



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.02.2018

Delivered on : 21.03.2018

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (NPD) (MD) No.1664 of 2011

Senguttuvan

... Revision Petitioner/Plaintiff

Vs.

1. Arulmighu Mariyamman Kovil, Samayapuram,
Rep. by its Executive Officer,
Samayapuram Post,
Manachanallur Taluk,
Trichy District.

2. Paramasivam

... Respondents/Defendants

PRAYER: Petition filed under Section 227 of the Constitution of India, to set aside the order dated 31.08.2010 in O.S.No.135 of 2003 on the file of Additional District Munsif Court, Lalgudi.

For Petitioner	: Mrs.J.Maria Roseline
For R1	: Mr.K.Govindarajan
For R2	: Mrs.J.Anandhavalli

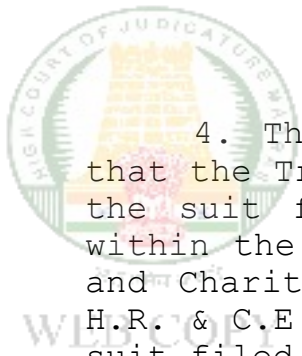
O R D E R

This Civil Revision Petition has been filed to set aside the order dated 31.08.2010 in O.S.No.135 of 2003 on the file of the Additional District Munsif Court, Lalgudi.

2. The brief facts of the case are as follows:

The Revision Petitioner, as plaintiff, has filed the suit in O.S. No.135 of 2003 against the respondents herein for the relief of permanent injunction restraining the first respondent from disbursing payment for the Oozhiyam performed by the revision petitioner to the 2nd respondent or anybody else and to pay the said oozhiyam only to the revision petitioner.

3. The learned counsel for the petitioner submitted that the trial court, on an erroneous appreciation of legal position, has rejected the suit for want of jurisdiction. The Trial Court has wrongly directed to strike off the suit from the suit register also.



4. The learned counsel for the petitioner would mainly argue that the Trial Court ought to have seen that the plaintiff had filed the suit for enforcing his rights and therefore his case is not within the ambit of Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (herein after referred to as H.R. & C.E ACT). Further, the Trial Court had erred in rejecting the suit filed by the plaintiff on the ground that relief claimed by the plaintiff is covered under section 63(e) of the H.R. & C.E ACT and therefore hit by Section 108 of the H.R. & C.E ACT.

5. According to the petitioner/plaintiff, he along with the three more family are performing Oozhiyam in Samayapuram Mariamman Temple for generations and the plaintiff is deriving his right from his grandfather namely, Pitchai and hence, four families are entitled for Oozhiyam by way of Mudi Kanikkai and other dedications given for the deity during festival time and it will be shared among the four family members.

6. It is the argument of the petitioner that the said Oozhiyam was given to the families directly by the defendants and earlier there was no agent between them for disbursing the said Oozhiyam and now the second defendant, who claims himself as an agent, is trying to obtain the said oozhiyam from the first defendant and the same is not disbursed to them in spite of all efforts. Hence, the plaintiff has filed the suit for injunction.

7. The first defendant being the Temple stated that already a suit filed in O.S. 360 of 1962 was preferred before the Principal District Munsif, Tiruchirappallai and the said suit was dismissed since the civil court has no jurisdiction. The service of the plaintiff is also denied by the first defendant by stating that they never did any service to the temple. The second defendant has also claimed himself as the President of their Sangam in the year 2004 and one Jeganathan as the President in the year 2005 and further, the distribution of Oozhiyam to the plaintiff and other three families as claimed by the petitioner is totally denied by the second defendant.

8. The learned counsel appearing for the first respondent submitted that the trial court has rightly rejected the suit and further struck off the same from the suit register. He would rely on the judgment reported in **AIR 1976 Madras 289** (In **R. Shanmughavelu Pillai Vs. V.R. Karuppannan Ambalam**), wherein it has been observed that rejection of plaint on whatever ground is a 'decree' within the meaning of Section 2(2) C.P.C and against the decree, Revision is not maintainable.

9. The learned counsel for the first respondent would further rely on the judgment reported in **AIR (39) Madras 86** (In **Paruchuru Thirumala Satyanarayanacharyulu and another Vs. Vannanava Ramaingam and others**) also to substantiate his argument that after rejection of plaint, the revision will not lie.



10. The learned counsel for the second respondent would submit that the trial court has rightly rejected the plaint by stating that there is bar under Section 108 of the H.R. & C.E Act. In support of his submission, he would rely on the judgment passed in **S.A.No.417 of 1981 (In Mayalagu Ambalam and others Vs.KR.PR.Karuppiiah Ambalam (died) and others)**.

11. Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned counsel appearing for the second respondent. This Court has perused the materials available on record.

12.The learned counsel for the petitioner would rely on the judgment reported in **1999 (II) CTC 635 (In V.S. Lakshminarayanan Iyengar and 8 others)**. In the considered opinion of this Court, the same is not applicable to the present case.

13. In the instant case, the issue involved in this petition is with regard to the right of the plaintiff who is rendering service to the Samayapuram Temple for generation and receiving the Oozhiyam from the first defendant Temple and now the said Oozhiyam is distributed to them only through the second defendant/agent. Further, the case of the petitioner is that contradictory to the earlier practise, now the Oozhiyam is distributed to him and the other three families only through the second defendant/agent. Whether this agent is empowered by the first defendant to distribute the said Oozhiyam is not clarified and further that issue is one to be dealt under the specific provision. Section 63(e) of the H.R & C.E Act, deals with the power of the Joint Commissioner or the Deputy Commissioner. As per the said Section, the Joint Commissioner/Deputy Commissioner shall have power to inquire into and decide whether any person is entitled, by custom or otherwise to any honour, emolument or perquisite in any religious institutions and what the established usage of a religious institutions is in regard to any other matter.

14. The issue in this Civil Revision Petition is involved in the right of a person, who claims himself as performing service in the Temple and getting Oozhiyam in the temple, which is dealt with under Section 108 of the HRCE Act and therefore, the trial court has stated that it has no jurisdiction.

15. The trial court has also observed that the issue is with regard to sharing of Oozhiyam directly from the first defendant and not through the second defendant, who claims himself as the President of the Sangam and hence, it has to be tried by the Commissioner of Hindu Religious Charitable Endowment and there is also bar to deal with such an issue. The trial court has also framed an additional issue along with the issues already framed and thereafter, the suit is directed to be struck off from the register.



16. On perusing the judgment of the trial court, I find no error or infirmity.

17. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1.The Additional District Munsif,
Lalgudi.

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

+ 1 CC TO Mr.K.GOVINDARAJAN, ADVOCATE IN SR No. 56817
+ 1 CC TO M/s.J.MARIA ROSELINE, ADVOCATE IN SR No. 56830
+ 1 CC TO M/s.J.ANANDHAVALLI, ADVOCATE IN SR No. 56954

CM
TE/KKR/SAR-4 : 06/04/2018 : 4P/7C

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21.03.2018