



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P(MD) (PD) .No.302 of 2016

and

C.M.P(MD) .No.1207of 2016

1.Sangilimuthu

2.Shanmugam

3.Manokar

.. Petitioners/Respondents 1 to 3/Plaintiffs

vs.

1.Janakiraman

.. 1st Respondent/Petitioner/3rd Party

2.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai-600 034.

3.The Inspector,
Hindu Religious and Charitable
Endowments Department,
Kulithalai.

4.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Karur ... Respondents 2 to 4/Respondents 4 to 6/Defendants

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.10.2015 passed in I.A.No.623 of 2015 in OS.No.6 of 2013 on the file of the District Munsif Court, Kulithalai and to allow this petition.

For Petitioner : Mr.G.Sridharan

For R-1 : Mr.M.Kalamurugappan

For R2 to R4 : Mr.M.Karuppasamy
Government Advocate

**ORDER**

The plaintiffs in O.S.No.6 of 2013 on the file of the District Munsif Court, Kulithalai are the revision petitioners herein. In the said suit proceedings, the first respondent herein filed I.A.No.623 of 2015 under Order 1 Rule 10(2) of C.P.C for impleading himself as defendant in the suit. The said I.A was allowed by an order dated 10.10.2015. Questioning the same, the Civil Revision Petition came to be filed.

2.Heard the learned counsel on either side.

3.The suit was filed in a representative capacity. The plaintiffs filed I.A.No.12 of 2013 under Order 1 Rule 8 of C.P.C. The said Interlocutory Application was subsequently allowed because no objection was lodged in that regard. This aspect of the matter has been set out in detail in paragraph No.4 of the counter affidavit filed by the revision petitioners in I.A.No.623 of 2015. It is seen that the first respondent herein did not file his objections in response to I.A.No.12 of 2013. He had kept quiet. He resides in the very same village. The suit itself was filed in the year 2012. The I.A. was taken out only in June 2015. An application filed under Order 1 Rule 10(2) CPC can be allowed, only if the Court below comes to the conclusion that the presence of the proposed party is necessary for an effective adjudication of the issue raised in the suit. Here the revision petitioners being the plaintiffs have not claimed any relief against the first respondent herein. In fact in paragraph 6 of the plaint it has been specifically mentioned that temple in question is a public temple and that the entire public is entitled to worship at the temple and that the plaintiffs' community has not prevented any other community people from worshipping at the temple. It has been specifically averred that the members of other communities have every right and liberty to come and worship in the temple and that there is no restriction whatsoever. The first respondent herein has not averred as to how his rights are infringed. Therefore, the first respondent has no cause of action whatsoever against the present revision petitioners. Therefore, the Court below erred in allowing the I.A.No.623 of 2015.

4.In this view of the matter, the impugned order in the civil revision petition is set aside. The Civil Revision Petition is allowed. However, the learned counsel appearing for the Hindu Religious and Charitable Endowments Department specifically states that the first respondent herein shall be examined as one of the witnesses on the side of the defendants. The Court below is also directed to permit the first respondent herein to be examined as witness on the side of the defendants.



5. With these directions, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

rmk

To

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai-600 034.

2. The Inspector,
Hindu Religious and Charitable
Endowments Department,
Kulithalai.

3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Karur.

+1cc to Spl Government Pleader, SR No.80609

+1cc to Mr. G.Sridharan, Advocate in SR No.80215

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NM/SV/SAR 4/24.09.18/3P/6C