

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2709 of 2013
and
M.P.No.1 of 2013**

1.C.R.Palanidoss @ Palani Balasubramaniam
2.C.R.Srinivasamurthy
3.P.L.E.M.Syed Mohideen Kalanjiam
4.P.L.E.M.Nalla Mohammed Kalanjiam
5.P.L.E.M.Amar Abdul Khader Kalanjiam .. Petitioners

Vs.

Sri Muthukumaraswamy Devasthanam
Rep. By its Trustees
1.P.Balasubramaniam
2.V.S.Bhaskar
3.P.Thilakumar
4.T.K.Shanmugam .. Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, against the fair and decreetal order dated 04.04.2013 made in I.A.No.15581 of 2012 in O.S.No.469 of 1996 on the file of the VII Assistant City Civil Judge, Chennai.

For Petitioners : Mr.G.Asokapathy
for M/s.Pass Associates

For Respondents : M/s.K.Mohanamurali

ORDER

The defendants in O.S.No.469 of 1996 are the civil revision petitioners before this Court, challenging the order passed in I.A.No.15581 of 2012 in O.S.No.469 of 1996, dated 04.04.2013, on the file of the VII Assistant Judge, City Civil Court, Chennai.

2.It is the case of the petitioners/defendants is that the respondent/plaintiff has filed the above suit in O.S.No.469 of 1996 before the learned VII Assistant Judge, City Civil Court, Chennai for recovery of possession of suit schedule mentioned property by Sri Muthukumaraswamy Devasthanam represented by selected trustees in pursuance of the Order 31 Rule 2 of C.P.C. and there are several trustees, all the trustees are necessary parties. Therefore, the trust shall be represented by all the trustees compulsorily. In the absence of the representation by all the trustees, the suit is not maintainable for want of proper representation.

3.The petitioners/defendants also come forward by saying that the election has been conducted once in every five years. The last election was conducted on 23.11.2008 and after lapse of 15 months, the plaintiffs have filed an application in I.A.No.5382 of 2010 to implead the elected Trustees on record namely S.Muthu, C.G.Lakshmi Narayanan, P.Ekambaram as plaintiffs 5 to 7 in the above suit. The other elected trustee M.Thilakumar has already on records as 1st defendant and the defendants also filed a detailed counter. During the pendency of the said petition, the plaintiff has filed another application in I.A.No.11707 of 2010 to amend the cause title as Sri Muthukumaraswamy Devasthanam represented by its Senior Trustees P.Balasubramaniam, V.S.Bhaskar, P.Thilakumar and T.K.Shanmugam. The petitioners/defendants also filed counter and the application in I.A.No.5382 of 2010 was dismissed on 03.02.2011 as withdrawn and the application in I.A.No.11707 of 2010 was dismissed on merits by order dated 18.11.2011.

4.Pursuant to the order passed in the above I.A., the petitioners/ defendants have filed a memo dated 01.12.2011 praying for dismissal of the suit for want of proper representation of the plaintiff. During the pendency of the memo, the plaintiff had filed another interim application in I.A.No.20226 of 2011 seeking for

substitution of new trustees and the same was dismissed and the suit was posted to 01.10.2012 for defendant's side evidence, but in the above suit, the plaintiff is not properly represented by the existing Trustee i.e. the newly elected trustees as per election held on 23.11.2008, which is a mandatory requirement as contemplated for a suit by or against the Trustees under Order 31 Rule 2 of CPC.

5. Where there are more trustees than one, all shall be entitled to act jointly, they would be in a position of joint trustees and form a Corporate Body. The representation of an institution namely a Trust can be valid or effective only if all the trustees jointly act. In fact, where a religious institution has more trustees than one, the institution cannot be represented unless all the trustees are made as parties. Therefore, they filed the petition in I.A.No.15581 of 2012 in O.S.No.469 of 1996 under Order 31 Rule 2 read with Section 151 of CPC with a prayer to dismiss the suit in O.S.No.411 of 1996.

6. A counter affidavit has been filed by the 3rd respondent by adopting by the respondents 1, 2 and 4. The respondent/plaintiff Devasthanam represented by the then existing Trustees for a declaration that the sale of the property by the defendants 1 and 2 in

favour of the defendants 3 to 5 is not valid and for recovery of possession. The Scheme Suit in C.S.No.117 of 1907, an order was passed by this Court in the year 1910 by approving a scheme. As per the scheme, the administration of the temple is vested with the Board of Trustees consisting of five Trustees, namely one senior Trustee and four other Trustees from among the members of Ayira Vysya Beri Chetty Community.

7.The respondent/plaintiff also come forward by saying that subsequent to the election, new trustees were elected and the respondent/plaintiff filed I.A.No.5382 of 2010 for impleading the new Trustees, but the petition for impleading is not maintainable and only a petition for substitution will arise, an endorsement was made on 03.02.2011, since the petition is not maintainable, it may be dismissed as withdrawn. Therefore, the respondent/plaintiff filed yet another application in I.A.No.11707 of 2010 for amendment of cause title and the same was dismissed on 18.11.2011 that Order 31 Rule 2 of C.P.C. all the trustees are necessary parties and no prejudice would be caused if the cause title is not amended as sought for.

8.The respondent/plaintiff also come forward by saying that the respondent/plaintiff filed another application in I.A.No.20226 of 2011

for substituting the newly elected trustees in the place of erstwhile trustees and the same was disposed by order dated 20.09.2012 that under Order 31 Rule 2 of C.P.C. is quiet clear that the substitution is not provided and it is the trust which is the permanent entity is entitled to prosecute the case notwithstanding the election and the new comers trustees. It is not necessary to substitute the trustees every five years and the present trustees or at liberty to adduce evidence in the suit. But, the dispute on the date of filing of the suit and in case of the substitution is acceded, it will create complications in further proceedings and possibly the new trustees would make an attempt to amend the plaint to suit their convenience reflecting their position. Therefore, the locus standi of the present trustees to adduce evidence however, cannot be questioned by the respondent, the suit is pending as part heard for last 10 years without the defendants letting in any evidence, since the plaintiffs have already closed their evidence. Therefore, the suit has been well laid by the trustees at that point of time. It is represented by all the trustees, the present petition is neither maintainable in law nor on facts of the case. Hence, the respondent/plaintiff sought for dismissal of the said petition with cost.

9.Considering both side arguments, the learned VII Assistant

Judge, City Civil Court, Chennai was pleased to dismiss the said application in I.A.No.15581 of 2012 in O.S.No.469 of 1996 dated 04.04.2013, on the ground that the petitioners/defendants cannot seek the dismissal of the suit as per direction of this Court in I.A.No.11707 of 2010 filed under Order 31 Rule 2 CPC, which is unchallenged by them and also the suit has been well laid by the trustees at that point of time and hence the present petition has been filed under Order 31 Rule 2 CPC, is not maintainable, challenging the said order, the present civil revision petition has been filed.

10.I heard Mr.G.Asokapathy, learned counsel appearing for the petitioners and Mr.K.Mohanamurali, learned counsel appearing for the respondents and perused all the records.

11.It is admitted fact that as per the Order 31 Rule 2 CPC, all the trustees should be represented in the suit which has been laid before the competent Court. As per the Order 31 Rule 2 CPC states as follows:

"2.Where suit is instituted without next friend, plaint to be taken off the file.- (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person

by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

[2A.Security to be furnished by next friend when so ordered.- (1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of Rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.]”

12.Admittedly, in this case, the suit has been held before the City Civil Court in the year 1996 by all the trustees, the cause title of the suit is as follows:

“Sri Muthukumarasamy Devasthanam,

represented by its trustees,

1.Mr.P.Balasubramaniam

2.V.S.Bhaskaran

3.P.Thilak Kumar

4.P.K.Shanmuga

... Plaintiffs

(Amended as per order dated 10.9.2004 in I.A.No.21017/2003)

vs.

1.Mr.C.R.Palanidoss, alias Palani Balasubramaniam

2.C.R.Srinivasa Moorthy

3.Mr.P.L.E.M.Syed Mohideen Kalanjiam

4.Mr.P.L.E.M.Nalla Mohammed Kalanjiam

5.Mr.P.L.E.M.Amar Abdul Khader Kalanjiam ... Defendants"

13.When the suit was laid in the year 1996, the prayer of the suit is as follows:

"a)directing the defendants 3 to 5 to deliver possession of the suit property to the Plaintiff Devasthanam viz. Sri Muthukumaraswamy Devasthanam otherwise known as "Kandakottam" represented by trustees 1 to 4 herein;

b)to award costs against the defendants;

c)to pass such further or other orders, directions as this Hon'ble Court may deem fit and proper and just and circumstances may deemed."

14.As per the cause of action mentioned in the plaint, which was arosed in the year 1994, 1995 and 1996, the suit was laid in the year 1996. Therefore, the prayer sought for in the said suit in the year 1996, since the suit was laid with all the trustees. Therefore, the

suit itself was laid as per the Order 31 Rule 2 of CPC.

15. When a scheme suit was filed by the petitioner/plaintiff Devasthanam in the year 1907, in a scheme suit in C.S.No.117 of 1907, this Court has passed an order in the year 1910, by approving the scheme. As per the scheme, the entire administration of the temple namely Sri Muthukumaraswamy Devasthanam at Chennai is vested with the Board of Trustees consisting of five Trustees, namely one senior Trustee and four other Trustees from among the members of Ayira Vysya Beri Chetty Community.

16. After filing the suit in the year 1996 and the election was taken place subsequently and after the election, new trustees were elected and therefore, the respondents/plaintiffs were filed a petition in I.A.No.5382 of 2010 for impleading the new Trustees. But, the Court has return the petition for impleading is not maintainable and only a petition for substitution will arose. Therefore, the endorsement made by the parties, since the petition is not maintainable and the same was dismissed as withdrawn on 03.02.2011.

17. Thereafter, the respondents/plaintiffs were filed another application in I.A.No.11707 of 2010 for amendment of cause title and

the same was dismissed on 18.11.2011 that Order 31 Rule 2 of CPC, all the trustees are necessary parties and no prejudiced would be caused if the cause title is not amended as sought for. Therefore, the respondents filed yet another application in I.A.No.20226 of 2011 for substituting the newly elected trustees in the place of erstwhile trustees and the same was disposed of on 20.09.2012 that under Order 31 Rule 2 of CPC is quiet clear that the substitution is not provided and it is the trust which is the permanent entity is entitled to prosecute the case notwithstanding the election and the new comer trustees.

18.It is also made clear that it is not necessary to substitute the trustees every five years and the present trustees or at liberty to adduce evidence in the suit. Since the dispute on the date of filing of the suit and the case of the year 1996, but in the case of the substitution is acceded, it will create complications in further proceedings and possibly the new trustees would make an attempt to amend the plaint to suit their convenience reflecting their position.

19.In this suit, whether the application filed by the petitioner in I.A.No.15581 of 2012 filed under Order 31 Rule 2 CPC is maintainable or not? When the suit was filed in the year 1996, at that time, all the

trustees were added as the plaintiffs in the suit and the suit was maintainable from 1996 to till this civil revision petition. But, due to the new election and new trustees, they cannot be added as a parties in the suit, since the suit was laid in the particular year for the suit property. Thus being the case, the petition filed under Order 31 Rule 2 CPC r/w Section 151 of CPC is not maintainable in this suit. Admittedly, the suit should be represented by all the trustees, and in this case all the trustees were added as parties at the time of suit itself. Therefore, the application filed by the petitioners/defendants for dismissal of the suit on the ground that the suit has not filed with all the trustees is not maintainable and the learned Judge has passed orders stating that at the time of filing the suit, all the trustees were added as parties and there is no necessity to implead the new comers as elected trustees. Therefore, the order passed by the learned VII Assistant Judge, City Civil Court, Chennai in I.A.No.15581 of 2012 in O.S.No.469 of 1996, dated 04.04.2013, is not required for the interference by this Court. Accordingly, this Civil Revision Petition is liable to be dismissed.

20.In the result:

(a) this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.15581 of 2012 in

O.S.No.469 of 1996, dated 04.04.2013, on the file of the
VII Assistant City Civil Judge, Chennai;

(b) the learned VII Assistant Judge, City Civil Court,
Chennai, is hereby directed to take up the suit on day to
day basis, without giving any adjournments to either
parties and to dispose of the same within a period of one
month, since the suit is for the year 1996. Both the
parties are hereby directed to give their fullest co-
operation for early disposal of the suit. No costs.
Consequently, connected miscellaneous petition is closed.

07.06.2017

Note:Issue order copy on 30.06.2017
Index:Yes
Speaking Order

vs

To
The VII Assistant City Civil Judge,
Chennai.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(PD)No.2709 of 2013
and
M.P.No.1 of 2013

07.06.2017
<http://www.judis.nic.in>