

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1996 of 2017
and CMP No.18568 of 2019
and CMP No.10740 of 2017

A.T.K. Manivannan

... Appellants

-vs-

1. P. Jayapal
2. C. Annamalai
3. S.P. Jagannathan
4. T. Kasimani Nadar

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code against the fair and decreetal order made in I.A.No.70 of 2015 in O.S.No.145 of 2004 dated 02.06.2017 on the file of III Additional District Court, Salem.

For Appellants : Mr.T.T. Ravichandran

For R.1 & R.2 : Mr.J. Prithivi

For R.3 : Not ready in notice

For R.4 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the impugned fair and decreetal order passed in I.A.No. 70 of 2015 in O.S.No.145 of 2004 dated 02.06.2017 by the learned III Additional District Judge, Salem, in and by which, the appellant/Mr.A.T.K. Manivannan, who was appointed as Receiver of "Salem Nadar Sangam", has come to this Court, citing a reason that the trial Court ought not to have entertained the application, filed by third parties, for removal of his appointment as Receiver of Salem Nadar Sangam. Moreover, there are no provisions for removal of Receiver once appointed for the purposes of conducting election and administering the properties of the Sangam. Further, the trial Court ought not to have entertained the application, since the Salem Nadar Sangam is a Society registered under the provisions of the Tamil Nadu

Societies Registration Act of 1975 and any enquiry into the affairs of the Society can be made only before the Registrar of Societies.

2. While so, an affidavit has been filed by the third parties, which is fully bereft of material particulars and there is no allegation of any mis-management or embezzlement of properties of the said Sangam and the Receiver is bound to perform acts for the benefit of the Society.

3. The learned counsel for the appellant would submit that F.I.R has been registered against the third party before the Kondalampatty Police Station in Cr.No.339 of 2003 and there is specific allegation that they have been trying to usurb the property belonging to the Sangam. While so, the trial Court ought to have considered the locus-standi of the respondents before moving an application for removal of the appellant from the Honorary Post of Receiver.

4. Referring to Order 40 Rules 1 and 4 of Civil Procedure Code, it is further submitted by the learned counsel for the appellant that there is no provision in the Code of Civil Procedure Code for removal of the existing Trustee and there are only provisions for enforcement of duties on the part of the Receiver as envisaged under Rule 4 of the said Code.

5. In view of the above proviso, it is pleaded, when the appellant has rightly filed a reply seeking time to file a Report mentioning the action taken by him, without granting sufficient time, an Order has been passed appointing one Mr.Sundaresan as Receiver with further direction to the appellant to hand over the charges. Such approach by the trial Court against the appellant who has been appointed as Honorary Receiver is unjust and unfair.

6. This Court finds no merit in the submissions made by the learned counsel for the appellant. When the appellant was appointed as Receiver to take care of the affairs of the Salem Nadar Sangam, as per the Order, he has been assigned with certain duties viz., to prepare the list of the members of the Sangam to form Trust, take possession of all the properties both movable and immovable, take inventory and conduct election, select office bearers as per Law, manage all properties, keep accounts, register the Sangam under Societies Registration Act and submit accounts to this Court once in six months till the disposal of the suit.

7. This Court could see from the reasons given in the impugned decreetal order that for about ten long years, the appellant, who was appointed as Receiver has forgotten his

obligation to submit the accounts to the Court once in six months. Moreover, he has not made any progress in preparation of the Voters List in all these ten long years. Therefore, the trial court, realising the mistake by appointing a wrong person as Receiver, has recalled the Order and one Mr.Sundaresan has been appointed, by replacing the appellant with a direction to the Appellant to hand over the charges when the Courts are having power to appoint Receiver or Advocate Commissioner the same Court has got equal power to recall their appointments, if it is satisfied that any such appointment is wrong. The aggrieved Receiver or Advocate Commissioner cannot question the recall order.

8. Therefore, this Court finds no merits in the appeal and the Civil Miscellaneous Appeal is dismissed with cost of Rs.10,000/- (Rupees ten thousand only) payable to Salem Nadar Sangam. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

sr

To

III Additional District Court, Salem.

Copy to: The Salem Nadar Sangam, Salem(21/11/2019)

+1cc to Mr.A.K.Kumarasamy, Advocate SR.74525

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C.M.A.No.1996 of 2017

RK(CO)

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