



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A (MD) No.625 of 2017

and

C.M.P. (MD) Nos.7264 & 6518 of 2017

- 1.Stephen
- 2.Thenose
- 3.Mariadhasan
- 4.John Bosco
- 5.Yesu Mary
- 6.Mabel
- 7.Rani
- 8.Mary
- 9.Yacovu
- 10.Seearu
- 11.Muthamma
- 12.Suthi
- 13.Benjamin
- 14.Nasirath
- 15.Franklin
- 16.Selva Rani
- 17.Salomon
- 18.Violet
- 19.Salat
- 20.Arockiyam

... Appellants/Petitions/Appellants/
Defendants 1, 10 to 15, 18 to 31

Vs.

- 1.Esakky Amman Temple
(Raja Rajeswari Esakky Amman Temple)
of Community of Valavilai,
Rep.by its Administrative Committee,
President of the 2nd plaintiff

- 2.Sukumaran
- 3.C.S.Kumar
- 4.Murugesan
- 5.M.Vinodhkumar
- 6.K.N.Kandaswamy
- 7.Mariyamma
- 8.Dhasan



9.Daisy
10.Seen
11.Priya Bouse

12.Praveen Bouse ... Respondents 1 to 12/Respondents/Respondents/
Plaintiffs 1 to 5, D6 to D9, D16 and D17

13.Vincent ... 13th Respondent/9th Petitioner/
9th Appellant/19th Defendant

(Respondents 4 and 7 dismissed
and 5, 8 to 12 set Ex-parte
in lower Court)

... Respondents

Prayer : Civil Miscellaneous appeal is filed Under Order 43 Rule 1 (r) Civil Procedure Code to set aside the order and decreetal order dated 07.02.2017 passed in I.A.No.12 of 2017 in A.S.No.57 of 2016 by Sub Court, Kuzhithurai in O.S.No.145 of 2004 on the file of District Munsif Court, Kuzhithurai.

For Appellants : Ms.J.R.Annie Abinaya for
Mrs.J.Anandhavalli

For Respondents : Mr.K.N.Thambi for R1 to R3 & R6

R4 & R7 dismissed
R5 & R8 to R12 ex-parte
R13 - expired.

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order dated 07.02.2017 made in I.A.No.12 of 2017 in A.S.No.57 of 2016 on the file of Sub Court, Kuzhithurai.

2.The appellants herein were the defendants in O.S.No.145 of 2004 on the file of the District Munsif Court, Kuzhithurai. The said suit was filed by the respondents 1 to 6 herein. It is a suit for declaration of title and possession and for mandatory injunction. Since a portion of the compound wall enclosing the suit property was damaged by the appellants herein, O.S.No.141 2004 was also filed seeking the relief of damages. Both the suits were decreed by a common Judgment dated 29.10.2015 by the learned II Additional District Munsif, Kuzhithurai. Aggrieved by the same, the appellants herein filed A.S.Nos.57 and 58 of 2016 before Sub Court, Kuzhithurai. In A.S.No.57 of 2016, the appellants herein filed I.A.No.12/2017 for restraining the temple management from putting up any construction in the suit property till the disposal of the appeals. The said Interlocutory Application was dismissed by the First Appellate Court on 07.02.2017. ~~Questioning the same~~, this Civil Miscellaneous Appeal has been filed.

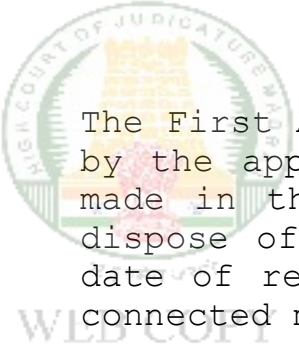


3. Heard the learned counsel for the appellants and the contesting respondents.

4. It was submitted by the learned counsel for the appellants that the First Appellate Court dismissed the Interlocutory Application on the ground that the appellants are Christians and that Kanyakumari District being a communally sensitive district, any interim order would lead to a serious law and order problem. This, according to the counsel for the appellants, cannot be said to be a proper approach in law. This reasoning is unfair. Because, the appellants have already given an undertaking that they would not seek to obstruct the performance of the poojas and other religious ceremonies on the strength of any interim order that may be granted in their favour.

5. I am of the view that I.A.No.12 of 2017 filed by the appellants herein is not maintainable. As already pointed out, the contesting respondents have obtained a decree of declaration and permanent injunction against the appellants herein. The appellants have been specifically restrained from obstructing the peaceful possession and enjoyment of the suit property by the contesting respondents. This decree granted in the suit has not been suspended by the First Appellate Court and continues to be in force even as on date. Therefore, so long as the decree stands, it is not open to the appellants herein to apply for an interim order that would cut down or truncate the force and effect of the said decree. Unless the decree granted against them has been suspended by the First Appellate Court, the present Interlocutory Application is clearly not maintainable. That apart, it is admitted by the appellants themselves that the compound wall has been already put up over the suit property. The proposed construction if at all will be carried out only within the said compound wall. Such a construction cannot in any way prejudice the rights of the appellants.

6. In any event, the temple management cannot claim any equity later. Totally, there were three suits, two filed by the temple and one for partition filed by the appellants. The said partition suit was dismissed for default. The appellants have not taken any steps to restore the same. The temple is admittedly in possession of the suit property. They put up a compound wall. A portion of the same was demolished by some of the appellants. The Criminal Court also convicted some of the appellants namely Stephen, Mariadhasan and Jerald for the offence under Section 427 of IPC by the judgment dated 08.04.2004 in S.T.C.No.1531 of 1998 on the file of the Judicial Magistrate No.II, Kuzhithurai. The appellants have not filed any suit for recovery of possession. Therefore, ~~it is not open to the appellants to file a suit in this appeal, this Court dismisses CMA(MD) No.625 of 2017. The order dismissing I.A.No.12/2017 in A.S.No.57 of 2016 on the file of Sub Court, Kuzhithurai stands confirmed.~~



The First Appellate Court shall dispose of the first appeals filed by the appellants herein uninfluenced by any of the observations made in this judgment. The First Appellate Court is directed to dispose of A.S.No.57/2016 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1. Sub Judge, Kuzhithurai.
2. District Munsif Court, Kuzhithurai.

+1cc to M/S. J.ANANDHAVALLI, Advocate, SR.No.81489.
+1cc to M/S. K.N.THAMPI, Advocate, SR.No.81501.

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and
C.M.P. (MD) No.7264 &
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Skm
SDS/SKN:RSK/SAR 2/13.10.2017/4P/5C