

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 04th DAY OF JANUARY 2019

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

A.Nos.5840 and 5841 of 2018

in

C.S. No.1014 of 2008

1. S.Jadav Chand Kanuga,
S/o.Sohanrajji Kanuga,
residing at 58, V.V.Koil Street,
Choolai, Chennai-600 112.
2. Ratan Chand Chhallani,
S/o.C.Tara Chand Chhallani,
residing at 41, Mookathal St.,
Purasaiwalkam, Chennai-600 007.
3. G.Ashok Chand Dakalia,
S/o.Late H.Gyanchand Dakalia,
residing at 27, Subba Naidu St.,
Choolai, Chennai-600 112.
4. K.Tarachand Golecha,
S/o.Kishan Chandji Golecha,
residing at No. 116, Choolai High Road,
Choolai, Chennai-600 112.
5. Suresh Chand Jhabak S/o.Tarachand Jhabak,
residing at No.92, Veperiy High Road,
Shantisagar Apartment,
Veperiy, Chennai-600 007.

*6. J.Harak Chand Golecha,
S/o. Late B.Jamnalal Golecha,
98, Choolai High Road,
Chennai 600 112.

*7. T.Shantilal Golecha,
Vasupujya Apartments,
A Block Flat No.5
51, Hunters Road,
Chennai 600 112.

.. Plaintiffs

* Plaintiffs 6 and 7 impleaded as per order of Court in A.No.457/2011 dated 24.02.2011 and time extended as per order dt. 03.03.2011.

-Versus-

1. Sri Chandraprabha Jain Swetambar Temple,
through its Managing body Sri Choolai
Bazaar Jain Sangh @ Shri Choolai Jain Sangh
@ Shri Choolai Moortipujak Jain Sangh
@ Sri Sangh Choolai Bazaar situated at
No.38, Venkatachala Mudali Street,
Choolai, Chennai-600 112,
and its working committee consisting of:

a) Rajendra Kumar Kochar,
S/o.Ratan Chandji Kochar,
residing at Old No.46, New No.30,
Venkatachala Mudali St.,
Choolai, Chennai-600 112.

b) Hemchand Vaid,
S/o.Heerachandji Vaid,
residing at No.16/57, Baker Street,
Choolai, Chennai-600 112.

c) Tarachand Kochar,
S/o.Mishrilalji Kochar,
residing at 34/3, (New No.27),
Vathiyar Kandan Street,
Choolai, Chennai-600 112.

- d) Punamchand Dakalia,
S/o.Hemrajji Dakalia,
residing at No.47,
Narasinga Perumal Koil Street,
Choolai, Chennai-600 112.
- e) Lalchand Lunavat alias Milapchand Lunavat,
S/o.Gulabchandji Lunawat,
No.6, Vathiyar Kandan Street,
Choolai, Chennai-600 112.
- f) Sunilkumar Sancheti,
S/o.Ganmalji Sancheti,
residing at 126/2, Choolai High Road,
Choolai, Chennai-600 112.
- g) Heeralal Golecha,
S/o.Manaklalji Golecha,
residing at 54/70, Maddox Street,
Choolai, Chennai-600 112.
- h) Heerachand Nimani,
S/o.Jeevanchandji Nimani,
residing at No.13, Anantha Krishnan Street,
I Floor, Choolai, Chennai-600 112.
- i) Rajendrakumar Kanuga,
S/o.Jalamchandji Kanuga,
residing at No.93, V.V.Koil Street,
Choolai, Chennai-600 112.
- 2. Sri.Prakash Chand Golecha,
S/o.Ranulalji Golecha,
residing at No.4, Subba Naidu Street,
Choolai, Chennai-600 112. ... Defendants

A.Nos.5840 and 5841 of 2018:

J.Harak Chand Golecha,
S/o. Late B.Jamnalal Golecha,
98, Choolai High Road
Chennai 600 112.

... Applicant

Vs.

1. Sri Chandraprabha Jain Swetambar Temple,
through its Managing Body
Sri Choolai Bazaar Jain Sangh @ Shri Choolai Jain Sangh,
@ Shri Chollai Moortipujak Jain Sangh
@ Sri Sangh Choolai Bazaar situated at
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and its working committee consisting of:

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- 2. Sri.Prakash Chand Golecha,
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- 3. S.Jadav Chand Kanuga,
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- 4. Ratan Chand Chhallani,
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7. Suresh Chand Jhabak
S/o.Tarachand Jhabak,
residing at No.92, Vepery High Road,
Shantisagar Apartment,
Vepery, Chennai-600 007.
8. T.Shantilal Golecha,
Vasupujya Apartments,
A Block Flat No.5
51, Huuters Road,
Vepery, Chennai 600 112.

...Respondents

A.No.5840 of 2018:

Application praying that this Hon'ble Court be pleased to allow this application, and permit the applicant to mark photocopies of the documents (a) A copy of the letter dated 08.10.2007 sent to the Auditor M/s Kumbhat & Co, (b) A Copy of the complaint dated 08.09.2006 lodged with the Commissioner of Police, Chennai and (c) A Copy of the proceedings of Tahsildar under Sec.145 of Cr.P.C as exhibits.

A.No.5841 of 2018:

Application praying that this Hon'ble Court be pleased to allow
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this application, and permit the applicant to mark photocopies of the documents (a) A copy of the letter dated 08.10.2007 sent to the

Auditor M/s Kumbhat & Co, (b) A Copy of the complaint dated 08.09.2006 lodged with the Commissioner of Police, Chennai and (c) A Copy of the proceedings of Tahsildar under Sec.145 of Cr.P.C as exhibits.

The prayer sought for in the A.No.5840 of 2018 is seeking permission of this Court to mark the photo copies of some documents mentioned in the list of documents filed along with this application.

2. The prayer sought for in the A.No.5841 of 2018 is seeking for permission to the applicant to file the additional documents which are shown in the list of documents filed along with the application.

3. I have heard, Mr.R.Parthasarathy, learned counsel appearing for the applicant and Mr.P. Sunil, for Mr.T.Viswanatha Rao, learned counsel appearing for the respondents.

4. Insofar as the A.No.5840 of 2018 is concerned, the applicant seeks for filing and marking of all the three documents which are photocopies (Xerox copies). Therefore, this application has

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been vehemently opposed by the respondents by filing a common counter

affidavit and also such opposition come from the learned counsel, who made submissions that, these photocopies cannot be marked.

5. I have gone through the said photocopies of the three documents sought to be marked. One document dated 08.09.2006 claimed to be the complaint lodged by the applicant's side to the Police Commissioner and another document dated 08.10.2007 is the letter sent to the Auditor one M/s.Kumbhat and Company and acknowledgement card and the third one is the copy of the proceedings of Tahsildar concerned under Section 145 of Criminal Procedure Code.

6. After having perused photocopies of all the three documents mentioned above filed along with these applications, this Court feels that, those documents may establish a case that there had been some dispute between the two groups, one is the applicant's group and another is the respondents group and that is the reason why even the matter has been referred to the Executive Magistrate under Section 145 of Cr.P.C. , where, these two groups i.e., A Party and B

Party in the same proceedings have been there with the Executive
Magistrate.

7. Therefore, with the strength of these documents, the plaint averments made in the suit by the plaintiff cannot be substantiated and in fact these documents no way would be connected to the alleged mismanagement on the part of the respondents/defendants. Moreover, even though the applicant is the party to documents No.1 & 2, it is claimed by them that the copies of the documents are not available with them, and they came out with the Xerox copy of the documents. Therefore, considering all these aspects, this Court is of the view that, these three documents which are sought to be filed by the applicant in these applications may not be necessitated for substantiating the suit claim. Therefore, apart from the objection made by the respondents side, this Court is of the view that, this application can be rejected.

8. Accordingly, this application in A.No.5840 of 2018 is rejected.

9. Insofar as the A.No.5841 of 2018 is concerned, the

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applicant seeks for permission of this Court, to file two additional

documents which are mentioned in the list of documents. One of the document dated 31.07.1997, is document pertaining to a decision taken by the first respondent/temple Committee dated 31.07.2003 and this document, according to the applicant become necessitated to substantiate the allegation that, without the authorisation of the Managing Committee of the first respondent/Temple, the property of the temple has been sold.

10. Along with the said document, the photocopies of the certified copy of the sale deed also filed i.e., Document No.1446 of 1997.

11. In respect of all these documents, it is opposed by the learned counsel appearing for the respondents that at the time of sale of the property covered under the said sale deed, the present committee were not in the realm of affair, therefore, those documents are also totally irrelevant to the issue raised in this suit.

12. However, the learned counsel appearing for the

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applicant would submit that, if at all the persons, who are in the

realm of affairs as of now or at the time of the filing the suit, are no way connected with the said alleged sale, it is for them to defend the same, therefore, on that score, the chance of the plaintiff to substantiate their case by filing these documents cannot be closed at the threshold.

13.This court finds some force in the argument advanced by the learned counsel for the applicant.

14. The second document is the representation dated 23.07.2003 and communication dated 31.07.2003. These documents are pertaining to the sale of one of the property belonging to the 1st respondent temple/trust and whether the said sale was taken place only for the benefit and welfare of the trust can be decided by this Court after adducing evidence. If at all, the respondents having the defence to state that since they were not in the realm of affairs to manage the 1st respondent/Temple during the relevant point of time such defence can always be taken by them, which would be considered by this Court at appropriate time. However, based on that reason, the very filing of the said documents, thus cannot be rejected and

therefore, in that view of the matter , this Court inclined to accept this application.

15. Accordingly, this application in A.No.5841 of 2018 is allowed.

Sd/- R.S.K.J.
04.01.2019

//Certified to be a true copy//
Dated this the day of 2019.

GM 23.05.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.