

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 27TH DAY OF APRIL 2018

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A.No.1272 of 2018

in

C.S.D.No.2816 of 2018

- 1.R.Kamala Kannan Chettiar,
S/o R.T.Ramasamy,
No.2, Elayalwar Koil Street,
Saidapet, Chennai 600 015
- 2.R.Mohana Krishnan Chettiar,
S/o R.T.Ramasamy,
No.2, Elayalwar Koil Street,
Saidapet, Chennai 600 015 ..Applicants/Plaintiffs

Vs.

- 1.Sri Prasanna Venkata Narashima
Perumal Koil,
Rep.by Managing Trustee,
Mr.S.Manohar Chettiyar,
Perumal Koil Street,
Saidapet, Chennai 600 015
- 2.S.Manohar Chettiyar,
S/o Srinivasan,
Managing Trustee of
Sri Prasanna Venkata Narashima
Perumal Koil,
No.10/26 Rangabashiyar Street,
Saidapet, Chennai 600 015
- 3.A.Madhanagopal Chettiyar,
S/o Adhi Chetty,
Trustee of Sri Prasanna Venkata
Narashima Perumal Koil,
No.10/26 Rangabashiyar Street,
Saidapet, Chennai 600 015
- 4.D.Rajasekaran Chettiyar,
S/o Dheenadayalan,
Trustee of Sri Prasanna Venkata
Narashima Perumal Koil,
No.59, Perumal Koil Street (Back side)
Saidapet, Chennai 600 015

5.K.R.Prabhakar Chettiar,
S/o Ranganathan,
No.6/9, II Street, New Colony,
Saidapet, Chennai 600 015

6.E.P.Parthasarathy,
Chairman of Baliya Chetty
Association (Saidapet)
Now Co-opted as Trustee of
Sri Prasanna Venkata Narashima
Perumal Koil,
No.16, Rangabashyam Street,
Saidapet, Chennai 600 015

..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to grant leave to sue under Section 92 of CPC before this Hon'ble Court.

This application coming on this day before this court for hearing the court made the following order:

This application has been filed, seeking leave to file the suit under Section 92 of CPC before this Court.

2.The Plaint in CSD.No.2816 of 2018 had been filed by R.Kamala Kannan Chettiar and R.Mohana Krishnan Chettiar against Sri Prasanna Venkata Narasimha Perumal Koil, represented by the Managing Trustee, S.Manohar Chettiyar and S.Manohar Chettiyar, in his capacity as Managing Trustee of the 1st Defendant, and also against A.Madhanagopal Chettiyar, D.Rajasekaran Chettiyar, K.R.Prabhakar Chettiar and E.P.Parthasarathy, Chairman of Baliya Chetty Association (Saidapet), now co-opted as Trustee of the 1st Defendant Temple.

3. The Plaintiffs belonged to Baliya Chetty Community. They reside in and around Sri Prasanna Venkata Narashima Perumal Koil in Saidapet. It is claimed that the Defendants, who are the Trustees of the Temple, are misusing their powers, mismanaging the administration and also have no object as to how the Temple should be

administered. It has been stated that OS.No.1134 of 1988 before the City Civil Court, Chennai, had been filed for framing a Scheme of administration and appointment of Trustees of the Religious Denominational Institution, namely, Sri Prasanna Venkata Narasimma Perumal Temple, which belongs to Baliya Chetty Community, who are living in and around in Saidapet, Chennai.

4. By judgement dated 11.2.1991, the Temple was declared as Religious Denominational Institution belonged to Baliya Chetty Community. This was confirmed in AS.No.325 of 1993, by judgement dated 26.4.1994. It has been stated that the 2nd Defendant had been badly administering the Koil Trust, though he is the Managing Trustee. It is also stated that he is not eligible to be the Managing Trustee. It has been stated that a group of people had fraudulently created a Trust, namely, Baliya Chetty Association (Saidapet) and claimed right over the Temple. This had been questioned and OS.No.4701 of 2006 had been filed on the file of the City Civil Court, Chennai. There was yet another suit filed by the former Managing Trustee of the Temple in OS.No.5795 of 2006 on the file of the City Civil Court, Chennai. Both the suits were decreed and appeals have been filed.

5. It has been further stated that the 6th Defendant had been coopted as a Trustee. It has been stated that in the interest of the Temple, a scheme should be framed. A draft scheme had also been given in the plaint. In the suit, the relief, which has been claimed, was to frame a scheme and to further declare that the 2nd to 6th Defendants are disqualified and ineligible to hold the post of Managing Trustee / Trustees of the 1st Defendant Temple and to remove them from trusteeship and for accounts and enquiries into the affairs of the Temple from 2015. Along with the plaint, the present application has been filed, seeking permission under Section 92 of CPC to institute the suit.

6. In the affidavit filed in support of the application, it has been stated that the Defendant, particularly, the 2nd Defendant is badly administering the Trust and that he is not eligible to be the Managing Trustee. It has been further stated that another Trust, namely, Baliya Chetty Association (Saidapet) has been formed and they are claiming right over the Temple. It has been stated that the interest of the Temple should be protected. It had been declared as the Religious Denominational Institution, belonging to the Baliya Chetty Community. They had donated lands to the Temple. It has been prayed that the application should be allowed and the suit must be instituted under Section 92(1) of CPC.

7. Notice had been directed. The Defendants entered appearance. The 2nd Defendant had filed a counter affidavit. In the counter, it has been specifically stated that the Plaintiffs are in collusion with their brother, R.Balakrishnan, who had filed OS.No.928 of 2017 before the City Civil Court, Chennai, alleging that elections had not been conducted in 2016 and continuation of the Trustees in Office was therefore illegal.

8. It has been stated that the said R.Balakrishnan Chettiyar, who was the brother of the Plaintiffs, was the Managing Trustee for the Temple from 1986 till 2015. During his tenure, he had swindled large sums of money, apart from alienating the properties of the trust. He has a criminal case in CC.No.4133 of 2004 in the 9th Metropolitan Magistrate Court, which had been transferred to CBCID Court, Egmore. He has also another case in CC.No.7534 of 2004, now pending on the file of the 9th Metropolitan Magistrate Court, Saidapet. It has been further stated that since 1986, elections had been held only once in five years. The said R.Balakrishnan Chettiyar was the Managing Trustee from 1986 till his

resignation in 2015. He resigned as Trustee in 2015. In 2016, the five year term came to an end. Elections were thereafter held under the guidance of Mr. Illamaguru, Advocate, who had also presided over the elections in 2011. The elections were conducted smoothly and results were announced on 28.5.2016. The 2nd to 5th Defendants and late Thiruvengada Chettiyar had been unanimously elected as Trustees. On the death of Thiruvengada Chettiyar in 2017, the 6th Defendant had been coopted as a Trustee.

9. It has been stated that the Trustees noticed that large sums of money had been spent by the said R. Balakrishnan during his tenure till 2015. They also noticed that monies were remained unaccounted. When he was asked to furnish the accounts, he removed the accounts books of the Temple when he resigned in 2015 and refused to produce the books of accounts. He had filed WP.No.12533 of 2004, challenging the notice issued by the Hindu Religious and Charitable Endowment Department. Subsequently, the said Writ Petition was withdrawn. He then filed OS.No.928 of 2017 before the 17th Assistant Court, City Civil Court, Chennai, claiming that elections had not been conducted in 2016. He suppressed a letter dated 26.8.2016, which had been received by him. The injunction application was dismissed, by order dated 13.7.2017 in IA.No.2561 of 2017. The City Civil Court specifically found that elections had been held and allegations to the contrary were made with a fraudulent intention. CMA.Nos.2899 and 2900 of 2017 are pending before this Court. It has been stated that since his misdeeds would be found out, he had set up his brother to file the present suit. It has been claimed that the Balija Chetty Association (Saidapet) has been recognised by the City Civil Court in its decree, which has been in existence from 1953. It has been, therefore, stated that the application should be dismissed.

10. This Court heard the arguments of the

learned counsel on either side.

11. The entire lis surrounds the administration and management of the 1st Defendant Temple. The 2nd to 6th Defendants are the Managing Trustee and Trustees of the said Temple. Two Plaintiffs have described themselves as Members of the Baliya Chetty Community and residing in and around the 1st Defendant Temple and well wishers of the Temple. They have not claimed to be the devotees or worshippers of the Temple. According to them, the Defendants have indulged in misappropriation of funds and therefore, become ineligible to continue as either Managing Trustee or Trustees.

12. It has also been stated that a separate Association has been created, namely, Baliya Chetty Association (Saidapet) which now claims to take control over the Temple. It has been further stated that the suit Temple has been declared as the Religious Denominational Institution, by judgement dated 11.2.1991 in OS.No.1134 of 1988 by the City Civil Court, Chennai. This had been confirmed in AS.No.325 of 1993, by judgement dated 26.4.1994.

13. It has to be pointed out that the Plaintiffs have not mentioned that their own brother, R.Balakrishnan was the Managing Trustee of the 1st Defendant Trust from 1986 till his resignation in 2015.

14. In the plaint, the Plaintiffs have sought for accounts from the year 2015 after the resignation of their brother, R.Balakrishnan. This shows that they are not interested in protecting the Temple, but in protecting the interest of their brother. As a matter of fact, their brother, R.Balakrishnan, is said to have filed OS.No.928 of 2017, claiming that elections were not held in 2016. However, that contention had been rejected by the City Civil Court.

15. It is also brought to the notice of this

Court that R.Balakrishnan is an accused in CC.No.4133 of 2004, now pending on the file of the 9th Metropolitan Magistrate Court, which had been transferred to CBCID Court at Egmore. He is also an accused in CC.No.7534 of 2004, pending before the 9th Metropolitan Magistrate Court, Saidapet, Chennai. It is seen that the Applicants indirectly seek to remove the Defendants, which appears to be the main reason for institution of the suit. However, this is clearly a re-litigation of the same issue.

16. In the decision of the Honourable Supreme Court reported in **AIR 1977 SC 2421 1 (T.Arivanandam Vs. T.V.Satyapal)**, the father had contested the eviction proceedings, lost it, appealed against it, lost again, moved a revision, suffered rejection of the revision petition and after that, his son re-litigated by filing a suit seeking that the eviction order has been obtained by fraud and collusion. In the said decision, the Honourable Supreme Court had stated as follows:-

"2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. ..
"

17. In **1998-3-SCC-573 (K.K.Modi Vs. K.N.Modi)**, the Honourable Supreme Court had stated as follows:-

" 44. One of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against

him. The re agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, 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.

18. The same dictum and preposition of law had been reiterated with much advantage by this court in **2005 4 LW 206 (The Member Concern Department of Post, Government of India, Ministry of Communication Vs. Annapoorni and others)**, which is a case where the property of the Respondents in the civil revision petition had been acquired by the Postal Department for construction of a Post Office and a Postal Department Administration Block. Numerous litigations were filed by the wife and the family members of the land owner entwining the Postal Department in a number of litigations, which had been filed with the purpose of insisting reconveyance of land or getting more rent or to just keep the litigation alive. In such circumstances also, this court affirmed that relitigation at various forums with respect to the same subject matter would amount to abuse of process of court and law.

19. The Plaintiffs have not disclosed that their own brother is also an accused in relation to acts of misappropriation during his period as Managing Trustee of the 1st Defendant Trust. The documents substantiating this have also been produced by the learned counsel for the Defendants. I am not impressed with the claim of the Plaintiffs. They are projecting an image being very humble whereas the intention of the Plaintiffs is only to protect the accused in two criminal cases as stated above. This Court cannot come to the rescue of the Plaintiffs. The entire Plaint is mala fide in nature.

20. For all the reasons as stated above and in view of the decisions cited supra, this application is to be dismissed and accordingly, it is dismissed. No costs.

27.04.2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

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