



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2019

CORAM

THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

C.R.P. [MD] No. 248 of 2019 (PD)
and C.M.P. (MD) No. 1152 of 2019

1. Umathanu Pillai
2. Veera Lekshmanan : Petitioners / Petitioners

-Vs-

1. M. Balasubramonian
2. M. Narayana Pillai
3. N. Maharajan : Respondents / Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, to direct the learned District and Sessions Judge, Nagercoil, to take on file and number it the returned order dated 30.01.2019 in unnumbered T.O.P. No.--of 2019, on the file of the learned District and Sessions Judge, Nagercoil.

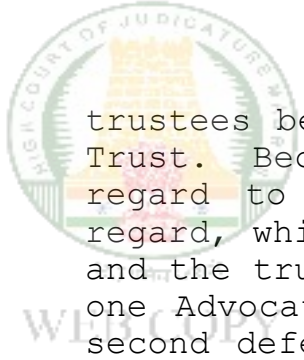
For Petitioner : Mr. S. Shanmugavel

ORDER

This Civil Revision Petition has been filed to direct the learned District and Sessions Judge, Nagercoil, to take on file and number it the returned order, dated 30.01.2019, in unnumbered T.O.P. No.--of 2019, on the file of the learned District and Sessions Judge, Nagercoil.

2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. The Transfer Original Petition was filed by these petitioners, before the learned District and Sessions Judge, Nagercoil and these petitioners are the beneficiaries of Arulmigu Chidambara Vinayagar Trust, situated at Kalliancaud, Aloor Village, Kalkulam Taluk, Kanyakumari District. The trust was created by one Chidambaram Elaya Nainar, three centuries back and endowed extensive lands in and around Nagercoil in favour of the Trust and the Trust has also owns a temple by name Chidambara Vinayagar Temple and the Trust has to maintain the temple and to carry out certain religious and public activities as ordained by the founder. A scheme was framed in the year 1964 for the proper management of the Trust, by the Subordinate Court and it was subsequently modified in the year 1972 and as per scheme, three



trustees being the family members of the founder has to manage the Trust. Because of split among the beneficiaries, dispute arose with regard to the management and litigations were launched in this regard, which resulted appointment of Receiver in O.S. No.68 of 1986 and the trust was under the control of this Court. Nearly 22 years, one Advocate Arumugam Pillai was receiver until his death and the second defendant who got party receivership, by stating that there is no beneficiaries alive by filing I.A. No.195 of 2009 and E.A.No. 17 of 2010 and in these two petitions the respondent column is filed as "NIL". Petition filed by other beneficiaries, the second respondent was removed and then this standing Advocate one Easwara Pillai was appointed as Receiver eventhough his name is not found in the receiver panel in E.A. No.584 of 2010. In the subsequent averments, the petitioners have stated that Easwara Pillai was also removed by henchman from receivership and the first respondent was appointed as receiver in the very same I.A. No.189 of 2011. The second respondent acted separately formed a group consists of about 8 persons which resulted the other beneficiaries to pass a resolution on 10.04.2012, prohibiting him and his men to file any petition, any where including Courts, without the knowledge of other beneficiaries. The first respondent giving trouble to the Management of the Trust and he filed E.A. No.401 of 2012, I.A. No.458 of 2012 for removal of first respondent from receivership against resolution, not complying Order 1, Rule 8 of the Civil Procedure Code provisions, not getting permission from the Court for filing any petition against the receiver and without the knowledge of the other beneficiaries and all are dismissed.

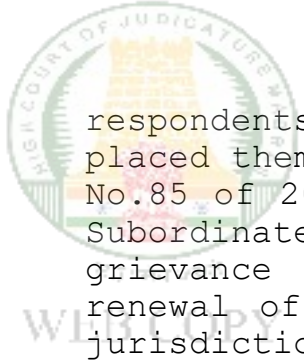
4. The contention of the petitioners that, now the Subordinate Court, Eraniel is functioning. The jurisdiction of the Principal Subordinate Court lost its territorial jurisdiction from 04.08.2018, the date of opening of the Eraniel Subordinate Court. But, this scheme decree in O.S. No.82 of 1184 M.E was not sent to renewal of Subordinate Court. But the first and second respondents have been now filed petitions before the Principal Subordinate Court, Nagercoil against the directions of this Court and Subordinate Court orders, without the knowledge of the beneficiaries, this petition I.A. No.85 of 2018 in O.S. No.82 of 1124 was filed by the second and third respondents. Hence, the petitioners have filed the present Civil Revision Petition to transfer the scheme decree in O.S. No.82 of 1124 M.E, on the file of the subordinate Court, Nagercoil.

5. To prove their contention, the learned counsel for the petitioners relied upon the following Judgments :-

1. **2009 (5) C.T.C. 550, R.Manickam and another Vs. The Sengunthar Charitable Trust represented by its Secretary and others.**
2. **2017(11) Supreme Court Cases 852, Vasanthi and others /Vs/ N.Ramani Kanthammal (Dead) represented by legal representatives and others.**

<https://hcservices.ecourts.gov.in/hcservices/>

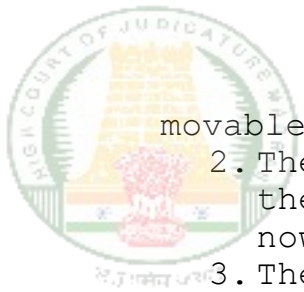
6. The case of the petitioners herein that I.A No.85 of 2018 in O.S. No.82 f 1124 M.E filed by the second and third



respondents for the beneficiaries. Now, the petitioners herein placed themselves as beneficiaries claiming for the transfer of I.A. No.85 of 2018 in O.S. No.82 of 1124 M.E from the file of Principal Subordinate Court, Nagercoil to the Subordinate Court, Eraniel. The grievance of the petitioners that after the constitutional of renewal of Subordinate Court, Eraniel, the cases relating to that jurisdiction were transferred to the Subordinate Court, Eraniel and the Subordinate Court, Nagercoil is also transferred to all the cases which falls under the jurisdiction of renewal of Subordinate Court, Eraniel, whereas this petition is alone is kept pending before the Subordinate Court, Nagercoil. As per the directions of the High Court, this case has to be transferred to renewal of Subordinate Court, Eraniel along with other cases relating to that jurisdiction. Hence, the petitioners grievance is that he is one of the beneficiaries and this I.A. No.85 of 2018 in O.S. No.82 of 1124 M.E has to be transferred to the Subordinate Court, Eraniel. It is contended by the petitioners is that the said I.A. No.85 of 2018 in O.S. No.82 of 1124 M.E filed by the beneficiaries and he, themselves also claims as beneficiary, seeking transfer of I.A. No.85 of 2018 in O.S. No.82 of 1124 M.E. But, no have been stated by the petitioners herein that what is their capacity in the O.S. No.68 of 1986 and what is the status in I.A. No.85 of 2018. The petitioners stated that they are also the beneficiaries under the scheme decree.

7. On perusal of the records in I.A. No.85 of 2018 in O.S. No.82 of 1124 M.E filed by the petitioners to remove the receiver of Arulmigu Chidambara Vinayagar Temple Trust and the said petitioners are the plaintiffs in O.S. No.3 of 2013 and the said petition also contained the details of passing of the scheme decree and further appointment of the receivers on various period and also pendency of E.A.No.189 of 2010. It is also contended in the said petition that the Advocate/receiver legally leased out the property and the petitioners in I.A. No.85 of 2018 in O.S. No.82 of 1124 M.E, on the file of the II Additional Subordinate Court, Nagercoil, obtained an interim injunction restraining the respondents from putting up any construction. Hence, the said petition was filed for the removal of the Advocate/receiver from the receivership of Arulmigu Chidambara Vinayagar Temple. In the said petition, the respondent/receiver has filed a counter statement and he also listed the entire facts regarding the activities of the receiver and also the management of the Trust and also the facts relating to the E.A. No.85 of 2018 for conducting Kumbabishekam for the temple. The said respondent has also contended that there are also criminal proceedings are pending against the petitioners. Hence, the Trial Court has also perused the entire documents and heard the contentions raised by both the sides and came to the conclusion that the Court is empowered to protect the Trust and to safeguard its properties. Further, the Court has found that the receiver has not acting in accordance with the scheme decree. Hence, with a view to protect the properties available in the Trust and the same has to be ascertained and recorded the Trial Court has passed an order with some directions:

- " 1. The receiver is directed to furnish the register of



movable and immovable properties of the trust.

2. The receiver is directed to furnish the particulars of the properties already sold and the remaining properties now available with the trust.

3. The receiver is directed to furnish the list of properties leased out to various persons by him and his predecessors with full particulars of lease and the name of the lessee with copies of the lease deeds.

4. The receiver is directed to furnish the Audit report from a qualified auditor from 21.10.2011 to till date regarding the income and expenditure and also assets and liabilities."

8. Now, the petitioners who claims themselves and henchmen has sought for transfer of the said I.A. No.85 of 2018 in O.S. No.82 of 1124 M.E to the Subordinate Court, Eraniel. They have not stated anything about their capacity and what way they are interested in the said proceedings. In view of the same, number of proceedings are pending before the Subordinate Court, Nagercoil. .

9. Based on the returned endorsement dated 30.01.2019. The returned endorsement states that

"as per the averments stated in paragraph No.2 in Page No.4 had already been framed in the year 1964. Then how the Transfer Original Petition is maintainable at this stage is to be stated. Hence returned".

10. Regarding the endorsement, the petitioners have not given any explanation by way of complying the return and the clarification sought for by the Court. Even, before this Court, the petitioners have not stated anything what way they are seeking relief in the petition and when they have complied the returned petition and where they have stated that the entire case relating to Eraniel jurisdiction has to be transferred. Hence, the Civil Revision Petition is liable to be dismissed.

11. In view of the above consideration, the Civil Revision Petition is dismissed with cost of Rs.2,000/-. The petitioner is directed to pay a sum of Rs.2,000/-to the credit of Chief Justice Relief fund, within a period of two weeks, from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS II)

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TO:

THE DISTRICT AND SESSIONS JUDGE,
NAGERCOIL KANYAKUMARI DISTRICT.

WEB COPY

COPY TO:

THE SECTION OFFICER,
ACCOUNTS SECTION,
MADURIA BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC to Mr.S.SHANMUGAVEL , Advocate SR.No. 51126.

C.R.P. [MD] No. 248 of 2019

28.02.2019

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