



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

WEB COPY

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) .No.176 of 2017

and

C.M.P. (MD) .No.1897 of 2017

1.Pichaimuthu
2.Pichai
3.Manikandan
4.Meenakshi Sundaram ... Appellants

Vs.

1.Maruthamuthu Pillai
2.Ponram Pillai
3.Vekatachalam Pillai
4.Mariappa Pillai
5.Thannasi Durai Pillai
6.Arumugam
7.Siva
8.Mani ... Respondents

Prayer:- This Civil Miscellaneous Appeal filed under Order 43 Rule 1 (q) of the Civil Procedure Code, against the fair and decreetal order made in I.A.No.170 of 2013 in Unnumbered O.S.No. Of 2013 on the file of the Sub-Court, Palani, dated 15-07-2016.

For Appellants : Mr.D.Venkatesh

For R1 to R5 : Mr.R.Janakiramulu

For R6 to R8 : No appearance

JUDGMENT

Heard the learned counsel on either side.

2.Soliya Vellalar Mutt is a public trust functioning at Palani. The respondents 1 to 5 herein filed an unnumbered scheme suit under Section 92 of Civil Procedure Code. They also filed I.A.No.47 of 2013, on the file of the Sub Court, Palani, for obtaining leave. A number of objectors opposed the grant of such leave. The Trial Court decided to decide the Leave Application. At this stage, the respondents 1 to 5 herein filed I.A.No.170 of 2013, for appointment of Receiver. This was strongly contested by the present appellants



which have been shown as defendants 1 to 4. The learned Trial Judge by order dated 15.07.2016, appointed Shri. Pandiaraj, learned Advocate, as the Receiver for the trust properties. Questioning the same, this appeal has been filed.

3. The learned counsel appearing for the appellants raised three contentions:-

1. Shri. Pandiaraj, learned advocate, who has been appointed as a Receiver is already the counsel for the defendants 5 to 7. The said defendants had given their consent for appointment of the Receiver. The present appellants and the said defendants 5 to 7 are not sailing together. Therefore, appointing such a person as a Receiver is inherently improper.

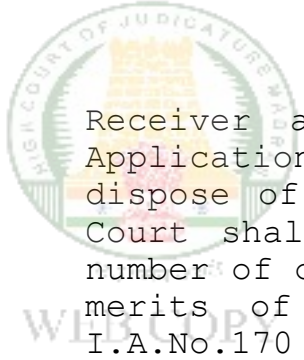
2. The Trial Court is yet to dispose of I.A.No.47 of 2013 seeking grant of leave

3. The Receiver cannot be appointed when the suit itself has not been numbered.

4. The learned counsel appearing for the respondents 1 to 5 wanted this Court to sustain the order impugned in this appeal.

5. The contention that the Court lacks the power to appoint a receiver when the suit is at the un-numbered stage is to be rejected. Order 40 of the Civil Procedure Code reads that whenever it appears to the Court to be just and convenient, it may appoint a Receiver. The provision does not mandate that only after numbering the plaint, the receiver can be appointed. The Court has the power to appoint the receiver, even before numbering of the suit. If such a power is not available to the Court, it can cause hardship in certain circumstances. Even in the present case, the plaint was filed as early as on 21.01.2013. Since Section 92 of Civil Procedure Code has been invoked, leave of the Court must be obtained. A large number of objectors have jumped into the fray opposing grant of leave. Hence I.A.No.47 of 2013, could not be taken up for disposal. Therefore, on account of non grant of leave, the suit could not be numbered. But, at the same time, this cannot be taken advantage by those in management of the suit properties. Hence, the Trial Judge chose to appoint a Receiver. The order appointing the receiver cannot be faulted on the ground that it was made prior to numbering of the suit.

6. However, the choice of the Receiver leaves much to be desired. Here, the parties are at loggerheads. Therefore, appointing an Advocate who is representing one of the contestants as a Receiver is clearly incorrect. In the very nature of things, the office of Receiver should be held by a non partisan candidate. The advocate of one of the contesting parties must not be conferred with the office of receivership. Hence, the appointment of Thiru. Pandiaraj, as receiver stands set aside. The matter is therefore remitted to the file of the Trial Court to consider the issue of appointment of



Receiver afresh and in accordance with law. Since the Leave Application is pending, it would be in the fitness of things to dispose of I.A.No.47 of 2013, on or before 31.06.2018. The Trial Court shall not be deterred by the fact that there are a large number of objectors. This Court has not expressed any opinion on the merits of the leave Application. The question of taking up I.A.No.170 of 2013, will arise depending on the out come of I.A.No.37 of 2013. The order made in I.A.No.170 of 2013, in Unnumbered O.S.No. Of 2013, on the file of the Sub-Court, Palani, is set aside.

7.With these observations and directions, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar/

To

1. The Subordinate Judge,
Sub-Court, Palani.
2. The Record Keeper, (2 copies)
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Madurai Bench of Madras High Court, Madurai.
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4. Siva, S/o.Nataraj Pillai,
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5. Mani,
S/O.Karuppasamy Pillai,
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Balasamuthiram Village,
Palani Taluk, Dindigul District.

+1 cc to Mr.D.Venkatesh, Advocate, SR.No.91621
+1 cc to Mr.R.Janaki Ramulu, Advocate, SR.No.91612

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