16
sole respondent in C.R.P.No.1406/16

Prayer in C.R.P.(PD)No.1405/16: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by learned Sub-ordinate Judge, Cheyyar in I.A.No.308/2012 in O.S.No.26 of 2012 on 26.02.2016.

Prayer in C.R.P.(PD)No.1406/16: Civil Revision Petition filed under Article 227

of the Constitution of India to set aside the fair and decreetal order passed by learned Sub-ordinate Judge, Cheyyar in I.A.No.119/2015 in I.A.No.278/2012 in O.S.No.26 of 2012 on 18.01.2016.

For Petitioners : Mr.S.D. Venkateswaran in both cases

For Respondents : Mr.M.Sivavarthanan for R6 in
C.R.P.No.1405/16 and sole
respondent in C.R.P. 1406/16

Mr.K.S.Karthikraja for R1 to 5 in
C.R.P.No.1405/16

COMMONORDER

These revisions challenge the order passed by learned Subordinate Judge, Cheyyar in I.A.No.119/2015 in I.A.No.278/2012 in O.S.No.26 of 2012 on 18.01.2016 and I.A.No.308/2012 in O.S.No.26 of 2012 on 26.02.2016.

2. Respondents 1 to 5 in C.R.P.No.1405/16 are hereinafter referred to as third parties, 6th respondent in C.R.P.No.1405/16 and sole respondent in C.R.P.No.1406/16 is referred to as plaintiff and petitioners are referred to as defendants.

3. Suit in O.S.No.26 of 2012 on the file of Subordinate Judge, Cheyyar

has been preferred by the plaintiff informing that a temple is denominational in nature, management thereof exclusively was reserved to a particular community, that the idols of Lakshmi Narayana Perumal with accompanying goddess Sridevi and Boodevi have traditionally been housed in the temple in a consecrated place and as defendants intended to shift the same, they be injuncted from doing so. Plaintiff also informed the intent of the defendants to construct a new sannathi for Adikesava Perumal who was not the presiding deity. Prayers a and b of the plaint reads as follows:

a. to restrain the defendants, their men, agents and servants by means of order of permanent injunction from ever shifting the idols of Sri Lakshmi Narayana Perumal with Goddess Sridevi and Boodevi and that of Sri Srinivasa Perumal from the sanctum Sanatorium of the said Temple at Navalpakkam village, Vandavasi Taluk and detailed in the schedule of property.

b. to restrain the defendants, their men, agents and servants by means of permanent injunction from ever consecrating any or new idol in Sri Lakshmi Narayana Perumal Temple alias Sri Srinivasa Perumal Temple of Navalpakkam village, Vandavasi Taluk.

4. Third parties moved application in I.A.No. 308 of 2012 before the Subordinate Judge, Cheyyar under Or.1 R.10(2) of CPC to implead themselves as party plaintiffs in the suit. On such petition being allowed by Court below

defendants in the suit have preferred C.R.P.No.1405 of 2016.

5. I.A.No.119 of 2015 in I.A.No.278 of 2012 was preferred by the defendants praying that the Advocate commissioner's report in I.A.No.278 of 2012 be eschewed. Against the dismissal of such application C.R.P.No.1406 of 2016 has been preferred by the defendants.

6. Learned counsel for defendants contended that the plaintiff had filed suit in his individual capacity and the third parties could not be impleaded as plaintiffs as impleading them would render the suit one in representative capacity. In the suit filed by the plaintiff in his individual capacity, the third parties were neither proper or necessary parties. Third parties sought to implead themselves citing the age of the plaintiff (admittedly 96 years now) and his ill-health. Defendants contend that even now plaintiff is capable of going about his affairs and has diligently been pursuing the suit. Learned counsel submitted that if need be, plaintiff may be examined through commissioner.

7. Learned counsel's contentions in C.R.P.No.1406/16 is that the plaintiff had moved an application for appointment of advocate commissioner in

I.A.No.102 of 2012 and an ex-parte order of appointment had been made. The prayer in I.A.No. 102 of 2012 besides requiring the Advocate commissioner to inspect the suit property and submit a detailed report with plan reflecting the topography and physical features of the suit property also required the advocate commissioner to obtain supporting testimonials. Learned counsel contended that therefore it is apparent that the very purpose behind moving I.A.No. 102 of 2012 was to gather evidence. From the fact that in I.A.No.278 of 2012, plaintiff sought revisiting of the property by the same advocate commissioner, it is apparent that the plaintiff and advocate commissioner are hand in glove. A reading of the advocate commissioner's report make it clear that no notice has been issued by the advocate commissioner to the defendants. The commissioner's report interalia informed that opposite to the three sannathis there was a road which is being used by public to worship the deity. Opposite to Garbagraha is the Garudalvar Sannadhi. Near the Garudalvar Sannadhi, there is an idol of Lord Anchaneyar. Behind the Garudalvar Sannadhi, there is a 'Kodimaram'. On the outside of the temple, on the southwest corner, approximately at a distance of 15 feet from the Moolavar Sannadhi Alamelumanga goddess Sannadhi is situate. Behind it, the temple compound is constructed. On the right side of 'Kodimaram' is Vahana Mandapam (a place

meant for stationing the temple car). Approximately at a distance of 30 feet from the 'Kodimaram', the Rajagopuram (main temple tower) is constructed. Just opposite to Rajagopuram, there is a street which is called as Sannadhi Street. It is further stated that the Rajagopuram was built in the year 1970 and during the Kumbabishekam the statutes in the karpagraha were in the same position as now. During the Kumababishekam solemnised during the year 1990 also the statutes were in the same position and this was informed to the commissioner by the villagers as well as the priests in the temple.

8. Learned counsel further contended that Court below erroneously has dismissed I.A.No.119 of 2015 observing that defendants could file their objections which would be considered by the Court while passing the final decree in the suit. Learned counsel contended that Court below failed to issue notice before appointment of commissioner. Court had no power to appoint a commissioner *ex-parte* even in emergencies as held in decision reported in AIR 1934 Madras 548. Learned counsel further contended that as informed in decision reported in 2012 -1-TLNJ-71 (Civil), the object of appointment of an advocate commissioner could not be to collect evidence. Learned counsel submitted that despite both decisions having been placed before the Court

below, Court below has erroneously dismissed the application.

9. Learned counsel for third parties submitted that the plaintiff had filed the suit in his individual capacity. Third parties had informed their interest was akin and alike to that of plaintiff and sought to be impleaded as plaintiffs, since the plaintiff was very advanced in years and in frail health.

10. Or.1 R.1 C.P.C informs that all persons may be joined in one suit as plaintiffs where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.

11. Third party application was in keeping with such rule. In the counter to I.A.No.308/12 the only objection raised by the defendants was that the third parties in the capacity of worshippers could not interfere with the temple administration and existing spiritual rites of the suit temple. Defendants have not placed any contention of the suit becoming one in representative capacity. In the I.A third parties had informed that the plaintiff had filed the suit to espouse the cause of their community people and to preserve their honour and

religious sentiments in worshipping the presiding deity in the suit temple and to undo the mischief caused by the defendants. Their concern over the age of the plaintiff, of his being confined at home as his movements and activities were restricted and thus may not be able to effectively prosecute the suit, had received due consideration resulting in the Court below allowing I.A.No.308/2012 and such order does not call for interference.

12. Learned counsel for plaintiff submitted that plaintiff had preferred the suit in his individual capacity and even if the third parties were permitted to join as plaintiffs, they would be espousing their individual causes. The suit would not part take the nature of a representative one.

13. Learned counsel specifically submits that plaintiff had no objection to the third parties joining in the action. He would contend that their being permitted to part take would not alter the pleadings of either side. The defendants could have no objection thereto. Learned counsel submitted that third parties may be made defendants in the suit. If it becomes necessary they may later be transposed as plaintiffs.

14. Submitting that no interference with the order of the Court below dismissing the application seeking eschewal of the advocate commissioner report was necessary, learned counsel informed that advocate commissioner report had been filed in Court in March 2012 and the defendants had filed I.A.No.119 of 2015 after three years. The advocate commissioner report had been filed before this Court in three earlier C.R.Ps and defendants had not objected thereto. In I.A.No.119 of 2015 the plaintiff has contended as follows:

“4. This respondent respectfully submits that the learned Advocate Commissioner Mr.C.Sundaram of this BAR soon after his appointment as Advocate commissioner, informed the petitioner counsel who lodged the caveat about his intending inspection then. The learned advocate for the petitioners discharged his duty by way of informing the petitioners and the petitioners were very much present at the time of inspection by the Advocate commissioner. In fact the petitioners attempted to adopt the dilatory and delaying tactics for which the learned advocate commissioner did not oblige considering the seriousness of the issue. Hence the petitioners who were present at the time of inspection by the learned Advocate commissioner did not raise any objection and the same is evident from the subsequent proceedings that have taken place. The petitioners at no point of time ever made any allegations in any part of the proceedings against the advocate commissioner and have come forward with the present application casting aspersions on the advocate commissioner, only out of desperation for having lost in all the forums.”

15. Defendants had not denied such contention by way of reply, they only now contend that they had no notice of appointment of advocate commissioner. Learned counsel submitted that if there was a factual error in the advocate commissioner informing the statement of persons present at the time of inspection in his report, Court below could well ignore the same. For such purpose, it was not necessary to eschew the report. Learned counsel further submitted that advocate commissioner's report and sketch infact were in keeping with paragraphs 7.13 of the written statement filed by the defendants.

16. We have extracted herein above the contentions of the plaintiff regards the knowledge of the appointment of advocate commissioner as also their presence at the time of inspection. Defendants have not disputed the same by way of reply. In the said circumstance, this Court dismisses C.R.P.(PD) No.1406 of 2016. Where both plaintiff and third parties inform of their interest being common and of their pursuing a common cause, defendants cannot be heard to complain. As rightly submitted by learned counsel for plaintiff the pleading and the cause of either side remain the same. When both plaintiff and third parties have agreed that plaintiff suffers difficulties owing to age and

their cause is common it is appropriate to allow the third parties to join in the action as plaintiffs and no prejudice whatsoever is caused to the defendants thereby. Generally, a plaintiff would include as proforma defendants parties whose cause is the same as his own but who have refused to join him in the action. In such event, such proforma defendants may subsequently be transposed as plaintiffs if occasion demands.

17. In the facts of the present case, where the plaintiff himself has no objection and, to repeat, no prejudice whatsoever is caused to the defendants, the order of the Court below permitting the third parties to be included as plaintiffs in the action is found to be proper. It is also seen that in allowing I.A.No.308/12 Court below, in dealing with contentions of the defendants that there was a peace agreement between the third parties and plaintiff in which the withdrawal of the suit was agreed upon, third parties 1 and 2 being signatories to such agreement and that the third parties could not be impleaded as parties. Without consent of the Board of Trustees, took note of the position that the application of the defendants Or.7 R.11 C.P.C seeking rejection of the suit had been dismissed and the civil revision petition moved before this court against such order had also ended in dismissal and this Court

had directed the disposal of the suit within a period of four months. In such circumstances, Court below had found it appropriate to allow the application of third parties towards effective and speedy trial. C.R.P(PD).No.1405 of 2016 shall stand dismissed.

In the result, both the civil revision petitions are dismissed. No costs.

23.12.2016

Index:yes/no

Internet:yes

To

The Sub-ordinate Judge, Cheyyar

C.T.SELVAM, J

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Pre-delivery order
in
Civil Revision Petition (PD)
Nos.1405 and 1406 of 2016

23.12.2016