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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.06.2018

Pronounced on : 24.09.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No. 606 of 2015 and
M.P. (MD) Nos. 1 and 2 of 2015 and
CMP (MD) No. 5451 of 2016

Rajasekaran @ Nithyananda
Camping at Madurai Aadheenam,
South Avani Moola Veethi,
Madurai.

.. Petitioner

vs.

1. Manivasagam

2. Sami Thiagarajan

3. Sri La Sri Arunagirinatha
Sri Gnanasambanda Desiga
Paramachariya Swamigal,
292nd Adheenakartha of Madurai Aadheenam,
South Avani Moola Veedhi,
Madurai.

.. Respondents

(since the 3rd respondent herein had not pressed
the I.A.No.285 of 2012 before the trial Court,
notice to 3rd respondent may be dispensed
with in the present Revision)

Prayer: Civil Revision is filed under Article 227 of the
Constitution of India, against the fair and executable order made in
I.A.No.285 of 2012 in O.S.No.83 of 2012, dated 22.12.2014, on the
file of the First Additional District Court, Madurai.



For Petitioner : Mr.J.Elayaraja

For Respondents : Mr.M.Manivasagam (R1) .
(Party-in-Person)

Mr.S.C.Herold Singh (for R2)

R3 - Dispensed with

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ORDER

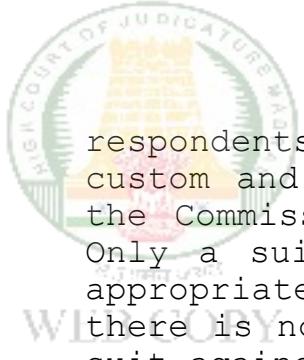
The short facts leading to filing of this Civil Revision Petition is as follows:

The Madurai Aadheenam, a Hindu Religious Math has been in existence for more than 2500 years, having a recorded history for about 1500 years. The said Aadheenam is administered by Adheenakartha Guru MahaSannidhanam, who is the head of the Math & Trustee, appointed as per the customs & traditions of Madurai Aadheenam. Previously on demise of the 291st Guru MahaSannidhanam on 14.03.1980, the 292nd Guru Maha Sannidhanam, the 3rd respondent herein / 1st Defendant, had assumed the office of the head of the Math on 15.03.1980 as per the custom and usage and continues to hold the office.

2.The 3rd respondent /1st Defendant, owing to his old age, decided to nominate a successor for the Math for continuous and efficient discharge of Math Obligations. Accordingly, the 3rd respondent/1st Defendant having found the petitioner herein / 2nd Defendant an efficient and entitled disciple, coronated him as Junior pontiff of Madurai Aadheenam on 27th April in line with customs and traditions of Madurai Aadheenam Math. A trust by name "Madurai Aadheenam Trust" was constituted on 12th April 2012 vide registered Doc.No.237/2012 on the file of the Sub- Registrar, Madurai, with the 3rd respondent / 1st Defendant and the petitioner / 2nd Defendant herein as its Trustees.

3.In the said factual background the respondents 1 and 2 as plaintiffs, leveling accusations and assertions have filed the above suit for permanent injunction in O.S.No.83 of 2012 before the learned I Additional District Judge, Madurai praying to declare the nomination of the petitioner / 2nd defendant as Junior Pontiff of Madurai Aadheenam by the 3rd respondent on 29.04.2012 as Null and Void and sought for permanent injunction as against 3rd respondent / 1st defendant from any further nomination.

4.It is the case of the petitioner / 2nd defendant and as well the 3rd respondent / 1st defendant that the Plaint in O.S.No.83 of 2012 on hand is liable to be rejected, since the plaintiffs /



respondents 1 and 2 have not followed the tenets of Math, i.e. the custom and usage and have not obtained prior permission/consent of the Commissioner, HR & CE in writing to institute the above suit. Only a suit under Section 59 of HR & CE Act, 1959 would be the appropriate remedy available, however factual position being that there is no provision under the HR & CE Act enabling institution of suit against the Junior Pontiff for removing him from the office.

5.It is their case before the Trial Court that in as much as a suit to be instituted under Section 59 of HR & CE Act, 1959 by the Commissioner HR & CE or Government or private parties, a written consent of the Commissioner HR & CE is essential. Thus the instant suit questioning the very appointment of the petitioner by the respondents 1 and 2 without the consent of the Commissioner, HR & CE is not maintainable. Therefore, both the defendants (i.e) the Revision petitioner herein and the 3rd respondent filed an Interlocutory application in I.A.No.285 of 2012 under Order VII, Rule 11 of C.P.C. seeking for rejection of the Plaint in O.S.No.83 of 2012 as abuse of process of Law and for want of compliance with mandatory procedures and leave of the Court under Order 1, Rule 8 of C.P.C. However, on misappraisal of Legal preposition and facts, the Learned Trial Judge had erroneously dismissed the said application vide and Order dated 22.12.2014, which is impugned in this Civil Revision Petition by the petitioner / 2nd defendant.

6.I heard Mr.J.Elayaraja, learned counsel for the petitioner, Mr.Manivasagam, who is party-in-person/1st respondent and Mr.S.C.Herold Singh, learned counsel for the 2nd respondent and perused the entire material available on records.

7.The learned counsel for the Revision petitioner at the outset submits that the respondents 1 and 2 / Plaintiffs, claiming the instant suit on hand filed in the interest and on behalf of interested general public in Tamil Saivait's custom and tradition, vide para 8 of Plaint, but have not complied with Order 1, Rule 8 of Civil Procedure Code to obtain leave of the Court to file the same in representative capacity. Thus the suit having been filed in the representative capacity and as such no permission/ Leave as required under Order 1, Rule 8 of CPC was obtained from the Court by the respondents 1 and 2, the suit on hand is not maintainable.

8.The 1st respondent /plaintiff is an Advocate, who in Writ Petition W.P.(MD).No.8260 of 2012 involved in challenging of very subject matter propounded in the suit, appeared before this Court as a Counsel. Being an Advocate and having represented several proceedings against petitioner, the 2nd respondent has no right whatsoever to maintain the suit as plaintiff, in actual he is



manipulating his position for personal gain and for individual insinuation as against professional ethics by filing the present suit, besides intending to gain popularity under the cover of litigation. Thus the plaint is liable to be rejected for material suppression that the 1st respondent being the plaintiff and having conducted some prior proceedings as against the petitioner, had not pleaded the result of various proceedings before this Court in as much as the alleged cause of action of the suit, the same is pending consideration before the authorities concerned.

9. It is his further contention that the suit on hand is not at all maintainable under Law and that the remedy available to any one aggrieved with regard to nomination of the revision petitioner would be only under Section 59 of the Tamil Nadu Hindu Religious and Charities Endowment Act as held by the Hon'ble Division Bench of this Court in the matter of M.Solaikannan Vs The Home Secretary and Others made in W.P.(MD)No.6607 of 2012 involving the very same issue on hand concerning this petitioner, holding that administration and supervision affairs of Religious Endowments are within the ambit of the Tamil Nadu Hindu Religious and Charitable Endowment Act.

10. That apart there is also a Specific bar of Jurisdiction of Civil Court that except for matters provided under Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, where no suit or legal proceedings in respect of the administration or management of the religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of law, except under and in conformity with, the provisions of the Act.

11. Law being that under Section 59 of Hindu Religious and Charitable Endowment Act, it is requisite and a condition precedent that a suit can be laid by any 2 or more persons having interest only on obtaining consent in writing of the Commissioner or otherwise Commissioner himself may institute the same. Whereas the 1st and 2nd respondents' plaint which neither disclose that they have obtained prior permission from Commissioner, HR & CE as required under Section 59 nor such authorization made by Commissioner is not in accordance with law and without adherence to the Provisions of the HR & CE Act and hence liable to be rejected.

12. More so, a suit against a Trust or Trustee can be filed only in adherence with provisions of Section 92 of Civil Procedure Code over and above the provisions of Tamil Nadu Hindu Religious and Charitable Endowment Act, even then there is a leave required. Section 9 of the CPC will come to be play envisaging that where there is an express or implied bar lie to try certain proceedings



and such suits are to be exclusively carried out before the appropriate forum concerned by the parties to the lis.

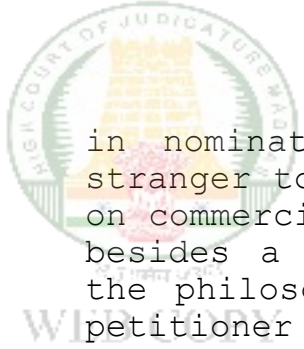
13. Again, respondent's plea for an injunction to restrain the internal administration of the Adheenam can never be the subject matter of a suit before a Civil Court and as such the respondents 1 and 2 / plaintiffs being neither affected nor having direct / personal interest, cannot maintain a suit for injunction over subject matter. Hence the respondents 1 and 2 / plaintiffs not being interested persons cannot maintain the suit either projecting individual right or collective right. Again there is no injury whatsoever pleaded in this suit for granting judgment in personam and consequently there is no cause for the plaintiff to maintain the suit.

14. Even according to the plaint it is candid that a succession to a Math being an internal affairs of the Math, the Court hence does not have Jurisdiction to interfere in the internal affairs of the management of the Adheenam, and that the nomination of the petitioner is the prerogative of the Adheenam.

15. In yet another angle the suit is bad for non-joinder of necessary parties as the Adheenam by itself is not made a party as subject matter relates to the administration of Adheenam. Therefore the plaintiffs/respondents 1 and 2 neither being the member of Adheenam nor its follower have no right to maintain the present suit. However, the Learned Trial Judge without appraisal of the above legal and factual aspects, but have disallowed petitioner's I.A.No.285 of 2012 under Order VII Rule 11 of C.P.C. seeking for rejection of the Plaint in O.S.No.83 of 2012 as abuse of process of Law and for want of compliance with mandatory procedures.

16. Per contra, the Respondent submits that the present Civil Revision Petition is vexatious having intended to delay the proceedings, on some pretext or the other and to avoid answering the core issues raised by the Respondents 1 and 2 / Plaintiffs in the Plaint. The appointment of petitioner herein as the Junior Pontiff of Madurai Adheenam, by the 3rd respondent / 1st Defendant is in violation of the 1400 years well established old custom and usage, followed by the Madurai Adheenam.

17. The contention of the petitioner that the suit do not disclose any cause of action is unsustainable, in view of the precise cause of action of violation of 1400 years old custom and usage followed by the Madurai Adheenam, which have force of law under Article 13 (3) (a) of the Constitution of India, affirming custom and usage to have force of Law. The 3rd respondent blundered



in nominating the petitioner as his successor, who is a total stranger to the Adheenam having his own Ashram at Bidadi, Bangalore, on commercial basis. Further the Petitioner is only a Yoga preacher, besides a self-declared Vedanti, while Madurai Adheenam stands by the philosophy of Saiva Siddhanta and hence the nomination of the petitioner is illegal and the 1 and 2 Respondents/Plaintiffs have been hurt by the nomination of the Petitioner as Junior Pontiff in total disregard for the custom and usage.

18.It is his further contention that the provisions of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, do not apply to the Religious matters as in case on hand that the choice of successors by the head of a Math is a Religious function of the Head of the Math and can never be construed as purely administrative function.

19.Again Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, dealing with Bar of suits, lay Bar only in respect of administration and management of Religious Institution. However the nomination of the successors to a Math is a Religious functions and therefore, Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, has no application on suit.

20.The respondents 1 and 2 /Plaintiffs being the devout and ardent Tamil Saivaites and followers of Saiva Siddhanta, were aggrieved by the nomination of the Petitioner as Junior Pontiff of Madurai Adheenam and hence they have *locus standi* to file the suit and thus have filed the suit for appropriate reliefs. The 2nd respondent although a practicing Advocate, has received Samaya Dheeksha (Religious initiation) as per agama tradition, as mentioned in the Plaint.

21.The allegation concerning the 2nd respondent's appearance as Advocate in W.P.(MD)No.8260 of 2012, the relief in the Writ Petition sought therein was for a direction to the Government to take custody of the Math, whereas it is not the subject issue on hand in the present suit.

22.In as much as applicability of Section 92 of C.P.C. as claimed by the petitioner, the said provision is irrelevant to the subject matter and so the suit is very well maintainable, as a result of which Section 9 of C.P.C. too will not come into play laying a Bar of Jurisdiction. Only on proper evaluation of the above aspects, the Learned Trial Judge rightly dismissed the revision petitioner's application seeking rejection of plaint and the same do not warrant any interference by this Court.



23. Again this Court finds the authorities relied and produced before this Court by either side dealt and were meant in support and confront to the power of a Head of the Math in appointing and removing of a Successor. Therefore, this Court is not in a position to scrutinize the application on hand in I.A.No.285 of 2012 involving the question of Rejection of plaint under Order 1, Rule 8 of C.P.C., in the light of authorities produced by either side. Thus the citations do not have any appliance as to the facts, circumstances and the nature of relief sought for in the instant application.

24. Nevertheless, so many contentions put forth by the revision petitioner and the respondents citing numerous authorities dealing with the powers and authority of the Head of the Math in appointing or revoking a Junior Pontiff, this Court is not inclined to go into those facts, in view of the earlier Decisions made by this Court in the matters of Ma.Gouthaman Vs. The State of Tamil Nadu and M.Jagathalaprathapan Vs. The State of Tamil Nadu in Writ Petition Nos.12915 and 26567 of 2012 respectively and as well the issue of appointment or removal of a successor, in the opinion of this Court do not require consideration in the instant application. Therefore, to decide the instant application, it is suffice to look as to the maintainability of the suit and as to whether mandatory provisions were complied with by the Respondents 1 and 2 herein in filing the suit or the plaint is liable to be rejected for want of compliance with Mandatory provisions.

25. It is made clear that this Court do not express any estimation over the mode of appointment or the suitability of the petitioner claiming to be appointed as Junior Pontiff or over removal of the petitioner from Math, as they are unwarranted for deciding the application on hand. The only scope of this application is as to see whether the plaint on hand is legitimately liable to be rejected for want of compliance with mandatory provisions under C.P.C. and HR & CE Act.

26. This Court finds that the following questions were framed by the Trial Court over petitioner's application for Rejection of plaint and having dealt with same, the Trial Court was pleased to disallow the petitioner's application and those questions framed are extracted hereunder for better appreciations:

"1) Whether the plaintiffs are having cause of action to file the suit?



2) Whether permission under Order 1, Rule 8 of C.P.C. is mandatory?

3) Whether section 108 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 bars in filing of suit?

4) Whether section 59 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 applies to this suit?

5) Whether section 92 of C.P.C. bars the suit? "

27. At the outset, this Court finds Question No.1, as to interrogation of Cause of Action, since involving Bundle of Facts it cannot be gone through at the inception. At the same time it is equally important to note that the 3rd respondent had filed his written statement in the above suit in O.S.No.83 of 2012 stating that the petitioner was already propelled out from Madurai Adheenam and the same was declared by the petitioner himself in his website, withdrawing himself from Madurai Math and hence pleaded non existence of cause of Action in the suit on hand.

28. Both the defendants have averred in their affidavits that the Trust was mutually dissolved and that no transactions had happened on the name of the Trust. Hence, this Court sees that the allegations of misuse of the Trust are more of apprehensions rather than actual misconduct. Over again in view of the pendency of O.S.No.1000 of 2012, this Court is not inclined to deal with validity of Trust or any pursuant alleged transactions thereto said to have performed between the 3rd respondent and the petitioner. Accordingly this Court confines to scrutinize exclusively the questions in above Serial Nos.2 to 4.

29. On careful perusal of the plaint, though it is found that the respondents 1 and 2, during oral arguments vehemently contend that they filed the suit in their individual capacity by way of personal interest, the plaint to contrary, categorically make evident that they filed the instant suit claiming to be representing the Tamil Saivaites living in India in general and Tamil Nadu in particular, who are also interested such like respondents 1 and 2 in upholding the Tamil Saivaite custom and tradition.

30. The Trial Court had also appropriately appreciated the same holding as following that "The plaint page 4 para 8 the respondents 1 and 2 herein have stated that:

"the plaintiffs prefer to file this suit as persons interest in upholding and preserving the sanctity of Tamil Saivism as well as in order to protect the interest of the customary rights and usage of all other Tamil Saivaites living in India in general and Tamil



Nadu in particular, who are also interested such like plaintiffs in upholding the Tamil Saivaite custom and tradition, which was piously followed over thousand four hundred years. The plaintiffs crave leave of this Honourable Court to permit the plaintiffs to file the present suit in the capacity of person interested and also safeguard the customary rights and usage of all Tamil Saivites."

From this it is evident that the respondents 1 and 2 herein have filed the suit in representative capacity even though their long and short cause title goes to show that the respondents have filed the suit in personal capacity.

31. Thus this Court notices that the plaint averments are self-demonstrating and explanatory that the instant suit is filed representing a Mass of Tamil Saivaites living in India in general and Tamil Nadu in particular. However the impugned order unveil that though reliance was made by the petitioner over the matter of The Executive Committee of the Synod Church of South India rep. G.S. and others, Vs. Rt. Rev. Dr. V. Devasahayam, Bishop and another, reported in 2009 (5) CTC 398 holding that the suits filed by or against representative capacity against unincorporated bodies, the plaintiffs have to obtain permission under Order 1 Rule 8 of C.P.C. and the same is mandatory.

32. Misfortunately in the case on hand it is held by the Trial Court that permission under Order 1 Rule 8 of C.P.C. may be obtained at any stage. This Court is incapable of appreciating the said approach, provided once having found the instant suit filed in representative capacity and as such the plaintiff is an Advocate supposed to be aware of the Mandatory procedures and facts as having represented several litigation as against the Math and there is no leave sought by the respondents 1 and 2, the Court below ought not to have decided the said Legal point so evasively, besides holding that ordering of Notice in the suit would amount to grant of Leave.

33. If the said methodology is accepted, then the same will make the provision under Order 1, Rule 8 of C.P.C. insignificant and invalid, by holding noticing of suit implies sanctioning of leave. Thus this Court finds the finding in this aspect of the Trial Court is erroneous and that the plaint on hand is liable to be rejected on the score of non-compliance with Order 1, Rule 8 of C.P.C.

34. Coming to other facet of question of applicability of Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 holding that Suit or legal proceedings, in respect of the administration or management of the religious institution or any other matter or dispute for determining or deciding which provision is made in this Act is not maintainable,



except under and in conformity with, the provisions of the Act.

35. The Hon'ble Division Bench of this Court in AIR 1983 Mad 72 has addressed the very issue of whether the appointment of a successor is a religious issue or not. This Court concluded that "The entire ceremony of initiation and investiture is wholly religious and spiritual and no part of it is secular or administrative. S.105(b) of the Act affords protection to the Mutts in respect of religious and spiritual functions which obviously include nomination and customary ceremonies for ordainment. The secular functions are only incidental to the office." It further observed that "If the right of interference on the question of succession is recognised as a matter of routine, then no head of the Mutt can ever appoint a successor, which is an exclusive personal right of the head of Mutt." Another Hon'ble Division Bench of this Court in the order dated 31.10.2012 in a combined order on various Writ Petitions filed in the same matter had observed that "So far as the appointment of successor is concerned, it is purely religious act."

36. Thus this Court finds that the question of applicability of Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 as contended by the Petitioner will not arise in the instant case as the said Act and hence the HR & CE Board has no provision to challenge the appointment of a successor.

37. Although the following discussion do not have impact on the application on hand to reject the plaint, instantaneously this Court have responsibility to refer to Section 6 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, determining the Jurisdictional Court to entertain a suit regarding Hindu religious institutions and endowments running as following that

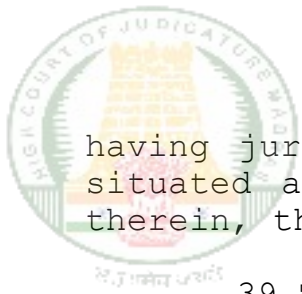
Section 6 -

"(7) "Court" means"

(i) in relation to a math or temple situated in the Presidency Town, the Chennai City Civil Court

(ii) in relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple is situated, or if there is no such Court, the District Court having such jurisdiction;"

38. The above provision explicitly declares the appropriate Forum / Court of Original Jurisdiction to try a suit in relation to a math or temple situated in the Presidency Town of Chennai is City Civil Court and with regard to a math or temple situated elsewhere in the State of Tamil Nadu, it is the Subordinate Judge's Court



having jurisdiction over the area in which the math or temple is situated and only if there is no such Subordinate Court situated therein, then the concerned District Court will have jurisdiction.

39. The record reveals that although the above point was raised by the petitioner, it is overruled by the Trial Court holding that the Jurisdiction to try the instant suit by the Court below / District Court is exercised by virtue of Section 6 (15) (a) Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 running as following that

Section 6 (15) (a) - "person having interest" means"

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

40. This Court in actual is surprised over such interpretation of the Court below / District Court, in assuming Jurisdiction by way of merely referring Section 6 (15) (a) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

41. No doubt that the above provision 6(15) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 entitles, any disciple of the math or a person of the religious persuasion to which the math belongs, to file a Suit for declaration or permanent Injunction or whatsoever the relief may be pertaining to administration or governance of the Math. The said provision deals solely with the Locus standi, whereas not the issue of Original / Competent Forum.

42. Hence this Court is clueless as to how Section 6 (15) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 according to the Learned Trial Judge excluded the Jurisdiction conferred under Law on Subordinate Court, Madurai to try suit pertaining to endowments and vested the same with District Court, Madurai, by itself.

43. In other words, Dominion of the Courts will remain static in line with Statutes conferring such Jurisdiction, whereas only a litigant or the reliefs sought therein may diverge.

44. It is equally important to state that suit in O.S.No.1000 of 2012 filed by the HR & CE Department in this regard is instituted only before the learned Subordinate Court, Madurai and already for



the same subject matter O.S.Nos.621, 1038 of 2012 and 85 of 2013 are found to be filed before the Principal Subordinate Court.

45.Thus this Court finds that the District Court / Court below is the not the proper forum having Original Jurisdiction over the subject issue provided that there are more than one Subordinate Court in Madurai.

46.It is needless to say that only in an area wanting Subordinate Court, the concerned District Court will act as an Original Jurisdictional Court in this regard. However, it may not be a ground for rejection, but surely the plaint is liable to be returned. Therefore the Learned District Judge at the least ought to have returned the plaint, so as to be presented before the proper forum, viz., Principal Sub-Court, Madurai.

47.At the same time, in as much as the *locus standi* to file a Suit against the Math, it is fundamental to look into the definition of a Math defined under Section 6 (13) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which is extracted hereunder:

"Section 6 (13) "math" means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the Founder of the institution or is regulated by usage and

(i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service; or

(ii) who exercises or claims to exercise spiritual headship over a body of disciples; and include places of religious worship or instruction which are appurtenant to the institution;

Explanation. "Where the headquarters of a math are outside the State but the math has properties situated within the State, control shall be exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the State are concerned.

48.Thus it is obvious to find that Madurai Adheenam is a Hindu religious institution with properties attached thereto and presided over by 3rd respondent and the succession of his office devolves in accordance with the direction of the Founder of the institution or is regulated by usage.



49. Coming to other facet of a person having locus standi to file a Suit against Math, i.e the interested person to file a suit against Math are stated in Section 6 (15) (a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which is extracted hereunder:

Section 6 (15) "person having interest" means"

- in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

50. A conjoint reading of Section 6 (13) and 6 (15) (a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 would show that to file a Suit against a Math, necessarily the plaintiff should be an interested person falling under Section 6 (15) (a), either as a Disciple or a person of religious persuasion to which the math belongs. It is to be noteworthy that persuasion, means a group of individual adhering to a particular system of religious belief of the Math and do not mean the Hindu religion as a whole.

51. Coming to the case on hand even though the first respondent contends him to be a practicing Advocate received Samaya Dheeksha (Religious initiation) as per agama tradition and the 2nd respondent as a devout Tamil Saivaite and by virtue of the same they have filed above suit, there is nothing on record to substantiate their claim and put on display that respondents 1 and 2 were either disciples of the Math or individuals adhering to system of religious belief propounded by Madurai Aadheenam Math.

52. Together in the present Interlocutory application and as well the main suit, there were no documents filed by the respondents 1 and 2 to show that they are interested person falling under Section 6 (15) (a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 having locus standi to file the suit against Madurai Adheenam Math. It is worthwhile to mention that not more than the following 3 documents namely Doc.No.1 - History of Madurai Adheenam, Doc No.2- Downloaded Internet Extract from website of the petitioner and Doc.No.3 - Compact Disc of video clippings of statement made by the 3rd respondent were filed by the respondents 1 and 2 along with plaint under Order VII Rule 14(1) of C.P.C. Therefore this Court finds that the respondents 1 and 2 cannot maintain the above suit, since incapable of substantiating them to be a disciple and hence they have no locus to file the present suit.

53. Coming back to the application on hand for rejection of plaint, in view of the pendency of the suit in O.S.No.1000 of 2012 this Court is not inclined to deal with question No.5 stated supra, viz as to whether Section 92 of C.P.C bars the suit on hand. All



over again, this court is of the opinion that hence the validity of Trust can be determined only at the outcome of the suit filed by the HR & CE Department to invalidate the Trust deed so created. More so, observance if any made in this petition may also touch upon the Suit proceedings. Thus this Court delimits to go into the said question of applicability of Section 92 C.P.C., which applies to the suits involving Public Charity Trusts.

54.To deal with final question in Q.No.4, this Court deems fit to extract Section 59 of the HR & CE Act,

"59. Suit for removal of trustee of math or specific endowment attached thereto:-

- The Commissioner or any two or more persons having interest and having obtained the consent in writing of the Commissioner, may institute a suit in the Court to obtain a decree for removing the trustee of a math or a specific endowment attached to a math for any one or more the following reasons,".

55.Primarily the Head of the Math, who administer the religious institution and its properties would come within the definition of 'trustee' as defined under Section 6(22) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, so only a suit under Section 59 of the Act would be the remedy available in respect of the maladministration or mismanagement of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act, shall be instituted in any Court of Law, except under and in conformity with the provisions of HR & CE Act.

56.Nevertheless, it is the finding of the Trial Court, that the instant suit has not been filed for removal of trustee of a math but for the relief of declaration, to declare that nomination of the petitioner / 2nd defendant as junior pontiff of Madurai Adheenam on 29.04.2012 as null and void and for permanent injunction restraining the 3rd respondent from nominating or appointing any strangers or non- junior pontiffs to Madurai Adheenam and permanent injunction restraining the petitioner from entering or remaining in the precincts of Madurai Adheenam, this Court is not in a position to appreciate such interpretation in view of categorical pronouncements of this Court as following:

(i) Ma.Gouthaman Vs. The State Of Tamilnadu and M. Jagathalaprathapan Vs. The State of Tamil Nadu and M.Jagathalaprathapan Vs. The State of Tamil Nadu in Writ Petition Nos.12915 & 26567 of 2012 and W.P.(MD) No.8260 of



2012 respectively vide Order dated 31.10.2012 involving the very same question of appointment of the petitioner as successor by the 3rd respondent.

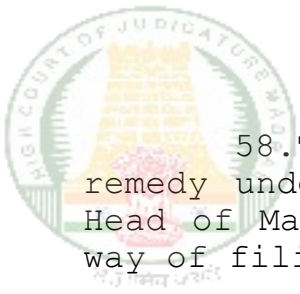
It is indispensable to note that the prayer sought for in Writ Petition Nos.12915 of 2012 and 26567 of 2012 and the relief sought for in the instant suit in O.S.No.83 of 2012 are identical seeking nullification of petitioner's appointment as successor by the 3rd respondent.

In the above batch of writ petitions, the Hon'ble Division Bench of this Court besides opining the requirement of a provision similar to Section 51 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (30 of 1987), suggested the State of Tamil Nadu to establish such provision giving suo motu powers to the Commissioner to deal with allegations against the trustees of the Math by the disciples and devotees of the Math, instead of making HR & CE to undergo ordeal of trial by filing a suit, the Hon'ble Division Bench in furtherance while dealing as to indistinguishable issue on hand encompassing petitioner's appointment, held that as per Section 59 of Tamil Nadu HR & CE Act, the Commissioner or any two or more persons who have obtained the consent of the Commissioner in writing, can institute a suit for removal of a trustee of a Math or a specific endowment attached to a Math.

ii) **M.Solaikannan Vs. The Home Secretary & Others in W.P.No 6607 of 2012** involving as to the indistinguishable issue on hand encompassing petitioner's appointment by 3rd respondent, observed vide para 31, that the appropriate remedy is under Section 59 of the HR & CE Act, 1959.

iii) **S.Nellai Kannan Vs The Commissioner, HR & CE & Ors in WP.No. 9468 of 2012** concerning as to the indistinguishable issue on hand encompassing appointment of the petitioner herein as successor by the 3rd respondent, vide paras 5, 6 & 12 this Court observed that to file a Suit under section 59 of the HR & CE Act, 1959, the Commissioner under Section 59 of HR & CE Act, 1959 is duty bound as to see that frivolous cases are not filed against Math or matters relating thereto.

57.It is momentous to note that all the above referred decisions stands pronounced in the subject issue concerning the dispute over petitioner's appointment as successor by the 3rd respondent.



58. Thus the above decisions would exhibit that appropriate remedy under Law, if aggrieved over misdeeds and for removal of a Head of Math is provided under Section 59 of HR & CE Act, 1959 by way of filing a Suit.

59. As found above, a Suit under Section 59 has to be filed either by the Commissioner or by any two or more persons having interest and having obtained the consent in writing of the Commissioner. However in the case on hand, admittedly no such sanction from the Commissioner, HR & CE appears to be obtained by the respondents 1 and 2/plaintiffs. Thus this Court finds that the plaint on hand is liable to be struck down for want of compliance of Mandatory provision of Section 59 HR & CE Act, 1959.

60. It is equally important to note the above referred Writ petition in W.P.No.9468 of 2012 was filed by the writ petitioner S.Nellai Kannan as against the Commissioner, HR & CE and Others, seeking for a direction by this Court to the Commissioner HR & CE to consider his claim before the Commissioner HR & CE seeking for Sanction / accord consent to file a Suit under section 59 of the HR & CE Act, 1959.

61. Accordingly this Court finds that Section 59 of HR & CE Act, 1959 in actual intend and serve to lay a rigid control/ prevent frivolous litigations as against a Religious Math. Indeed the reason behind such arrangement would be to allow a bonafide claim by way of filing suit in adherence with Section 59 of HR & CE Act, 1959 and on the other hand to avoid unfair and untrustworthy suits and reliefs thereto as against a Math performing Religious function and as well as against the Head of the Math, who perform both religious and administrative deeds and would come across very many difficulties.

62. Thus Section 59 of HR & CE Act, 1959 being a protective measure, to shield a Religious Math from unjustified and underhanded litigations, this Court finds that the above provision cannot be overlooked or disregarded and consequently finds the Plaint in O.S.No.83 of 2012 on hand is liable to be rejected for want of compliance with Section 59 of HR & CE Act, 1959.

63. Accordingly the Revision Petition succeeds on Questions Nos.2 and 4 on the ground of non-compliance of Mandatory provisions of Order 1, Rule 8 of C.P.C. and Section 59 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 respectively, though be unsuccessful in as much as Question Nos.1, 3 and 5. Consequently, the plaint in O.S.No.83 of 2012 on the file of the learned I Additional District Judge, Madurai is liable to be



rejected.

64. In the result, the Civil Revision Petition stands allowed and the plaint in O.S.No.83 of 2012 on the file of the learned I Additional District Judge, Madurai, is rejected. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

The 1st Additional District Judge,
Madurai.

+1 CC To MR.S.C.HEROLD SINGH, Advocate SR. NO.86405
+5 CC To MR.J.ELAYARAJA, Advocate SR. NO. 86396

Pre-delivery order made in
C.R.P. (MD) (PD) No. 606 of 2015 and
M.P. (MD) Nos. 1 and 2 of 2015 and
CMP (MD) No. 5451 of 2016
24.09.2018

VSV

TR/SV/SAR-IV(26.09.2018)17P 8C