

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 306 of 2017

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CIVIL REVISION PETITION No. 591 of 2017

COMMON ORDER:

Since both the C.R.Ps., are inter-connected, they are being disposed of by this common order.

2) C.R.P.No. 306 of 2017 is filed against an order passed in I.A.86 of 2016 in O.S.No.16 of 2010 refusing to accept the application filed under Order I Rule 10 (1&2) read with 94(e) and Section 151 CPC, by the petitioner/3rd plaintiff praying to strike out the name of the second plaintiff and transpose him as 4th defendant; whereas C.R.P.No.591 of 2017 is filed against an order passed in I.A.No.401 of 2014 dated 04.12.2015, wherein the application filed by the petitioner/proposed party therein to implead him as second plaintiff in the suit, who is the first respondent herein, was allowed.

3) The facts in issue are as under:

M.R.Nagaraja (deceased plaintiff), his mother Malleswaramma and Pagidi Divakar were the trustees, by way of succession, for Sri Boga Nanjundeswara Swami temple. M.R.Nagaraja filed the above suit on behalf of Divakar and Malleswaramma. In the month of April 2013, P.Divakar died with testate to the knowledge of his sons. It is said that during the lifetime, Pagidi Divakar executed a Will dated

18.12.2012 in favour of the second petitioner herein, stating that after his demise the second petitioner shall be the founder trustee in his place for the above temple. While things stood thus, the first petitioner i.e., M.R.Nagaraja died. The second petitioner herein was added as third plaintiff being the legal heir of deceased first petitioner vide I.A.No.411 of 2015 dated 04.12.2015. It is also to be noted here that Pagidi Sudhakar, who is the son of Pagidi Divakar also filed I.A.No.401 of 2015, which was also allowed on 04.12.2015, thereby he came on record as second plaintiff. As such by 04.12.2015, the second petitioner herein (third plaintiff) was there on record representing the original plaintiff. Strangely the said orders were not challenged immediately. Later on, basing on a Will said to have been executed by Divakar, the second petitioner herein filed I.A.86 of 2016 to transpose the second plaintiff as 4th defendant in the suit. It is his case that no prejudice would be caused if the second plaintiff is transposed as the 4th defendant in the suit, since there cannot be two persons claiming rights over a particular temple.

4) A counter came to be filed opposing the same. It is stated in the counter that the said Will is a forged one and that the father of P.Divakar never executed a Will dated 18.12.2012. It is further stated that though the petitioner is well-aware of the filing of the petition by the respondent in I.A.No.401 of 2015 and though

he was aware about the order passed, no steps have been taken till December 2016, when the C.R.P. is filed questioning his impleadment. Since the suit is for injunction and not for declaration of the trustees of the temple, the question of transposing the second plaintiff as 4th respondent would not arise. In fact the case of the petitioner is that as the defendants in the original suit were interfering with the temple, she sought for injunction. Such being the position, transposing the second plaintiff in the suit as 4th defendant does not stand, as it is nobody's case that the second plaintiff was interfering with the possession. After considering the rival arguments and the orders passed by this Court earlier, the said I.A. was dismissed. Challenging the same, the present C.R.Ps. are filed.

5) Learned counsel for the petitioner reiterated the arguments, which are referred to, in the petition filed in support of the C.R.Ps. According to him, since second and third plaintiffs have conflicting interest over the matter in issue, it will be just and proper if the second plaintiff is transposed as 4th defendant.

6) As seen from the record, the original suit, which was filed by M.R.Nagaraja, Pagidi Sudhakar and M.Rohini relates to grant of permanent injunction restraining the defendants 1 to 3 therein i.e., Assistant Commissioner of Endowments, Inspector of Endowments and Executive Officer, Endowments, and their men from in any way

interfering with the management and administration of the temple and also the possession of the 3rd plaintiff apart from other reliefs.

7) Since the suit is for bare injunction restraining defendants 1 to 3 from interfering with the property in dispute, the question would be "Whether the request of the petitioner for transposing the second plaintiff as 4th defendant is just and proper?"

8) It is to be noted here that Pagidi Divakar died much prior to the death of M.R.Nagaraja. Immediately after his death, no steps were taken to bring the Will alleged to have been executed by him on record. The legal heir of said Pagidi Divakar viz., P.Sudhakar filed an application to implead him as second plaintiff in place of his father. The said application was allowed in the month of December 2015.

9) Learned counsel for the petitioner would submit that he was not aware about the order passed and as such could not take steps to question the said order. But the record clearly discloses that on the very same day, the very same court also allowed the application filed by the petitioner herself i.e., third plaintiff as legal heir of M.R.Nagaraja (first plaintiff). A perusal of the averments in the plaint clearly indicate that the original plaintiff in the suit never claimed that there was any conflict of interest between himself and other two trustees. The second plaintiff come on record as legal heir of the original second plaintiff.

10) When there is no dispute between the trustees and when the suit is for a bare injunction, transposing the second plaintiff as fourth defendant may not arise. It may be true that both of them are now fighting for hereditary rights in the trustship of the temple but the relief in the present suit is only with regard to injunction restraining the defendants 1 to 3 who are the representatives of the Endowments Department from interfering with the property.

11) At this stage, it would be relevant to note that originally the plaintiffs filed O.S.No.6 of 2001 before the Additional District Court, Madanapalli. The matter was referred to Lok Adalat wherein it was held that V.Malleswaramma, Paidi Sudhakar and the original plaintiff are the founder trustees of the temple. Apart from that the defendants in their counter categorically stated that in the month of December 2000 itself the Assistant Commissioner and Executive Officer, Endowments, Punganur took possession of the shop rooms in ROC.No.178 of 2000 under a panchanama as they belong to Boga Nanjundeswaraswamy temple, Punganur, as per the directions of the Commissioner, Endowment and also as per the orders passed by this Court in W.P.No.14327 of 1998 dated 08.08.2000 and W.P.No.1114 of 2000 dated 19.10.2000.

12) Since the original plaintiff, who is the husband of the petitioner/third plaintiff clearly averred in the plaint that the

father of the second plaintiff is one of the founder trustees of the temple and the second plaintiff, who is the son of the founder trustee has come on record claiming to be the founder trustee, the petitioner cannot claim that she may be declared as founder trustee by virtue of alleged Will. The said issue has to be decided in the trial after adducing evidence. The *inter-se* dispute between the plaintiffs is as to who the founder trustee of the temple is which fact has to be decided in the suit. At this stage, the relief sought for by the petitioner, namely to transpose the second plaintiff as 4th defendant in the suit, cannot be accepted.

13) It is also to be noted here that Malleswaramma is said to have executed a special power of attorney dated 17.12.2014 in favour of his son Jagadeesh i.e., the brother of the petitioner, who is permitted to manage the temple trust on her behalf as a trust member. It has been commented upon that the said Jagadeesh was not made as a party to the suit. Apart from all these things, the defendants raised a plea with regard to maintainability of the suit itself.

14) Such being the position, this Court is of the view that when the suit is only for an injunction against the defendants 1 to 3, who are Government employees, transposing the second plaintiff as fourth defendant may not serve any purpose and when the second plaintiff came on record as the legal heir of one of the founder

trustees, this Court finds no illegality in the order of the trial court.

Hence, the orders under challenge warrant no interference.

15) Accordingly, both the Civil Revision Petitions are dismissed. No costs. Miscellaneous Petitions pending if any, in these C.R.Ps., shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:19.07.2017
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