



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.691 of 2018

and

CMP (MD) No.3070 of 2018

1.Dharmapandian

R.Kanagarajan (died)

2.Ernest Paul Stephen

3.D.Alexander Shepperd

4.S.Selvadurai

5.S.Balasubramanian

6.P.G.Arulraj

... Petitioners /Defendants 1, 3 to 7

Vs.

The Christ Church (CSI)

Represented by its Secretary

No.1, Rajendra Main Road,

Ilanthope, Karimedu,

Madurai.

... Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.33 of 2018 on the file of the learned Principal District Munsif, Madurai.

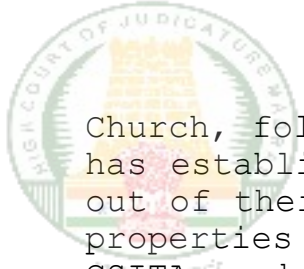
For Petitioner : Mr.T.A.Ebenezer

ORDER

This Civil Revision Petition has been filed to strike off the plaint in O.S.No.33 of 2018 on the file of the learned Principal District Munsif, Madurai.

2. The revision petitioners are the defendants in O.S.No.33 of 2018, which was filed by the respondent/plaintiff, for permanent injunction restraining the defendants, their men, agents from in anyway interfering with the peaceful administration and conduct of the Christ Church Madurai and its regular functions. The present revision petition has been filed to strike off the plaint.

3. The learned Counsel for the revision petitioners among other things would aver that St. George's Church is scheduled in Indian Church Act, under Tinnevely Diocese before formation of Church of South India Trust Association (CSITA) and as an autonomous



Church, following the Anglican order of worship, St. George's Church has established and built 19 branch Churches in and around Madurai, out of their own funds. It is stated that there are many number of properties in the name of St. George's Church. According to them, CSITA and CSI Madurai Ramnad Diocese are interfering with the administration of St. George's Church and now one member namely, M.Gnanaraj @ Shanmugavel of St. George's Church filed a suit in O.S.No.157 of 2017 on the file of Principal District Munsif, Madurai to stop the elections and the election to be conducted on the supervision of the Bishop of CSI Diocese. Other two members filed a suit in O.S.No.272 of 2017 with similar prayer. According to the petitioners, the learned Principal District Munsif, Madurai stopped the election by way of interim order and appointed an Advocate Commissioner, belongs to CSI denomination to conduct election without any examination and testing of evidence. There are various suits filed among the petitioners as well as the respondent, which are pending.

3.1. The respondent filed a suit in O.S.No.33 of 2018 seeking permanent injunction and the learned Principal District Munsif, Madurai has granted interim injunction, thereby, restrained the petitioners. The Secretary of Christ Church has filed a suit in O.S.No.113 of 2018 against the Presbyter one Rev. Jebastin appointed by the St. George's Church and obtained interim order restraining Rev. Jebastin to interfere in the Church services. According to the petitioners, the petitioners who are the real members of the Christ Church protesting against the illegal acts of CSI have been ex-communicated by the orders of the Civil Court and hence, the petitioners are unable to attend even the Church Services, which is very unfortunate.

3.2. The learned Counsel for the petitioners would further submit that St.George's Church has filed a suit in O.S.No.SR8323 of 2018 on the file of the Principal Sub Judge, Madurai for permanent injunction restraining the CSITA and its men in any manner from interfering with the management, administration of St.George's church and its Branch Churches, which is pending before the Principal Sub Court, Madurai in pre-numbering stage and therefore, the petitioners have come before this Court, for struck of the plaint in O.S.No.33 of 2018 on the file of the Principal District Munsif, Madurai.

4. Heard the learned Counsel appearing for the petitioners and perused the documents placed on record.

5. The issue as to whether the above petition for strike off plaint can be filed without approaching the Court below under Order 7 Rule 11 of Code of Civil Procedure, has already been settled in the Judgment reported in 2007-3-L.W.515, in the case of Ganapathy Subramanian vs. S.Ramalingam and 23 others, wherein, it is held that the supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. In paragraph No.16 of the judgment, it is held as follows:



"The supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. Mere filing of the suit by the respondents and taking the suit on the file by the Trial Court cannot be regarded as an act on the part of the Trial Court to transgress its jurisdiction or its bound. Of course, the party who files the suit might have filed the suit suppressing material facts or made up the suit to his convenience for seeking the relief which is not otherwise entitled to, but that fact has to be considered by the Trial Court during the relevant point of time. There is no impediment or embargo for the petitioner to put forth his contentions before the Trial Court to strike off the plaint at the threshold. As this Court is relegating the petitioner to go before the Trial Court for the relief, the Court has restrained itself from going into the facts of the case, as any observation made by this Court would have a bearing on the suit, which is pending before the Trial Court. Of course, the petitioner is also having an effective remedy in the Code of Civil Procedure itself to have the suit struck off and he could very well avail that remedy. On the above said reasoning, I am not inclined to grant the relief as prayed for in the revision."

6. The judgment reported in 2011 (2) LW - 45 - in the case of Krishnamoorthy Vs. Balakrishnan and another, in paragraph No.12, it is held as follows :

" The Court has to see whether the filing of the suit in O.S. No. 248 of 2009 by the 1st respondent is abuse of process of Court. It is stated by the petitioner that the suit is not maintainable since the property in dispute was purchased by the 1st respondent from the 2nd respondent during the pendency of the execution petition but it is contended by the 1st respondent that he had no knowledge about the suit and the execution proceedings filed by this petitioner. It is well settled that contentious issues or facts cannot be discussed and dealt in the petition filed under Article 227 of the Constitution. When alternative remedy of filing petition under Order 7 Rule 11 of CPC is available to the petitioner, for rejection of plaint before the trial Court, when the matter has to be dealt with reference to facts, this Court can refuse to exercise jurisdiction under Article 227."

7. It is an admitted fact that suits are pending against the petitioners as well as the respondent. The grounds raised by the petitioner are question of disputed facts and therefore, relying on the judgment cited above, this Court is not inclined to admit the above Civil Revision Petition when an effective alternative remedy



under Order 7 Rule 10 of Code of Civil Procedure is available.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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/True copy/

Sd/
Assistant Registrar(AS)

Sub Assistant Registrar

To

The Principal District Munsif,
Madurai.

+1cc to Mr.T.A.Ebenezer, Advocate, SR.No. 58029

CRP (PD) (MD) No.691 of 2018
26.03.2018

RM
KK/JC/19.04.2018/SAR-2/4P-3C