

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.755 of 2017
& CMP No.4098 of 2017

1. Sri Prasanna Venkata Narayana Perumal Koil
(Sri Prasanna Venkata Narasimha Perumal Koil),
Rep. By its Trustee, S.Manohar Chettiar,
Perumal Koil Street, Saidapet, Chennai 600 015
 2. S.Manohar Chettiyar
 3. A.Madhanagopal Chettiyar
 4. D.Rajasekaran Chettiyar
 5. R.Prabhakara Chettiyar
 6. A.R.Thiruvengada Chettiyar ... Appellants /
Defendants
- ...Vs...
- R.Balakrishnan ... Respondent /
Plaintiff

Civil Miscellaneous Appeal filed under Section 104 r/w Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908, against the order and decreetal order, dated 23.02.2017 passed in I.A.No.2561 of 2017 in O.S.No.928 of 2017 on the file of the XVII Additional City Civil Court, Chennai.

For Appellants : Mr. Sharath Chander, for,
M/s. Seshadri Mandalam
For Respondent : Mr. P.Satheeshkumar, for,
Mr. K.Elangovan

J U D G M E N T

The suit in O.S.No.928 of 2014 before the City Civil Court, Chennai, filed by one R.Balakrishnan, seeks the following relief:-

"... declaring the continuance of defendants 2 to 6 as trustees of the R-1/Temple as illegal; for a consequential permanent injunction restraining the defendants 2 to 6 from functioning as trustees of the R-1/Temple; and for other reliefs."

2. Along with the suit, a petition in I.A.No.2561 of 2017 has been filed, seeking interim injunction restraining the respondents 2 to 6 / defendants 2 to 6 from functioning as Trustees of the R-1/Temple, pending disposal of the above suit.

3. By the order dated 23.02.2017 interim injunction has been granted in favour of the petitioner, till 09.03.2017, with the following observations:-

"Perused the Affidavit and plaint averments and documents. As per plaint Document No.1 to 4 clearly reveals that the respondents 2 to 6 are not having any right to hold the post at present. Further, the learned counsel appearing for the petitioner circulated the typed set, which clearly reveals that after 2011, election was not conducted to R-1/Temple by R-2 to R-6."

4. Whether there was an election or not and whether R-2 to R-6 were elected as Office Bearers or not and whether they have got any right to continue as trustees or not, are the issues to be tried by the Trial Court.

5. Alleging that, there are suppression of material facts in the plaint and therefore, it is open to the respondents to approach the court, by filing this Appeal, instead of moving the Trial Court, under Order 39 Rule 4 CPC, the decision reported in 2002 SCC Online Cal 376 : AIR 2003 Cal 96 : (2002) 3 CHN 322 (The Bengal Club Ltd., v. Susanta Kumar Chowdhary) is relied upon, where-under, after emphasizing the importance of pleadings, the Court has held that if the plaint do not disclose the correct state of facts with sufficient candour and clarity, it is not necessary for the respondents to accept the pleadings and it is open to him to raise that issue before the Appellate Court.

6. Be that as it may, the situation demands immediate resolution of the dispute, so that the function scheduled to be conducted on 05.03.2017 has to be peaceful and it should not be a disturbance to the General Public, who are expected to attend the function on 05.03.2017.

6.1. When this view was expressed by this Court, the learned counsel appearing for the sole respondent in the Appeal has filed an affidavit and the sum and substance of the same is that, except by participation, there will not be any interference on the part of the sole respondent in conducting the festival on 4th and 5th of March 2017 or on any other subsequent days.

6.2. This affidavit is recorded.

7. As the interim injunction has been granted only till 09.03.2017, this Court deems it appropriate to leave it to the trial court, to hear the injunction application on merits within a limited time frame.

7.1. According to the learned counsel appearing for both sides, it is possible to dispose of the injunction application within a period of two weeks (from the date of receipt of a copy of this order) and it is ordered accordingly.

7.2. It is needless to state that the order of injunction will not stand as an impediment for the defendants 2 to 6 / Appellants 2 to 6, from applying or getting police protection towards peaceful conduct of the festival.

8. In the result, this Civil Miscellaneous Appeal is disposed of, with the above directions. No costs. Consequently, the connected CMP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

To

1. XVII Additional Judge
City Civil Court, Chennai.

2. The Section Officer,
V.R.Section, High Court, Madras.

+2 ccs to Mr.Seshadri Mandalam Advocate sr 14134

C.M.A.No.755 of 2017
& CMP No.4098 of 2017

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