

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.430 of 2016
& C.M.P.Nos.2234, 3499 and 6474 of 2016

Orders reserved on 20.06.2017	Orders pronounced on 29.06.2017
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1.Swami Atmananda
 Managing Trustee
 Sri Sarada Niketan Samithi Trust
 Kanavaipudhur
 Omalur Taluk
 Salem District.

2.Swami Duruvanandha
 Sarada Niketan Samithi Trust
 Kanavaipudhur
 Omalur Taluk
 Salem District.

3.Swami Gnaneshwarananda
 Sarada Niketan Samithi Trust
 Kanavaipudhur
 Omalur Taluk
 Salem District.

.. Petitioners

Vs.

1. Sri Nithyananda Swami
 Founder

Nithyananda Dhyanapeetam
 Bidadi, Bangalore
 Karnataka and
 Madathipathi of
 Sri Arunachala Gnanadesikar Swami Temple & Mutt
 Vedaranyam
 Madathipathi of
 Sri Po. Ka. Sathukal Madam
 Vedaranyam
 Madathipathi of
 Sri Palsamy Mutt and Sri Sankara Swami Mutt
 Thanjavur
 Represented by his power agent
 Sri Nithya Shuddhananda @ A.Sathishkumar

2. N.V.P.Ashok

(2nd Respondent impleaded vide order of
 this Court dated 29.06.2017 by VMVJ
 made in C.M.P.No.6474 of 2016)

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
 Constitution of India, to strike off the plaint in O.S.No.90 of 2015 on
 the file of the learned Principal Sub Judge, Nagapattinam.

For Petitioners	: Mr.S.Prabhakaran Senior Counsel for Mr.V.Kasinatha Bharathi
For R1	: Mr.Venkatesh Mahadevan
For R2	: Mr.Conscious Ilango

ORDER

This Civil Revision Petition has been filed to strike off the plaint in O.S.No.90 of 2015 on the file of the learned Principal Sub Judge, Nagapattinam.

2. One of the devotees filed C.M.P.No.6474 of 2016 for impleading one N.V.P.Ashok, a third party, as second respondent in the civil revision petition. According to the third party/petitioner in C.M.P.No.6474 of 2016, he and his family members are the devotees of four mutts and contributed huge amounts to carry out the activities of the mutts. Fourth respondent in C.M.P./first respondent herein filed counter opposing the said application. In view of the claim of the third party that he is a devotee and he is contributing amounts to the mutt to carry out the activities of mutt, C.M.P.No.6474 of 2016 is allowed and he is impleaded as second respondent in CRP.

3. The petitioners are the defendants and first respondent is the plaintiff in O.S.No.90 of 2015 on the file of the Principal Sub-Court, Nagapattinam. The first respondent filed the suit for

declaration that the first respondent is the Madathipathi of Sri Somanatha Swami Temple and Mutt at Thiruvarur, Madathipathi of Sri Po.Ka.Sathukal Madam in Vedaranyam, Madathipathi of Sri Arunachal Gnanadesigar Swamigal Madam in Panchanathikulam and Madathipathi of Sri Palasamy and Sri Sankara Swami mutt at Thanjavur and consequential relief of injunction in favour of the first respondent against the petitioners restraining them from interfering in any way in the first respondent's administration of the four mutts and its properties.

4. According to the first respondent, he is a spiritual leader and has many number of followers. He has inspired several Hindu spiritual foundations in several places in India and around the world. Being impressed by spiritual activities of the first respondent, first petitioner came to the conclusion that the first respondent could only run all the four mutts referred to above in efficient manner. In view of the same, first petitioner nominated the first respondent as Madathipathi of four mutts mentioned in the plaint by four nomination deeds dated 15.04.2014. From that date onwards, first respondent is in possession and administrating four mutts. The nomination deeds were submitted to the concerned Sub-Registrar

office for registration. The said deeds were not registered for various reasons. The petitioners made attempt to interfere with the administration of four mutts and the first respondent has given a complaint to the police before the Deputy Superintendent of Police, Thiruvarur and a case has been registered in Crime No.587 of 2015. According to the first respondent, in the absence of any cancellation of nomination of first respondent as Madathipathi on valid grounds, the petitioners cannot say that the nomination of the first respondent as Madathipathi is not valid in law. In the circumstance, for the reasons stated above, the first respondent filed the above suit.

5. The petitioners have filed the present civil revision petition under Article 227 of the Constitution of India to strike off the plaint in O.S.No.90 of 2015 on the file of the Principal Sub-Court, Nagapattinam. Originally, the petitioners contended that the learned Principal Sub-Judge, Nagapattinam, has no territorial or pecuniary jurisdiction to entertain and decide the suit. The value mentioned in the plaint is not correct and the properties are more valuable and memo of valuation is contrary to Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. The properties involved in

the suit schedule property are covered in three Districts and the first respondent ought to have obtained permission under Section 17 of C.P.C. to maintain the suit in any one of the Courts, which is having jurisdiction. The learned Judge failed to see that the first respondent has not obtained such a leave. The first respondent has no right or interest in the suit mutts referred to above as Madathipathi and nomination deeds submitted were withdrawn and there is no cause of action arose for the suit.

6. Subsequently, the petitioners filed additional grounds. In the additional grounds, the petitioners have stated that as per the provisions of Sections 26, 26(1)(h) and 6(13) of the Tamil Nadu HR and CE Act, the suit is barred by statute. They also raised a ground that as per Articles 26 and 21 of the Constitution of India, nomination of the first respondent is invalid. The first petitioner, without knowing the criminal activities and fraud played by the first respondent, who swindled several properties of various mutts, nominated the first respondent as Madathipathi. The first respondent is not legally and spiritually qualified to be a Madathipathi. For the above reason, the petitioners sought to strike of the plaint.

7. The learned Senior Counsel appearing for the petitioners brought to the notice of this Court the various contentions raised in the grounds of revision. According to him, a Madathipathi cannot be nominated, while existing Madathipathi is alive. Only after the death of existing Madathipathi, another Madathipathi can take over the administration of the mutt. The first respondent is not a disciple of the mutt and he is not qualified to be nominated as Madathipathi. The learned Senior Counsel has referred to the Division Bench judgement of this Court in W.P.No.12915 of 2012, dated 31.10.2012 and submitted that the first respondent is a person with criminal background involved in grave offence, particularly, offences relating to women. He is a self styled god man. Several criminal cases have been registered against him and they are pending before various Courts in Tamil Nadu as well as in Karnataka. The learned Senior Counsel submitted that as per Section 108 of the Tamil Nadu HR and CE Act, the suit is barred and as per Section 63 of HR and CE Act, the joint Commissioner or Deputy Commissioner only have power to decide any dispute with regard to religious institutions. In view of these sections and Section 9 of CPC, the suit filed by the first respondent is not maintainable and it is barred by statute.

There is no cause of action for the suit filed by the first respondent. The plaint can be rejected as per Order VII Rule 11 of C.P.C. The learned Senior Counsel further contended that the Division Bench of this Court in its order dated 31.10.2012 made in W.P.No.12915 of 2012 issued a direction to the authority to take action against the first respondent. The first petitioner did not follow the rituals and procedures, when he nominated the first respondent as Madathipathi of four mutts.

8. In support of his contentions, learned Senior Counsel has relied on the following judgments:

(i) ***W.P.No.12915 of 2012, dated 31.10.2012 (Ma.Gouthaman Vs. The State of Tamilnadu)***, wherein he has referred Sections 59 of the Tamil Nadu HR and CE Act and 51 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 and submitted that no such power of removal of Madathipathi is available to the Commissioner under Tamil Nadu HR and CE Act. Under Tamil Nadu Act, 22 of 1959, removal could be done only by way of filing a suit.

(ii) ***(2010) 1 SCC 689 (Kashi Math Samsthan and***

***another Vs. Shrimad Sudhindra Thirtha Swamy and another*),**

in para-29, it is held as follows:

“29. The finding arrived at by the trial Court as well as by the High Court to the effect that the seat of Mathadhipati can be transferred to the successor of the existing Mathadhipati only after his death and not before, which is apparent from the customs and traditions of the Math, it is difficult to accept at least prima facie the case that respondent 1 had relinquished the seat of Mathadhipati in favour of Appellant 2 and such seat could be assumed by Appellant 2 before the death of the existing Mathadhipati i.e., Respondent 1 or by any deed executed by Respondent 1 relinquishing as the Mathadhipati of the Math.”

(iii) ***AIR 2002 SCC 2171 (A.V.G.P.Chettiar and Sons and others Vs. T.Palanisamy Gounder)***, in para-28, it is held as follows:

“28. Under the Endowments Act, the supervision and administration of "religious endowments" are vested in a hierarchy of officials consisting of the Commissioner, Joint Commissioner, Deputy Commissioner and Assistant Commissioner. The Endowments Act contains elaborate provisions inter-alia for the maintenance

and alienation of immovable property of a religious endowment. Section 5 of the Endowments Act provides for certain Acts not to apply to Hindu Religious Institutions and Endowments. The excepted enactments include Section 92 of the Code of Civil Procedure, 1908. Section 108 of the Endowments Act provides:

"Bar of suits in respect of administration of management, or religious institutions, etc. - No suit or other legal proceedings in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act".

(iv) **(2008) 10 SCC 97 (Abdul Gafur and Another Vs. State of Uttarakhand and others)**, in para-20, it is held as follows:

"20. Having considered the matter in the light of the aforestated legal position, we are of the opinion that the impugned order cannot be sustained. It is true that under Section 24 of the Code, the High Court has jurisdiction to suo motu withdraw a suit or appeal, pending in any court

subordinate to it, to its file and adjudicate itself on the issues involved therein and dispose of the same. Unless the High Court decides to transfer the suit or the appeal, as the case may be, to some other court or the same court, it is obliged to try, adjudicate and dispose of the same. It needs little emphasis that the High Court is competent to dispose of the suit on preliminary issues, as contemplated in Order 14 Rules 1 & 2 of the Code, which may include the issues with regard to maintainability of the suit. If the High Court is convinced that the plaint read as a whole does not disclose any cause of action, it may reject the plaint in terms of Order 7 Rule 11 of the Code. As a matter of fact, as observed by V.R. Krishna Iyer, J., in *T. Arivandandam (supra)*, if on a meaningful - not formal - reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the court should exercise its power under the said provision. And if clever drafting has created an illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party searchingly under Order X CPC. Nonetheless, the fact remains that the suit has to be disposed of either by the High Court or by the courts subordinate to it in a meaningful manner as per the procedure prescribed

in the Code and not on one's own whims.”

(v) **2013 (6) CTC 809 (N.A.Chinnasamy and another Vs. S.Vellingirinathan)**, in para-27, it is held as follows:

“27. As held by the Hon'ble Apex Court, its aim being to secure quiet with the community, to suppress fraud and perjury to quicken diligence and to prevent oppression. Hence while invoking Order 7, Rule 11 of the Code of Civil Procedure, the Court has to go through and consider the whole pleading of the plaintiff, for which the averments of the written statement shall be gone into. It has been made clear that the plaint could be rejected, as per the averments of the pleading of the plaintiff that (1) where there is no cause of action to seek the relief sought for in the suit (2) the suit is barred by any statute, and (3) if the suit being filed is found as an abuse of process of law. If any one of the aforesaid grounds is established, the Court can invoke Order 7, Rule 11 CPC to reject the plaint. When a revision petition is filed invoking Article 227 of the Constitution, the requirement to struck off the plaint is more than what is required to reject the plaint under Order 7, Rule 11 CPC. If filing of the suit itself is a clear abuse of process, based on the plaint averments and the admitted facts of the plaintiff, this Court can pass appropriate orders to

struck off the plaint under Article 227 of the Constitution. However, merely, based on the inordinate delay or the grounds raised under the Limitation Act, plaint cannot be rejected. If the plaintiff, having sufficient knowledge about the occurrence, after a lapse of time, without any bona fide intention, approaches the Court, after the period of limitation, the same shall be presumed as an abuse of process of Court. If the suit filed is an abuse of process of law and Court, this Court can pass appropriate orders, invoking Article 227 of the Constitution of India to struck off the plaint, in order to prevent abuse of process of Court and to meet the ends of justice."

9. Learned counsel for the first respondent submitted that Section 6(13) of HR and CE Act defines a 'mutt'. As per the customs and usage, even during the life time of existing Madathipathi of mutt, a nomination can be made nominating another person as new Madathipathi. Once nomination deed is executed, the new Madathipathi takes administration of mutt. The learned counsel for the first respondent referred to nomination deeds and submitted that in the nomination deeds, it has been clearly mentioned as to how succession would go after life time of the first respondent.

There is no reference or clause in Section 63(a) to (g) of the HR and CE Act with regard to mutt. When there is a dispute with regard to office of the mutt, only the Civil Court can decide the issue. The mutts do not come under the control of HR and CE Board. The petitioners have not filed any application before the lower Court under Order VII Rule 11 of C.P.C. for rejection of the plaint. Without availing said remedy, the petitioners rushed to this Court. The extraordinary power under Article 227 of the Constitution of India exercised only if fundamental rights are infringed. In the present case, first respondent is entitled to file the suit for declaration that he is entitled to be a Madathipathi. The argument of the learned Senior Counsel appearing for the petitioners that there is no cause of action for filing the suit is not correct. First respondent has stated that as to how cause of action has arisen in the plaint and he has also stated that how he is entitled to relief of declaration. Section 26 of HR and CE Act deals with the disqualification of the trustee. As far as the judgments of the Division Bench of this Court referred to by the learned Senior Counsel for the petitioners is concerned, it was delivered on 31.10.2012 and after two years of pronouncement of judgment only, the first petitioner has nominated the first respondent as Madathipathi. Learned counsel for the first

respondent further contended that once Madathipathi is nominated and the said nomination cannot be revoked except for good cause. In support of his contention, the learned counsel for the first respondent relied on the judgement reported in ***AIR 1974 SCC 199 (Sri Mahalinga Thambiran Swamigal Vs. His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamigal)***.

10. Learned counsel appearing for the second respondent/impleaded respondent submitted that the first respondent is not a fit person to be appointed as Madathipathi. Appointment of first respondent as Madathipathi is abuse of process of law and first petitioner by nomination has created two owners to the mutt. As per Section 17 of the Registration Act, nomination deed is compulsorily registerable. The nomination deeds appointing the first respondent as Madathipathi by the first petitioner are not registered, therefore, the first respondent has not become Madathipathi. In support of his contention, he has relied on the following judgments:

(i) ***AIR 1935 Mad 220 (Sri Mahant Prayag Doss Jee Varu and Others vs. Archakam Bokkasam Govindacharlu and***

others);

(ii) **(2007) 7 Supreme Court Cases 482 (A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Others),** in para-10, it is held as follows:

"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archaks/shebais/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

(iii) **(1883) ILR 6 Mad 76 (Kuppa Gurukul Vs. Dorasami**

Gurukul);

(iv) **AIR 1967 SCC 1044 (Bishwanath and another Vs. Sri Thakur Radha Ballabhli and others)**, in para-5, 9 and 10, it is held as follows:

“5. The only outstanding question, therefore, is whether the suit is maintainable by the idol represented by Yasodanandan, who is a worshipper as well as a person who had been assisting the 2nd defendant in the management of the temple.

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9. Three legal concepts are well settled : (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense. It has also been held that persons who go in only for the purpose of devotion have, according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage : In the present case, the plaintiff is not only a mere worshipper but is found to have been assisting the 2nd defendant in the management of the temple.

10. The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the Property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. "

11. Heard both sides, perused the materials available on record and the judgments relied on by both sides.

12. The petitioners who are the defendants in the suit filed the present civil revision petition for striking of the plaint filed by the first respondent in O.S.No.90 of 2015. According to the petitioners, as per the provisions of HR and CE Act and Section 9 of the C.P.C., the suit is barred by statute. A reading of section referred to by the learned Senior Counsel for the petitioners do not reveal that the relief sought for by the first respondent is barred by the provisions of HR and CE Act or Civil Procedure Code.

13. On the other hand, learned counsel for the first respondent referred to Section 63(a) to (g) of the Act and his submission that there is no clause with regard to office of the mutt and when there is a dispute with regard to office of the mutt, it can be tried only before the Civil Court, has considerable force. The Division Bench of this Court in judgment dated 31.10.2012 compared Section 51 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 with Section 59 of Tamil Nadu HR and CE Act and held that Andhra Pradesh Act has given power to the Commissioner for removal of any Madathipathi. Whereas Tamil Nadu HR and CE Act does not provide any such power to the Commissioner. The Division Bench of this Court

extracted Section 59 of Tamil Nadu HR and CE Act and observed that the Commissioner or any two or more persons having interest and having obtained the consent in writing of the Commissioner, may institute a suit in the Court to obtain a decree for removing the trustee of a mutt or a specific endowment attached to a mutt for the reasons stated therein.

14. In the circumstance, the contention of the learned counsel for the first respondent that any dispute with regard to Madathipathi, only the Civil Court has got jurisdiction, has considerable force.

15. This Court has extraordinary power under Article 227 of the Constitution of India and it can be exercised only sparingly and in a cautious manner. The Court has supervising power over all the Courts subordinate to it. In the present case, first respondent has made averments as to how he is entitled to declaration sought for and also cause of action for the suit.

16. A reading of the plaint does not lead to the conclusion that filing of the suit is an abuse of process of Court. The Hon'ble Apex

Court in the judgment reported in **1998 (3) SCC 573 [K.K.Modi Vs. K.N.Modi and others]**, wherein at paragraph 44, it has been held as follows:-

"44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

The above said judgment has elaborately dealt with the issue of abuse of process of Court and contrary to the justice and public policy. Applying the ratio decidendi of the said judgment, I hold that the petitioners have not made out any case for striking off the plaint on the ground of abuse of process of Court, barred by statute or plaint does not disclose any cause of action.

17. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P.Nos.2234 & 3499 of 2016 are closed and C.M.P.No.6474 of 2016 is allowed.

29.06.2017

Index : Yes/No

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To

The Principal Sub-Judge
Nagapattinam.

V.M.VELUMANI, J.

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Pre-delivery order made in
C.R.P.(PD)No.430 of 2016
& C.M.P.No.6474 of 2016

29.06.2017

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