

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

S.A.Nos.504 and 505 of 2017
and
C.M.P. Nos.8588 & 8589 of 2017

1) S. Sivakumar
2) J. Sridhar ... Appellants in both cases/Appellants/
Plaintiffs/Petitioners

-Vs-

1. The Executive Officer
Arulmighu Kottai Mariamman Temple
Having office at Arulmighu
Kottai Mariamman Temple
Fort, Salem - 636 001.

2. The Fit Person
Arulmighu Kottai Mariamman Temple
Having office at Arulmighu
Kottai Mariamman Temple
Fort, Salem - 636 001.

... Respondent in both cases/
Respondents/Defendants/Respondents

Prayer : These Second Appeals have been filed under Section 100 of C.P.C., against the common Judgment and Decree dated 29.07.2015 made in A.S. No. 10 & 11 of 2015 on the file of the Principal Sub Court, Salem confirming the fair and final order dated 01.11.2014 made in I.A.No. 46 of 2014 and O.S. No. 1104 of 2012 on the file of the III Additional District Munsif Court, Salem respectively.

For Appellants : Mr.T. Murugamanickam
in all SAs Sr. Counsel for M/s.Zeenath Begum

For Respondents : Mr. R. Karthikeyan and
in both SAs Mr. Bharanidaran

J U D G M E N T

These Second Appeals arise against the common Judgment and Decree dated 29.07.2015 made in A.S. No. 10 & 11 of 2015 on the file of the Principal Sub Court, Salem confirming the fair and final order dated 01.11.2014 made in I.A.No. 46 of 2014 in O.S. No. 1104 of 2012 on the file of the III Additional District Munsif Court, Salem.

2. Mr. R. Karthikeyan, learned counsel takes notice for the respondents. By consent of both the parties, the appeal is disposed of, at the stage of admission itself.

3. The following substantial question of law is framed by this Court :

" Whether the suit is maintainable in view of bar under Section 108 of the H.R & C.E Act "

4. Heard the arguments of the learned counsel for both parties. It is brought to the notice of this Court that the aforesaid issue has not been framed either by the trial court or the Appellate Court. The learned counsel for the respondents would submit that as per the provisions under Section 108 of the H.R. & C.E Act 1959 and in the light of the decisions rendered by the Hon'ble Supreme Court and this Court, the relief prayed in the present suit is not maintainable. The learned counsel for the respondents further submitted that the maintainability of the suit has been raised before this Court. But, the trial court has not framed the issue. The learned Senior Counsel appearing for the appellants seek an opportunity may be given to the appellants to place all the evidences, both oral and documentary before the lower Appellate Court, to put forth their contention on merits including maintainability of the suit.

5. In view of the above submissions, this Court is inclined to pass the following judgement :

1. The impugned common judgment and decree passed in A.S. Nos. 10 & 11 of 2015 dated 29.07.2015 is set aside and the appeals are remanded to the Lower Appellate Court to decide the question of maintainability of the suit, by framing necessary issues and to decide the appeals in accordance with law, after providing an opportunity to the parties concerned.
2. On instructions, the learned counsel for both the parties, undertake that they would co-operate with the Appellate Court, to complete the proceedings, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

6. The Second Appeals are allowed, with the above directions. Consequently, the connected Miscellaneous Petitions are closed. No order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Principal Sub Court,
Salem
2. The III Additional District Munsif Court,
Salem.
- 3.The Section Officer,
VR Section, High court, Madras.

+1cc to Mr.Zeenath Begum, Advocate SR.No.68345

+1cc to Mr.R.Karthikeyan, Advocate SR.No.69270

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VGI (CO)
GN(14/12/2017)



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