



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2018

CORAM

WEB COPY

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**C.R.P.(MD).No.494 of 2017 and  
C.M.P.(MD)No.2338 of 2017

1. Kothandapani
2. Seenivasan
3. Ravichandran

... Petitioners/Respondents 1 to 3/  
Defendants 1 to 3**Vs.**

1. Vaishnava Desanthiru Kattalai,  
Rep. and its Trustee Marikumar Srinivasan,  
S/o.R.Duraisingam,  
138, A.R.R.Road,  
Kumbakonam.

... 1<sup>st</sup> Respondent/Petitioner/  
Plaintiff

2. Vimala
3. Selvaraj
4. The Joint Sub-Registrar,  
O/o.Sub Registrar,  
Kumbakonam.

... Respondents 2 to 4/  
Respondents 4 to 6/  
Defendants 4 to 6

**PRAYER :** Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.79 of 2016 in un-filed original suit on the file of the Principal Sub Court, Kumbakonam, dated 16.02.2016.

|                |                                         |
|----------------|-----------------------------------------|
| For Petitioner | : Mr.V.K.Vijayaragavan                  |
| For R-4        | : Mr.M.Murugan,<br>Government Advocate. |
| For R-1 & R-2  | : No appearance.                        |
| For R-3        | : Ex-parte                              |

**O R D E R**

The first respondent herein filed a plaint under Section 92 of C.P.C. The plaint itself was treated as a leave application and notwithstanding the objection lodged by the Revision petitioners



herein, leave was granted on 16.12.2016 by the Court below. The first respondent was permitted to conduct the suit for administration of trust. Questioning the same, this Civil Revision petition has been filed.

2. Though the first respondent has been served and his name is also printed in the cause list, he has not chosen to enter appearance either in person or through counsel.

3. For filing a suit under Section 92 of C.P.C., the Advocate General or two or more persons having an interest in the trust and having obtained the leave of Court may institute a suit. In this case, contrary to the procedure under Section 92 of C.P.C., the suit has been instituted by only one person. The procedure adopted by the first respondent is also not in tune with the statutory scheme set out in Section 92 of C.P.C. The Court below ought to have seen that an independent plaint must have been filed along with a leave application. In this case what was filed before the Court below was only a plaint and the same was treated as a leave application. It appears that the Court below has not taken note of the requirements set out in Section 92 of C.P.C.

4. Therefore, the order impugned in this Civil Revision petition is set aside. The Civil Revision petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-III)

**To**

1. The Principal Subordinate Judge,  
Kumbakonam.
2. The Record Keeper, V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 87181  
+ 1 CC TO Mr.V.K.VIJAYA RAGHAVAN, ADVOCATE IN SR No. 87375

PMU

TE/PM/SAR-4 : 01/11/2018 : 2P/6C

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