



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARANC.R.P. (PD) (MD) No.439 of 2016
and C.M.P. (MD) No.1899 of 2016

The Town Panchayath
Rep. through its Executive Officer,
Vasudevanallur,
Sivagiri Taluk,
Tirunelveli District.

... Petitioner/Petitioner/Appellant

-vs-

1. V.Subbiah
Rep. of Worshipper of Arulmigu Veera Sakkadevi
Pommathal Thirukovil, Vasudevanallur, Sivagiri Taluk,
Vasudevanallur Rajakambala Naicker
Community President
2. N.Nagarajan
3. The State of Tamil Nadu,
Through its District Collector,
Tirunelveli.
4. The Tahsildar,
Sivagiri. ... Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records relating to the fair and decreetal order passed in I.A.No.5 of 2012 in A.S.No.38 of 2012 dated 03.01.2014 on the file of the Subordinate Judge, Sankarankovil and set aside the same and allow this civil revision petition.

For Petitioner	: Mr.M.Rajarajan
For R1	: No Appearance
For R2	: Mr.M.P.Senthil
For R3 & R4	: Mr.Aayiram K.Selvakumar Addl. Govt. Pleader

ORDER

The revision petitioner (in short "Panchayath") is the 3rd defendant in O.S.No.128 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Sivagiri, Tirunelveli District and in the

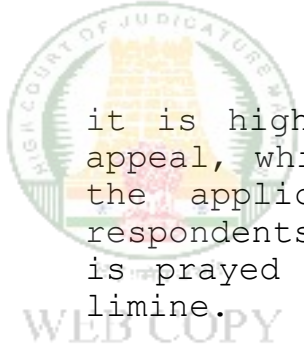


suit, the plaintiffs / R1 & R2 herein (representing Arulmigu Veera Sakkadevi Pommathal Thirukovil) sought for possession after removal of compound wall and permanent injunction, restraining the 3rd respondent herein from mutating the revenue records, etc. Subsequently, the suit was partly decreed in favour of the plaintiffs on 28.02.2012, thereby declaring that the 1st schedule property belongs to plaintiff Temple, with direction to the 3rd respondent herein to give possession to the Temple after removal of the compound wall. Against the said order, the revision petitioner herein had preferred an appeal in A.S.No.38 of 2012 for setting aside the same, during pendency of which, the revision petitioner took out an application in I.A.No.5 of 2012 in A.S.No.38 of 2012 for transposing the respondents 3 and 4 as the appellants 2 and 3 in the appeal and the said application was dismissed by the Trial Court on the ground that no strong case has been made out to transpose the respondents 3 & 4 as appellants. Aggrieved by such dismissal, challenging the same, the petitioner / Appellant is before this Court.

2. It is the case of the revision petitioner that the 3rd respondent herein is in-charge of the entire District administration and the 4th respondent is subordinate to the 3rd respondent. Though the Panchayath is a separate body, it is one of the local bodies and it has to function in consultation with the District Administration and both have to work for the welfare of public by adhering to the directions of the Government. Therefore, the respondents 3 and 4 have to be transposed as appellants in the appeal, as the Panchayath does not claim any relief from them and the respondents 3 and 4 would also support the case of the appellant to declare that the "Peedam" is situated in front of the 1st respondent's Temple. It is the further case of the Panchayath that the respondents 3 and 4 have not preferred any appeal against the judgment of the Trial Court and therefore, no prejudice would be caused to the respondents 1 and 2 in transposing the respondents 3 and 4 as appellants in the appeal.

3. It is submitted by the petitioner-Panchayath that the respondents 3 and 4 and the Panchayath have been sailing in the same boat and litigating under the same grounds. Moreover, the suit schedule properties belonged to the Government and except the temple portion, other areas are being used by the Panchayath on obtaining prior permission from the Government and as such, the respondents 3 and 4 were inadvertently added as the opposite parties instead of showing them as the appellants.

4. Learned counsel for the respondents 1 and 2 has contended that the suit was filed by them against the Panchayath and the respondents 3 and 4 herein and in the suit, the Panchayath was represented by an Advocate and the learned Government Pleader was engaged for representing the respondents 3 and 4. Before the Trial Court, both the Panchayath and the respondents 3 and 4 have filed separate written statements in support of their pleas and as such,



it is highly improbable in transposing them as appellants in the appeal, which is contrary to the principles of law. Contending that the application has been filed only at the instance of the respondents 3 and 4, as they have not filed the appeal in time, it is prayed that the present petition is liable to be dismissed in limine.

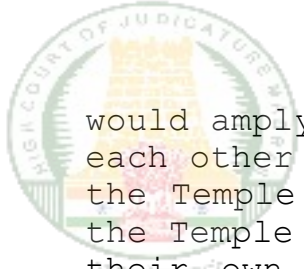
5. Heard the learned counsel for the petitioner, learned counsel for R2 and the learned Additional Government Pleader appearing for R3 & R4. There is no representation on behalf of R1 and this Court perused the material documents available on record.

6. The Panchayath has invoked the provisions of Order XXIII Rule 1(A) for transposition of parties, viz., the respondents 3 and 4 as appellants in the appeal, on the ground that they have no rival claim with each other and the said application was disallowed by the Trial Court for lack of reasons. It is not in dispute that the subject property is a natham property, belonging to the Government and the Panchayath, being subordinate to the Government, got permission from them and raised a compound wall for the bus stand, which was ordered to be demolished so as to give rights to the Temple for ingress and egress. It is the claim of the respondents 1 and 2 that in order to surmount the legal consequences of non filing of appeal against the judgment and decree of the Trial Court in the suit, the appellant filed the application with the above prayer.

7. The Trial Court has held that the ingredients of Order XXIII Rule 1A CPC were not satisfied by the Panchayath to prove the necessity of construing the respondents 3 and 4 as appellants in the appeal. This Court feels it appropriate to have a glance at Order XXIII Rule 2 (A) CPC, while reproducing it, for the sake of brevity, which reads as under:

"R.1A. When transposition of defendants as plaintiffs may be permitted - Where a suit is withdrawn or abandoned by a plaintiff under rule 1 and a defendant applies to be transposed as a plaintiff under rule 10 of Order 1, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants."

8. If the present case is analyzed in consonance with the above provision, it could be seen that the petitioner has narrated innumerable reasons to substantiate its argument for transposition of the respondents 3 and 4 as the appellants in the appeal, namely, a) the respondents 3 and 4 have not preferred any appeal till now as against the judgment and decree in the suit; b) the Panchayath is subordinate to the respondents 3 and 4 and c) the Panchayath has no claim whatsoever against the respondents 3 and 4. Though it was contended by the learned counsel for the 2nd respondent that separate written statements have been filed by the Panchayath and the respondents 3 and 4 before the Trial Court, a perusal of the same



would amply prove the fact that they have not made any claim against each other and they stood on the same line in resisting the claim of the Temple alone. Moreover, they were shown as party respondents by the Temple and since the Panchayath and the respondents 3 and 4 have their own Advocates in all Courts, they had to necessarily file separate written statements, which cannot be faulted with. Since the Government only permitted the Panchayath to use the natham property for construction of a water tank as well as compound wall, because the respondents 3 and 4 were shown as party respondents by the appellant along with the plaintiff, it cannot be said that they will support the case of the plaintiff/Temple. Therefore, finding much force in the contention raised by the learned counsel for the Panchayath and to meet out the ends of justice, this Court is of the view that the order of the Trial Court is liable to be set aside.

9. In the result,

a) this Civil Revision Petition is allowed and the order dated 03.01.2014 passed in I.A.No.5 of 2012 in A.S.No.38 of 2012 by the learned Subordinate Judge, Sankarankovil, is hereby set aside;

b) the learned Subordinate Judge, Sankarankovil is directed to transpose the respondents 3 and 4 as appellants 2 and 3 in the First Appeal and dispose of the appeal within a period of three months from the date of such transposition, without giving any unnecessary adjournment to either parties and the parties shall also cooperate for early disposal of the suit within the stipulated period prescribed above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True copy/

Sub Assistant Registrar(CS-IV)

To:

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

+1cc to Mr.M.P.Senthil, Advocate, SR.No.72777.

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