

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.186 of 2015

and

M.P.No.1 of 2015

Arulmigu Someswarar Sivanadiyargal
Thirukutam Trust
rep.by its Secretary
R.Murugesan

.. Petitioner

vs

1. Anwerjan
2. Mumtaj Begum
3. Nazreen Shahin
4. S.K.Anis Ahmed
5. Anjum Farzana
6. Mohammed Sirajudeen
7. Mohammed Saijid
8. Mohamed Sabir
9. The Idol of Sri Someswar
Arulmigu Someswarar Koil
Theradi Street, Sankari.
- 10.The Executive Officer
(H.R.& C.E.), Arulmigu
Someswarar Koil
Theradi Street, Sankari.

11.The Assistant Commissioner
HR & CE Salem-4.

12. The Commissioner
HR & CE Nungambakkam High Road
Chennai 600 034.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 05.11.2014 passed by the learned Subordinate Judge, Sankari in I.A.No.151 of 2014 in O.S.No.42 of 2011.

For Petitioner : Mr.R.Marudhachalamoorthy

For Respondents : Mrs. Hema Sampath
Senior Counsel
for Mrs.R.Meenal
for RR1 to 8

No appearance for
RR9 to 12.

ORDER

The third party, who proposed to be the fifth defendant, was denied the right of impleadment. Aggrieved by the same, the present revision is filed.

2. The revision petitioner, who claims to be the Secretary of Arulmigu Someswarar Sivanadiyargal Thirukutam Trust, which is a registered trust has filed an application to implead itself as a party to the suit. According to him, the Trust has been involved in temple functions and other activities of the temples in and around Sankari. The respondents 1 to 8/plaintiffs have filed the suit seeking declaration of title and for a permanent injunction. According to the petitioner, the suit property was used by the temple devotees and by the above mentioned trust for all the temple functions for preparing prasadam and for distribution of Annadanam on important and auspicious days. He claims that only the Trust has got right and title over the suit property and nobody else, as they are in possession of the same for more than a century. The plaintiffs, who have got no right or title over the suit property have filed the suit to grab the same. As the suit lands are classified as a village Natham, the issuance of patta in favour of the petitioner-Trust has been delayed. The said delay has been taken advantage of by the plaintiffs and the

suit has been filed by them without making the revision petitioner as a party to the suit. Hence, the impleadment is sought for by the revision petitioner.

3. The above application was resisted by the plaintiffs, claiming to be a vexatious attempt. Earlier I.A.No.371 of 2012 was filed by one S.K.Venkatachalam, claiming to be a devotee, representing a group of worshippers. The said application was dismissed. Now, this is a second attempt by the revision petitioner to implead itself as a party in the suit claiming the suit property, to be a temple property. As the revision petitioner is not a necessary party, the plaintiffs sought for the dismissal of the same.

4. The trial court, after considering the submissions made on either side, dismissed the application.

5. Heard the learned counsel for the petitioner and the learned Senior Counsel, appearing for respondents 1 to 8. Despite notice being served, there is no representation on behalf

of respondents 9 to 12.

6. The question that arise for determination in this revision is whether the revision petitioner should be added as a party to the suit?

7. At the outset, I would like to recollect the judgment of this Court reported in **2007(2) CTC 73 [S.Krishnan vs. Rathinavel Naicker and 22 others]** wherein it has been held as follows:

"17. In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending suit or other proceeding, may be crystallized in to the following categories:

(a) If without his presence no effective and complete adjudication could be made;

(b) If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;

(c) If there is a cause of action against him;

(d) If the relief sought in the suit or other proceedings is likely to be made binding on him;

(e) If the ultimate outcome of the proceedings is likely to affect him adversely;

(f) If his role is really that of a necessary witness but is sought to be camouflaged as a necessary party; If a party to a litigation satisfies the court that the person sought to be impleaded, passes any one or more of the above tests, then he is entitled to get the discretion of the Court exercised in his favour. The above tests are not exhaustive and at times, even if a person falls under any one of the above categories, the Court may refuse to implead him. To quote an example, a subsequent purchaser of a property, which forms the subject matter of the suit, may satisfy the tests (d) and (e) above mentioned and yet the Court may decline to implead him on the basis of the doctrine of lis pendens. Therefore, the above list is only a broad statement of the principles that could be culled out from judicial precedents."

8. Keeping the aforesaid principles in mind, if the case on hand is analysed, it is seen that the petitioner-Trust, though claims that they have been in continuous possession of the suit property by conducting temple functions and using the suit property for the purpose of temple activities, there is nothing on record to show the same. In fact, it is stated that the petitioner-Trust is unable to get patta in their favour as the land is classified

as Village Natham. The petitioner-Trust is claiming the lands basing on long continuous possession. However, they try to project that the lands should be used for temple purpose. It is relevant to note that the first defendant is the temple and the second defendant is the Executive Officer of the same. The third and fourth defendants are the authorities of the Hindu Religious and Charitable Endowments Department. The petitioner also had contended that the temple is under the control of Hindu Religious and Charitable Endowments Department. If the temple is the owner of the property, which is under the control of the Hindu Religious and Charitable Endowments Department, the plaintiffs have added both of them as parties to the suit and they are contesting the same. Even as per the revision petitioner, the lands should be used for the temple purpose. Therefore, there could be no better person to defend the case of the plaintiffs excepting the temple itself or the Hindu Religious and Charitable Endowments Department. While so, the petitioner, claiming to be the Trust is seeking to implead itself in the suit, who may not be a necessary party.

9. A person can be impleaded at the pleasure of the *dominus litus*, if he is a necessary party to the proceedings and the presence of the said party would enable the Court for an effective adjudication. The petitioner-Trust herein has not made out as to how it is a necessary party, what is its interest in the suit property, how it would be prejudiced if the suit is tried in its absence, etc. In such circumstances, the learned trial Judge has rightly dismissed the application, as the impleadment of the petitioner-Trust is irrelevant to the case.

10. Therefore, I do not find any infirmity in the said order passed by the Court below, warranting interference in this revision. Accordingly, the revision fails and the same is dismissed. No costs. The suit in O.S.No.42 of 2011 shall be disposed of on or before 31.03.2017. Consequently, the connected miscellaneous petition is closed.

21.02.2017

vj2

Index: yes/No

Internet: yes

To

The Subordinate Judge, Sankari

PUSHPA SATHYANARAYANA,J.,

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