

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM:

THE HON'BLE MR.JUSTICE M.M.SUNDRESH  
and  
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

O.S.A.No.52 of 2014  
and  
M.P.No.1 of 2014

Most Rev. G.Devakadasham  
Moderator of Church of South India,  
Chairman of Church of South India Trust Association &  
Bishop of CSI Kanyakumari Diocese  
CSI Synod Secretariat,  
CSI Centre,  
No.5, Whites Road, Royapettah,  
Chennai - 600 014.

... Appellant

.. Vs ..

1. N.P.Thangaraj
2. J.Asir Packia Singh
3. Church of South India,  
Represented by its Moderator Most Rev. G.Devakadasham  
CSI Synod Secretariat,  
CSI Centre,  
No.5, Whites Road, Royapettah,  
Chennai - 600 014.
4. Church of South India Trust Association,  
Represented by its Honorary Secretary,  
CSI Synod Secretariat,  
CSI Centre,

No.5, Whites Road, Royapettah,  
Chennai - 600 014.

5. Rt. Rev. G.Dyvasirvadam,  
Deputy Moderator of Church of South India &  
Member Trustee of Church of South India Trust Association  
CSI Synod Secretariat,  
CSI Centre,  
No.5, Whites Road, Royapettah,  
Chennai - 600 014.

6. CSI Kanyakumari Diocese  
Rep. by its Vice-President,  
CSI Diocesan Office,  
No.71A, Dennis Street,  
Nagercoil-629 001.  
Kanyakumari District.

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Respondents

**Prayer:** Original Side Appeal is filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 1 of the Madras High Court Original Side Rules, against the order and decretal order passed by the learned Single Judge of this Court in A.No.3015 of 2013 in C.S.D.No.18001 of 2013, dated 21.01.2014.

For Appellant : Mr.V.Selvaraj  
for M/s.D.Prabhu Mukunth Arunkumar

For R-1 : Mr.A.Immanuel (Caveator)

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**JUDGMENT**

**(Judgment of the Court was delivered by  
M.M.SUNDRESH,J.,)**

This appeal has been directed against the order passed by the learned Single Judge of this Court by which the application filed under Order 1 Rule 8 of CPC was directed to be decided by the learned Master while granting leave under Section 92 of CPC.

2. The learned counsel appearing for the appellant made two submissions. The first submission is to the effect that the prayer as sought for is not maintainable in a suit filed under Section 92 of CPC. The second submission is that in a suit filed under Section 92 of CPC, what is required is the availability of two or more persons and thus, an application under Order 1 Rule 8 of CPC is not maintainable in law. Incidentally, the learned counsel submits that the other trustees are not arrayed as party respondents.

3. The learned counsel appearing for the respondents/plaintiffs submits that it is settled law that what is required to be seen in an application seeking leave is, only the averments in the plaint. There are sufficient averments to show that the properties of the Church of South India which are being managed by the Church or being siphoned off by the Moderator by selling them and purchasing properties in his name without due authority of law. The leave having been obtained, the issue of Order 1 Rule 8 of CPC will have to be decided in law and both Church of South India and the Trust have been made as parties. Church of South India is an unregistered body and Church of South India Trust Association is registered under the Companies Act. The Moderator of the Church of South India is incidentally the Managing Trustee and Chairman of the Trust. Therefore, a comprehensive prayer has been sought for in the suit. Hence, no interference is required.

4. As rightly submitted by the learned counsel appearing for the respondents/plaintiffs and as observed by the learned Single Judge,

at the time of granting leave, the averments in the plaint alone has to be looked into. It is not in dispute that there are sufficient averments supported by documents which are sufficient to satisfy the requirement for granting leave. There is no dispute that the plaintiffs are the Executive Committee Members of Kanyakumari Diocese. Granting leave is prior to the institution of the suit. Therefore, we do not find any error in the order passed by the learned Single Judge. The learned Single Judge has rightly relegated the application filed under Order 1 Rule 8 of CPC before the learned Master. From the averments, it is clear that the plaintiffs have sought for a comprehensive relief. This is for the reason that the Church of South India is unregistered body and therefore, its properties are being maintained by the Trust and registered and constituted as per the provisions contained under the Companies Act. The fact that the Moderator of the Church of South India is the Chairman and Trustee of the Church is not in dispute. However, it is alleged that there is mismanagement. After all, the Code is a procedural law meant to render substantive justice. When there are two persons available and it has been established that they are

interested in the welfare of the trust of the Church, nothing more is required in the teeth of the sufficient averments and documents to support it. Thus, we do not find any error in the order passed by the learned Single Judge.

5. The question of impleadment if any, would come at the later point of time. Admittedly, we are of the stage of granting leave. The allegations are directed against the mismanagement by the Moderator of the Church who is incidentally the Chairman and Managing Trustee of the Church. At this stage, what is required to be seen is the compliance under Section 92 of CPC, which has been duly satisfied. Hence, looking from any angle, we do not find any merit in the appeal and therefore, the appeal is liable to be dismissed. Accordingly, this appeal is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

[M.M.S.,J.]      [N.A.N.,J.]

30.01.2017

Index : Yes / No

Internet: Yes

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AND  
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