

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD).No.2945 of 2019

and

C.M.P.No.19019 of 2019

P.Murugaiyan

... Petitioner

Vs.

1.P.K.Vadivel

2.P.Sampathkumar

3.V.Poorna Ramchandran

4.P.Jagadeesan

... Respondents/
Proposed Defendants

5.Kamalam

6.P.G.Selvi

7.G.Senthivel

8.G.Thamaraikannan

9.The Executive Officer,
Arulmigu Muthu Vinayagar and Kamatachi Amman Tiru Kovil,
Punjai Puliampatti.

10.The Joint Commissioner,
The Hindu Religious and Charitable Endowment,
Coimbatore.

11.P.Meenakshi Sundaram

12.P.Krishnasamy

13.P.Jeganathan

... Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 06.06.2019 made in I.A.No.1 of 2019 in O.S.No.193 of 2016 on the file of the learned Subordinate Judge, Sathyamangalam.

For Petitioner : Mr.T.S.Vijaya Raghavan
For Respondents : Mr.N.Manokaran for R1 to R4

ORDER

This revision petition has been filed against the fair and decreetal order made in I.A.No.1 of 2019 in O.S.No.193 of 2016, on the file of the learned Subordinate Judge, Sathyamangalam, by order dated 06.06.2019.

2. Before the Trial Court, the revision petitioner had filed the suit in O.S.No.193 of 2016, for declaration to declare the plaintiff as a Hereditary Trustee belongs to Pullikarar Sect to hold the post of Pullikarar as one of the Hereditary Trustee.

3. In the said suit, the other eligible legal heirs of the Pullikarar Sect, who can also be considered to be inducted, as claimed by the plaintiff, had been arrayed as party defendants in the suit.

4. The defendants, in order to contest the suit, filed a

written statement and they prayed for dismissal of the suit. At this juncture, the present I.A.No.1 of 2019 filed by the third party applicants, they are respondents 1 to 4 herein, to implead them as party defendants in the suit.

5. Their claim before the Trial Court in support of the said application was that, they also belong to the very same community i.e., Mudaliar Community of that locality, from among the community, apart from the third Hereditary Trustee already declared by the HR&CE (Hindu Religious and Charitable Endowment) Department, two more Trustees have to be elected and inducted. Moreover, since they belong to the same community of that locality, they have interest over the temple which is going to be administered by the Hereditary Trustee and other two trustees constituting a Trust Board.

6. Therefore, in that capacity, since the petitioners therein are having interest over the temple, they made present application to implead themselves as defendants in the suit. The said application has been allowed by the learned Judge through the impugned order dated 06.06.2019. Felt aggrieved, the revision petitioner/plaintiff has filed the present revision petition.

7. Heard Mr.T.S.Vijaya Raghavan, learned counsel appearing on behalf of the petitioner, who has taken this Court to the proceedings issued by the Deputy Commissioner of HR&CE Department, Coimbatore vide order dated 12.04.1995 in O.A.No.25/95/B1, wherein, the following order has been passed:

"1.Perindhana G.Murugesan
2.Pullikkarar P.Ganeshan
3.Nattamai Ponniah Mudaliar ...Petitioners
.....

In the matter of Arulmigu Muthuvinayagar and Kamashiamman temples, Kamatchiamman Road, Punjai Puliampatty, Sathyamangalam Taluk, Periyar District.

This is an application under Section 63(b) of the Tamil Nadu H.R.&C.E. Act 1959 as amended by Act 46/1991.

The above application having come on for final hearing before me on 25.03.1996 in the presence of Thiru M.A.Palanisamy, Advocate for the petitioners and after hearing the arguments and after having perused the connected records, the Deputy Commissioner passed the following :

Order

The petition be and is hereby allowed. The office of

trusteeship of Arulmigu Muthuvinayagar and Kamashiamman temples in Punjai Puliampatty, Sathyamangalam Taluk, Periyar District is declared to be hereditary. The petitioners are to hold office as such.

*Sd.Pon.Selvaraj
Deputy Commissioner"*

By relying upon these communications, the learned counsel would submit that the three Hereditary Trustees have been declared so. In the said Trust, out of the three, one will be as Periyadhanam G.Murugesan, Second man would be Pullikarar P.Ganesan and third will be as Nattamai Ponnaiya Mudaliyar

8. The learned counsel appearing on behalf of the petitioner has further invited the attention of this Court in the order passed by the Deputy Commission, HR&CE Department in the said O.A on the same date as annexeure to the said order, where, he has relied upon the following passage:

"Through him Exs.A1 to A3 marked. Ex.A1 is the Xerox copy of the registered Trust Deed dt.08.02.1946 executed by one Sri Marappa Mudaliar in favour of Sri Ponnusamy Mudaliar, S/o Periyadhanam Marappa Mudaliar (1) Nattamai Ponnusamy Mudaliar, S/o Pulikara Marappa Mudaliar (2) Nattamai Nanjappa Mudaliar S/o. Donniah Mudaliar (3) the above three

trustees were to elect from the community”

9. Therefore, the learned counsel would submit that, apart from the third Hereditary Trustee, two more have to be inducted from among the eligible community people of this locality like the present proposed parties and all together totally five trustees in the Trust Board, who can administer the temple.

10. He would further submit that while that being the position, the second Hereditary Trustee that is Pullikarar one P.Ganeshan, who was declared so by proceedings dated 12.04.1995, referring to above, died on 15.10.2002. Therefore, in order to inherit the trusteeship from among the legal heirs of the said Pullikarar P.Ganeshan, the petitioner being one of the brother of the said P.Ganeshan approached the HR&CE Department by filing a petition under Section 54(1) of the HR&CE Act. However, the said petition has been returned by the HR&CE Department on the ground that, unless the petitioner, who seeks legal heirship to inherit Hereditary Trusteeship of the Pullikarar P.Ganeshan, provide NOC obtained from other legal heirs and unless and until it is proved that he is the proper legal heir, such kind of registration under Section 54(1) of HR&CE Act cannot be made. Therefore, on that ground, the said application filed by the petitioner before HR&CE

Department was returned.

11. Therefore, having no other option, the petitioner filed the present suit against all the legal heirs of the late Pullikarar P.Ganeshan, who have been arrayed as defendants in the suit and sought for declaration to declare him as one of the Hereditary Trustee namely Pullikarar Sect.

12. The learned counsel would also submit that, while that being so, the triable issue before the Trial Court was among the legal heirs of both the plaintiffs and defendants in the suit who is the eligible person to be inducted as Hereditary Pullikarar Ship, which is to be decided by the Trial Court and this is the only triable issue and in this context the plaint filed by the plaintiff has been suitably denied by the defendants by filing a written statement and in the said triable issue in the plaint nowhere the proposed parties who have now been inducted as party defendants through the impugned order, are referred to.

13. He would further submit that, though the said decision has been accepted by the learned Judge in the impugned order, still the learned Judge has allowed the application of the third party to implead them as party defendants through impugned order.

Therefore, aggrieved over the same, the present revision has been filed.

14. Per contra, the learned counsel appearing for the respondents 1 to 4, who are the main contesting respondents in this Civil Revision Petition, as they are the petitioners before the Trial Court, submits that, the petition has been allowed through the impugned order by stating that, the temple is a common temple for community people viz., Mudaliar Community in that locality and in order to administer the temple, a Trust Board was constituted, where, three people would be inducted as Hereditary Trustees as per the proceedings issued by the HR&CE Department. The remaining two Trustees to be inducted by way of election among the other eligible community persons of that locality and in these circumstances, the petitioners are eligible persons to be considered for induction into the trusteeship, as additional two trustees and that apart, these petitioners are also having interest over the smooth administration of the temple and also these respondents are entitled to pay their contribution to administer the temple and in this regard, if any maladministration is noticed, it can be brought to the notice of the authorities concerned to prevent it and for all these reasons, these respondents fairly believing that plaintiffs are not the

proper persons to be considered for induction as it is the Hereditary Trusteeship for the Pullikarar Sect. Therefore, if the issue raised in the suit is decided between the plaintiff and the original defendants without giving a chance to the interested persons like the respondents 1 to 4 herein, the real issue could not be decided by the Trial Court. Therefore, in order to have a complete and effective adjudication of the issue in the suit it become absolute necessity to implead these respondents as party defendants and accordingly, the learned Judge after having considered these aspects allowed the application. Hence, it does not require any interference.

15. I have considered the rival submissions made by the both the learned counsel appearing for the parties and perused the materials placed before this Court.

16. There is no dispute that the temple in question has already been declared by the HR&CE Department as a Hereditary temple. Therefore, the trusteeship is Hereditary in nature and from proceedings dated 12.04.1995 of the HR&CE Department, three people have already been identified and recognized and in fact declared as Hereditary Trustees. Pullikkarar P.Ganeshan is one

among the three, therefore, if the said P.Ganeshan died, naturally in his place some one from his family or as a legal heir can be brought in. In this context it is case of the revision petitioner/plaintiff that, he is the brother of the said P.Ganeshan and not only himself other brothers are also there. Apart from that, the widow and child of the late P.Ganeshan, all were impleaded as defendants already in the suit, they are also contesting the suit.

17. Therefore, if at all the issue raised by the plaintiff in the suit is to be decided, it can very well be decided after considering the merits and demerits of each of the legal heir of the late P.Ganeshan Pullikkarar that is, the plaintiff and the defendants. Apart from these people, there is no other legal heirs for Pullikkarar P.Ganeshan.

18. More over, as far as the General Administration of the temple concerned as to who has to come as Hereditary Trustee cannot be decided beyond the legal heirs or family members of the Hereditary Trustee already declared by the department and in this context, if at all, any one to be chosen to be declared as Pullikkarar in the place of late P.Ganeshan, such selection must be made only from among the legal heirs of the P.Ganeshan and if there is no

legal heirs readily available to take the management then only they should go to the other relatives or interested members from that community. Herein the case in hand, admittedly legal heirs are available for the Pullikkarar P.Ganeshan and as per the scheme of the trusteeship to administer the temple the Pullikkararship, which has been made vacant by virtue of the death of the P.Ganeshan is to be necessarily filled up only from among the legal heirs or family members of the said Geneshan and in order to decide such issue, in fact, which is the only issue to be tried before the Trial Court, no third parties can be considered to be necessary parties in the suit.

19. In fact, this position has been accepted by the learned Judge at page 27 of the impugned order, where the learned judge has stated the following:

“ இந்த மனுதாரர்கள் அசல் வழக்கில் கட்சி
சேர்க்காவிட்டால், முழுமையான தீர்வு ஏற்படாது என்ற
நிலை இல்லை. ஆனாலும் இந்த மனுதாரர்கள் அசல்
வழக்கின் தீர்ப்பால் பாதிப்படையக் கூடும் என்ற நிலை
உள்ளதால் இந்த மனுதாரர்கள் இந்த வழக்கிற்கு
தேவையான தரப்பினராக உள்ளார்கள். ”

20. When the Trial Court has come to the conclusion that even if the proposed parties are not impleaded as party defendants in the suit, it is not the situation, where the issue raised in the suit

cannot be completely adjudicated and decided.

21. When that being so, as the major criteria to invoke the provisions under Order 1 Rule 10 of CPC to implead the parties as party defendants/plaintiffs in the suit is missing in the present case, which has been infact found out and admitted by the learned Judge, still the learned judge has gone to the extent of allowing the petition by impleading the respondents 1 to 4 as party defendants in the suit, which, in the considered opinion of this Court is not in accordance with Order 1 Rule 10 of CPC. In that view of the matter this Court is of the considered opinion that the order impugned is liable to be set aside and accordingly the same is set aside.

22. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

26.09.2019

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Index:Yes/No
Internet:Yes/No
Speaking/Non Speaking order

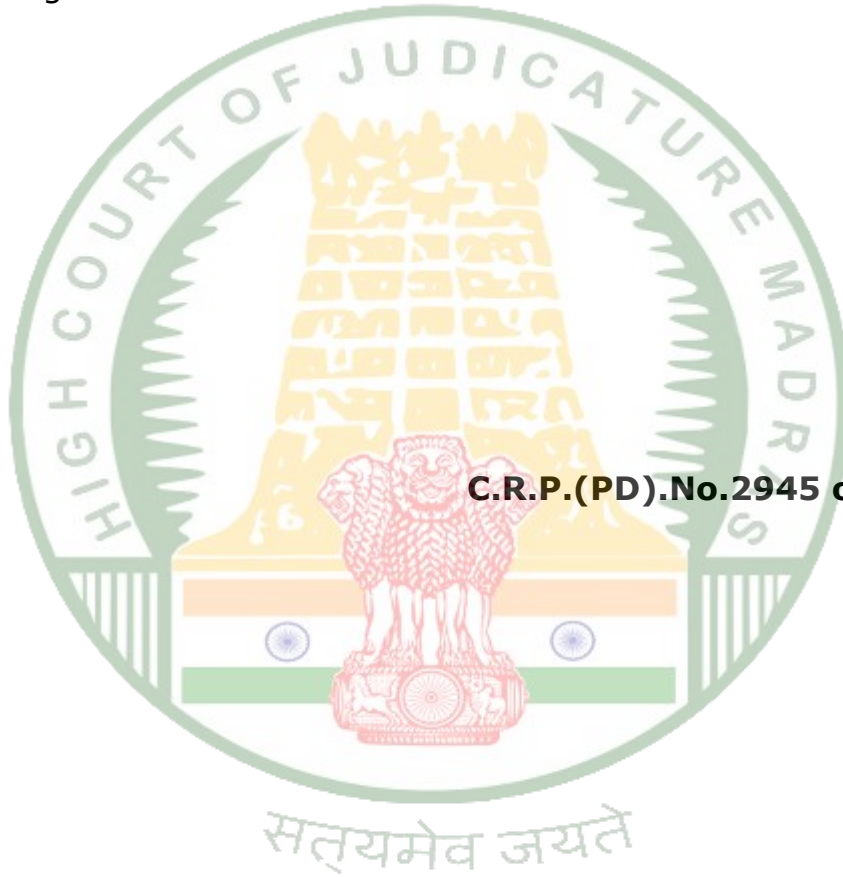
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R.SURESH KUMAR,J.

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To
The Subordinate Judge,
Sathyamangalam.



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