



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (NPD) (MD) .No.1962 of 2016

and

C.M.P. (MD) No.9255 of 2016

- 1.Jeyam
- 2.Kalpana
- 3.Babi Kanna
- 4.Athistalakshmi
- 5.Geetha
- 6.Rajathi
- 7.Sivasankaran .. Petitioners/Respondents 1 to 7/Respondents 1 to 7

Vs.

- 1.K.Periakaruppan .. 1st Respondent/Petitioner/Appellant
- 2.Selvasekaran
- 3.The Joint Commissioner
Hindu Endowment and Charitable Department,
Thiruppathur Road,
Sivagangai Town,
Sivagangai District.
- 4.The Devasthanam Manager,
Sivagangai Devasthanam,
Raja Sathira street,
Rajasekaran Road,
Sivagangai Town,
Sivagangai District. ... Respondents 2 to 4/Respondents 8 to 10/
Respondents 8 to 10

PRAYER : Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 20.04.2016 passed in I.A.No.50 of 2016 in A.S.No.42 of 2010 by Sub Court, Sivagangai thereby allowing the Civil Revision Petition with costs.

For petitioners : Mr.S.Anand Chandrasekar
for M/s. Sarvabhauman Associates

<https://hcservices.ecourt.gov.in/hcservices/> For R1 and R2 : No appearance

For R3 and R4 : Dispensed with

**ORDER**

The defendants in O.S.No.27 of 2007 on the file of the District Munsif Court, Sivagangai are the revision petitioners herein. The suit was filed by the first respondent herein, seeking the relief of declaration and permanent injunction. The suit was dismissed by Judgment and decree dated 12.02.2010. Questioning the same, the first respondent filed A.S.No.42 of 2010 before the Sub Court, Sivagangai. After arguments were substantially advanced on either side before the first appellate Court, when the matter was posted for reply, the first respondent filed I.A.No.50 of 2016 for amending the suit prayer. The Court below by order dated 20.04.2016 allowed the said I.A. Questioning the same, this Civil Revision Petition has been filed.

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

3.The first respondent has not assigned any reason for not having made this prayer at the appropriate stage. The requirement of due diligence as set out in the proviso to Order 6 Rule 17 of CPC has not at all been met in this case. No explanation is forthcoming. As a consequence of allowing this amendment application, the matter may have to be remanded to the file of the trial Court for fresh trial for adducing evidence.

4.The suit is of the year 2007. The appeal was filed way back in the year 2010. The amendment application was filed only in 2016. As pointed out by the learned counsel for the revision petitioner, it was filed when the matter was posted for reply.

5.Therefore, this Court comes to the conclusion that the first respondent has not at all been diligent and therefore he is not entitled to any relief.

6.Therefore, the order impugned in this Civil Revision Petition is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar()

/True Copy/

Sub Assistant Registrar(CS-IV)



To

Sub Court,
Sivagangai.

+1cc to M/s.Sarvabhauman, Advocate in SR No.84619

C.R.P. (NPD) (MD) .No.1962 of 2016
and

C.M.P. (MD) No.9255 of 2016

NM/RP/SAR IV/15.10.18/3P/3C