

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.4596 of 2017 and C.M.P.No.21657 of 2017

Jayachitra

... Petitioner/5th Defendant

Vs

1 Emmanuel Full Gospel Mission Trust
rep. by its Trustee Tuhin Samuel2 Tuhin Samuel ... Respondents 1 & 2/Proposed
Parties

3 David Padmanaban

... 3rd Respondent/Plaintiff

4 James Gopalakrishnan

5 Joy

6 Jacklin

7 Divya

8 Chitra

9 Pusha Mala

10 Manoharan

11 State Bank of India
rep. by its Manager,
Main branch,
Salem.12 State Bank of India
rep. by its Manager,
Rasipuram post,
Salem.13 Canara Bank,
rep. by its Manager,
Fort Main road, Salem.

14 Canara Bank
rep. by its Manager,
Konakarai branch,
Kothagiri, Nilgiris District.

15 State Bank of India
Rep. by its Manager,
Kothagiri branch,
The Nilgiris District.

16 Canara Bank
rep. by its Manager,
Seerapalli,
Rasipuram Taluk.

17 Canara Bank
rep. by its Manager,
Rasipuram branch,
Namakkal District.

18 Indian Bank,
rep. by its Manager,
Rasipuram branch,
Namakkal District.

Pastor Williams (died)

19 Dr. Jerome
Arulsamy
166-E Church Hill lane,
Udagamandalam 643 001.

20 Gnana Durairaj

21 George Wilson

22 Raja

23 Moorthy

... Respondents 4 to 23/Defendants 2 to 4
7 to 9, 11, 14 to 21, 23 to 27

(Respondents 5 to 23 given up by the petitioner)



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This Civil Revision Petition is filed under section 227 of Constitution of India against the order dated 27.10.2017 made in I.A.No.92 of 2017 in O.S.No.296 of 2004 on the file of the Fast Track Mahila Court, Namakkal.

For Petitioner : Mr.N.Manokaran
For Respondent 1 & 2 : Mr.P.Subramanian for
Mr.Francis Xavier
For Respondent No.3 : Mr.D.Anbarasu
For Respondent No.4 : V.Sasikumar

ORDER

According to the petitioner, the third respondent herein has filed a suit in O.S.No.296 of 2004 against the respondents 4 to 23 before the Fast Track Court, Namakkal for declaration, perpetual injunction and delivery of possession. In the aforesaid suit, the respondents 1 and 2 herein have filed I.A.No.92 of 2017 for impleading themselves as defendants in the suit alleging that the second respondent is a Trustee of the first respondent Trust and the same was allowed by the Court below. Challenging the said order, the 5th defendant in the suit has preferred the present Civil revision petition before this Court.

2 According to the learned counsel for the petitioner, the respondents 1 and 2 have not placed sufficient materials before the Court

below to show that the Trustee is authorised the respondents 1 and 2 to contest the suit. On this ground alone, the order passed by the Court below is liable to be set aside.

3 Per contra, the learned counsel for the respondents 1 and 2 would submit that the first respondent is represented by the second respondent as a Trustee. A resolution also has been passed by the Trustees to authorise the second respondent to contest and defend the suit on behalf of the first respondent Trust. Even though said document has been filed along with the application, it was not marked at the time of hearing the interlocutory application. According to the learned counsel for the respondents, said documents can be placed at the time of trial in the aforesaid suit. The learned counsel for the respondents 1 and 2 submits that the Court below has rightly allowed the application and therefore, no warrants to interfere with the order passed by the Court below.

4 The learned counsel for the third respondent and the learned counsel for the fourth respondent adopted the submissions made by the learned counsel for the respondents 1 and 2. In so far as the other respondents, the petitioner has given up the civil revision against them.

5 Heard the learned counsel for the petitioner, the learned counsel for the respondents 1 and 2, the learned counsel for the third respondent and the learned counsel for the fourth respondent and perused the materials available on record.

6 According to the learned counsel for the petitioner, the suit property belongs to the Trust. The second respondent has filed an application in the individual capacity as well as representative capacity of the first respondent. The ground raised by the petitioner herein is that the respondents 1 and 2 have not placed any materials to show that the second respondent is one of the Trustees of the first respondent Trust and also there is no document placed before the court below to show that the second respondent was authorised to contest and defend the suit on behalf of the trust. The court below being satisfied with the documents placed before it, allowed the application to implead the respondents 1 and 2 herein as defendants in the suit. Further, the second respondent is one of the Trustees of the first respondent trust. The second respondent also produced document to show that he has been authorised by other trustees to defend and contest the suit.

7 It is clear from the facts of the case that the respondents though filed documents along with the petition, has not marked the same to

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show that the second respondent is one of the trustees of the first respondent and also authorised to contest and defend the suit on behalf of the first respondent trust. Therefore, in order to provide opportunity to the respondent, this Court feels that the order passed by the court below is liable to be set aside. The court below shall decide the application by giving an opportunity to the respondent to mark the documents and to prove that the petitioner can contest and defend the case on behalf of the first respondent trust in the suit.

8 In the facts and circumstances of the case, this Court has no hesitation to set aside the order passed in I.A.No.92 of 2017 and the same is remanded to the court below to decide the application afresh, after providing opportunities to the parties concerned.

In the result, the Civil revision petition stands allowed with the above directions. No costs. Connected miscellaneous petition is closed.

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24.1.2018

Speaking/Non Speaking order

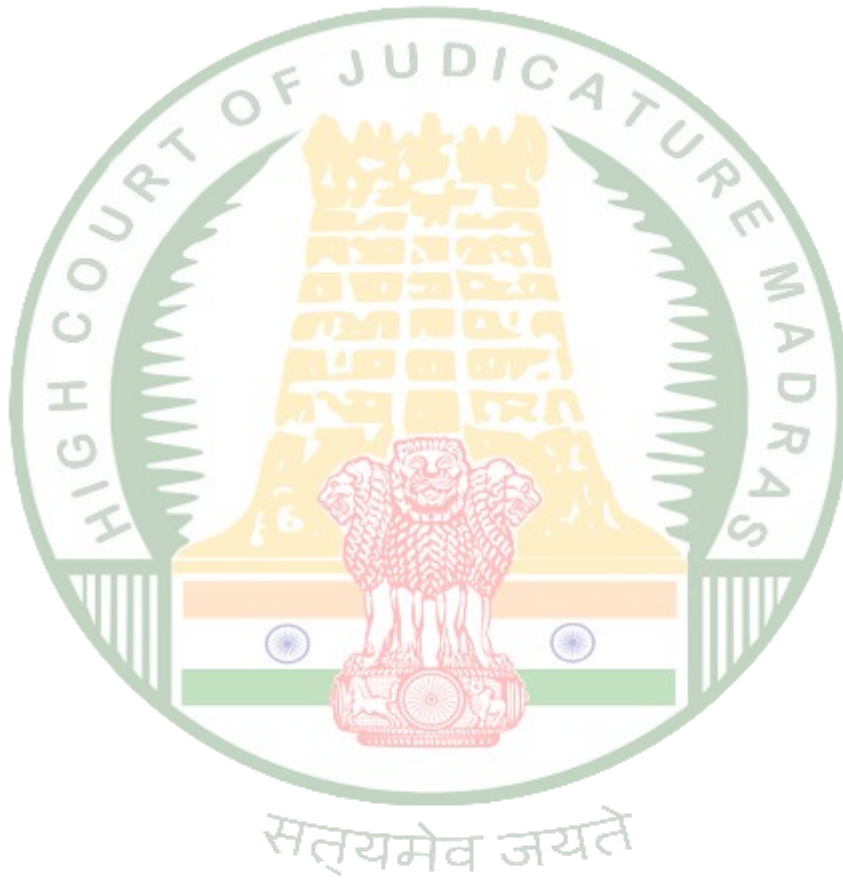
Index: Yes/No

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To

The Fast Track Mahila Court, Namakkal.

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