



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.09.2018
DELIVERED ON : 26.09.2018

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THE HONOURABLE MRS.JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1293 of 2015
and
M.P. (MD) Nos.1 and 2 of 2015

1. The Managing Trustee
A/m Nagara Sivan Temple
Kadanur Sivaganga District

2. Chokku Subramanian
3. A.R.Kathiresan
4. K.R.V.Subramaniyan

.. Petitioners

Vs.

AN.AR. Srinivasan

.. Respondent

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 16.04.2015 allowing the I.A.No.469 of 2013 in O.S.No.135 of 2012 by the Additional District Munsif, Karaikudi.

For Petitioners : Mr.T.Srinivasa Raghavan
For Respondent : Mr.K.Balasundharan

ORDER

Heard Mr..T.Srinivasa Raghavan, learned counsel appearing for the petitioners and Mr.K.Balasundharan, learned counsel appearing for the respondents.

2.This petition has been filed to set aside the fair and decreetal order dated 16.04.2015 allowing the I.A.No.469 of 2013 in O.S.No.135 of 2012 by the Additional District Munsif, Karaikudi.

3.The petitioners are the defendants and the respondent is the plaintiff in the suit. The respondent filed a suit against the first petitioner for the relief of declaration and for mandatory injunction. The respondent filed a petition in I.A.No.469 of 2013



for production of document which are in the custody of the petitioners. The trial Court allowed the petition and direct the petitioners to produce the documents on 03.06.2015. Against the order, the petitioners have approached this Court by way of Revision petition.

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4. On the side of the petitioners, it is stated that the respondent herein filed a petition to produce the documents by name Karai kuutta chittu pulli kuutta chittu and the resolution passed by the two groups by name karai and pulli which are called as Atavanai puthagam the book in which the particulars of resolutions are written down and the resolution vide Na.Ka.No.2073/2012/AA1 and to produce all these four documents. It is further stated that the petitioners herein are not in a position to produce all these documents and the documents belonged to 14 groups named as karikal and without the permission of the General Body, those documents cannot be obtained by the respondent and even in the counter affidavit, the respondent has undertaken to conduct the meeting without introducing new Karaikararkal and the production of the documents is unnecessary at this stage and the prayer sought for in the original suit by the respondent is beyond the jurisdiction of the lower Court and prayed this petition to be allowed.

5. On the side of the respondent, it is stated that though the petitioners herein had undertaken to conduct the meeting without increasing or decreasing the Karaikararkal. The petitioners have not conducted any meeting and their administration is affecting the activities of the administration of the temple. It is stated that after the orders passed in I.A.No.243 of 2012, the petitioners herein have conducted a meeting and in that meeting, a resolution was passed that there would not be any meeting hereafter and that they are trying to implead some new Karaikararkal and to prove these facts, the respondent need the above said documents and prayed the petition to be dismissed.

6. A perusal of the records reveals that the suit was filed to declare some resolutions passed by the petitioners without the permission of the 14 Karaikararkal and only by a meeting of Pullikootam as illegal and for an injunction that the petitioners should not change the already existing 14 Karaikararkal and not to conduct any Pulli meeting on 12.08.2013 or any other date. In I.A.No.243 of 2012, the respondent obtained an interim order with an allegation that such pulli meeting was conducted without the approval of 14 Karaikararkal and that some new Karaikararkal are being introduced in that meeting and one of such allegation is that in the meeting, a new resolution was passed not to conduct

<https://hccasesonline.gov.in/cases/>

7. On the side of the petitioners, it is stated that the



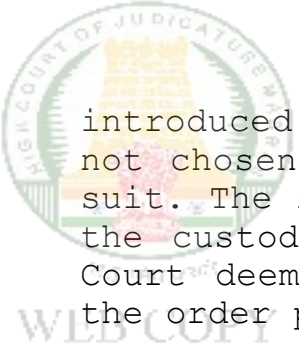
suit itself not maintainable as there is bar under 138 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The administration body of the temple contained 14 Karaikararkal. One such Karai is selected for administration for one year as per the scheme dated 27.10.1931. The Course available for the respondent is to approach the Hindu Religious and Charitable Endowments Department for the modification and that civil suit will not lie.

8.A perusal of the records reveals that so called 14 Karaikararkal were not impleaded in the suit or in this petition. From the records, it is clear that the petitioners have already undertaken before the lower Court not to make any modification in the Karaigal. It is further stated that the petitioners are not in the custody of the documents. When the parties are not included in the trial, the document cannot be called upon to be produced from third parties. A person can be called upon to produce a document only when the document is in his custody. In support to this contention, the Judgment passed by the Court in the case of P.R.Palaniappan and Another v. T.R. Rathineswaran and Others reported in 2009 (3) CTC 121 is cited.

9.It is further stated that the respondent cannot compel the petitioners to produce the document and that the respondent himself is a member of the 14 Karaikararkal and when he is a party in the Karaikararkal demanding the respondent to produce the document which are in the custody of the Karaikararkal is not necessary. The respondent has not produce any document to show that the above stated documents are in the custody of the petitioners. The petitioners have not taken any steps against the third parties 14 Karaikararkal who are having the custody of the documents. In support of his contention, the Judgment of this Court in the case of K.Sundararaj v. R.Chellamuthu and Others reported in 2015 (2) MWN (Civil) 47 is cited.

10.On the side of the respondent, it is stated that the document is in the possession of the petitioners and that those documents are vital. The petitioners have created new Karaikararkal irrespective of the Court order as per Order 12 Rule 8 of CPC. If the document is not produced, an adverse inference can be created upon the petitioners herein. It is further stated that the petitioner herein has admitted possession of the documents in his counter statement.

11.The verification of the records reveals that the petitioners have not admitted the possession of the documents. The petitioners herein have stated that they were not able to produce the documents and the documents can be produced only on getting permission from the 14 Karaikararkal and this cannot be treated as an admission of possession of the documents. When there is an undertaking not to modify the 14 Karaikararkal, there is nothing sufficient enough to show some new Karaikararkal are being



introduced to the administration of the temple. The respondent has not chosen to implead those 14 Karaikararkal as parties to the suit. The respondent has not proved that this documents are not in the custody of the petitioners. In the above circumstances, this Court deems it necessary to allow the petition and to set aside the order passed by the lower Court.

12.With the above direction, this Civil Revision Petition is allowed. No Costs. Consequently, M.P.(MD)Nos.1 and 2 of 2015 are closed.

Sd/-
Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Additional District Munsif,
Karaikudi.

+ 1 CC TO Mr.S.MADHAVAN, ADVOCATE IN SR No. 86865
+ 1 CC TO Mr.K.BAALASUNDHARAM, ADVOCATE IN SR No. 86957

MRN
TE/PM/SAR-3 : 25/10/2018 : 4P/4C

C.R.P. (PD) (MD) No.1293 of 2015
26.09.2018