



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.1247 of 2018 (NPD)
and
CMP (MD)No.5271 of 2018

M.Balasubramoniam ... Petitioner/Advocate Receiver/Respondent

Vs.

M.Narayana Pillai ... Respondent/Petitioner/Petitioner

Prayer : This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 04.04.2018 in I.A No.387 of 2017 in OS No.82/1124 M.E on the file of the Principal Sub Court, Nagercoil.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.A.Arumugam for
M/s.Ajmal Associates

ORDER

The scheme suit in OS No.82/1124 M.E was instituted before the Sub court, Nagercoil for getting a scheme decree for Arulmighu Chidambara Vinayagar Temple in Kanniyakumari District. The final decree was passed on 29.02.1964. Periodically Advocates were appointed as court receivers for administering the trust properties. One Arumugapillai was appointed as an Advocate Receiver. He passed away in the year 2009. When he was alive, E.A.No.318 of 2008 was filed by the respondent herein for directing the Advocate Commissioner to conduct renovation work and perform Kumbabishekam at an estimated cost of rupees 10.00 crore for the temple. The said I.A was subsequently re-numbered as I.A No.404 of 2014. In the meanwhile, the said Arumugam Pillai passed away and the respondent himself for a belief period acted as party receiver. He was removed from advocate receivership and one Eswara Pillai was appointed as Advocate Receiver. He was also removed in the year 2011. Thereafter, the present revision petitioner M.Balasubramoniam was appointed as an Advocate Receiver on 21.10.2011. It is not in dispute that, as on date, he has been acting as advocate receiver. The revision petitioner herein made an endorsement in the said I.A.No.404 of 2014 that it can be allowed. Based on the said



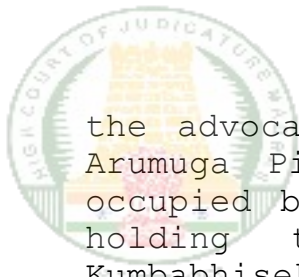
endorsement, I.A.No.404 of 2014 was allowed on 24.08.2017. Thereafter, the respondent herein took out E.A No.387 of 2017 for reviewing the order dated 24.08.2017 allowing I.A.No.404 of 2014. The said review application was allowed by order dated 04.04.2018 by the court below. Questioning the correctness of the said order, this Civil Revision Petition has been filed.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the respondent contended that the very receivership of Thiru.M.Balasubramoniam has been disputed by the respondent and that therefore, the court below was justified in reviewing its earlier order dated 24.08.2017. He also submitted that originally I.A.No.404 of 2014 was filed when Thiru.Arumuga Pillai was the Advocate Receiver. In fact, the respondent had faith only in the said Arumuga Pillai for conducting Kumbabishekam in question. He also pointed out that Thiru.M.Balasubramoniam had not got himself formally substituted in the place of Arumugapillai and therefore, the question of permitting the said Thiru.M.Balasubramoniam, the present advocate receiver, to conduct Kumbabishekam cannot arise. He wanted this Court to sustain the order impugned in this Civil Revision Petition.

4.I am unable to agree with the submission of the learned counsel for the respondent. As rightly pointed by the learned counsel for the revision petitioner, an Advocate Receiver appointed by the court is an officer of the court. The revision petitioner was appointed in the very proceedings on 21.10.2011. Therefore, the question of he formally applying to the court for substituting himself does not arise at all. The learned counsel also pointed out that the reason on which the court below has proceeded is erroneous in law. It is not in dispute that the revision petitioner who was appointed in the year 2011 continues to be an advocate receiver till date. In fact, there are quite a few properties of the trust that requires administration and management. When the revision petitioner continues to be an advocate commissioner till date and has not been removed from the said office, the question of finding him disqualified to conduct kumbabhisekam alone does not arise.

5.Mere pendency of a complaint against the petitioner or an application for removal is not a ground for allowing the plea of the respondent. There is yet another aspect of the matter. The respondent is the applicant in I.A.No.404 of 2014. This Court went through the affidavit filed in support of the said I.A and all that the respondent wanted was that the advocate receiver should be directed to conduct the Kumbabhisekham. The respondent had not projected as if he wanted Arumuga Pillai to personally conduct the Kumbabhisekham. The relief was sought more against the office of



the advocate receivership. Therefore, merely because the said Arumuga Pillai passed away and now the said office is being occupied by the revision petitioner cannot be a ground for holding that the revision petitioner cannot perform the Kumbabhisekham.

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6.Hence, this Court would hold that so long as the petitioner is holding the office of the Advocate Receivership, he is entitled to perform the Kumbabhisekam. Therefore, the order impugned in this civil revision petition is set aside. However, the learned counsel for the revision petitioner submitted that he would rather wait for a period of four weeks since this Court had given a direction in CRP(MD)No.1346 of 2018 for the disposal of I.A.No.85 of 2018 filed by the respondent herein seeking the revision petitioner's removal. If no orders are passed in the said I.A No.85 of 2018 within a period of four weeks or if an order in favour of the respondent is not passed therein, it is made clear that the petitioner would be entitled to commence his works regarding Kumbabhisekham.

7.This Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar (CS-I)

To
The Principal Sub Judge, Nagercoil.

+1cc to M/s.AJMAL ASSOCIATES, Advocate, SR.No.79075
+1cc to Mr.G.PRABHU RAJADURAI, Advocate, SR.No.79223

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