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C.M.A. (MD) Nos. 53 and 54 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.08.2019

DELIVERED ON : 26.11.2019

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.M.A. (MD) Nos. 53 and 54 of 2017

and

C.R.P. (MD) Nos. 2591 and 2592 of 2016

and

C.M.P. (MD) Nos. 5879, 5880, 7324, 7325, 7577 and 7580 of 2019

C.M.A. (MD) Nos. 53 and 54 of 2017 :

Sri Shanmuga Seva Sangam Nattar Trust,  
Through its Secretary,  
Door No.84/1, Adivaram,  
North Giri Veedhi,  
Palani,  
Dindigul District.

.. Appellant/Petitioner/Appellant in both C.M.As.

Vs.

Sadhu Dharmanadha Saraswathi,  
Swamigal Trust Adivaram,  
Giri Veedhi, Palani,  
Through its Secretary G.Venkatachalapathi,  
S/o. Govindarajan,  
D.No.141/89, West Sambantham Veedhi,  
R.S.Puram,  
Coimbatore.

.. Respondent/Respondent/Respondent in both

C.M.As.

**COMMON PRAYER :** Civil Miscellaneous Appeals are filed under Order 43 Rule 1(C) of Civil Procedure Code, to set aside the fair and decretal order dated 09.11.2016 made in I.A.Nos.166 and 168 of 2016 in C.M.A.No.24 and 23 of 2013 on the file of the learned Principal District Judge, Dindigul.

For Appellant (in both C.M.As.) : Mr.C.Arul Vadivel @ Sekar  
For Respondent (in both C.M.As.) : Mr.D.Venkatesh



C.R.P. (MD) (PD) Nos. 2591 and 2592 of 2016 :

Sri Shanmuga Seva Sangam Nattar Trust,  
Through its Secretary,  
Door No.84/1, Adivaram,  
North Giri Veedhi,  
Palani. .. Appellant/Petitioner/Appellant in both C.R.Ps.

Vs.

1.Sadhu Dharmanadha Saraswathi,  
Swamigal Trust Adivaram,  
Giri Veedhi, Palani,  
Through its Secretary G.Venkatachalapathi,  
S/o. Govindarajan,  
D.No.141/89, West Sambantham Veedhi,  
R.S.Puram,  
Coimbatore.

2.R.M.Chinnasamy

3.The Superintendent of Police,  
Dindigul.

4.The Inspector of Police,  
Town Police Station,  
Palani.

.. Respondent/Respondent/Respondent in both C.R.Ps.

(R2 is impleaded as a party of respondent; vide Court order dated 09.07.2018 made

in C.M.P. (MD) Nos. 1170 and 1171 of 2017 in C.R.P. (MD) (PD) Nos. 2591 and 2592 of 2016.

R3 and R4 are impleaded as parties of respondent; vide Court order dated 09.07.2018 made in C.M.P. (MD) No. 146 of 2017 in C.R.P. (MD) (PD) Nos. 2591 and 2592 of 2016).

**COMMON PRAYER :** Civil Revision Petitions are filed under Article 227 of the Constitution of India, to call for the order dated 09.11.2016 passed in I.A.Nos.166 and 168 of 2016 in C.M.A.Nos.24 and 23 of 2013 on the file of the learned Principal District Judge, Dindigul and to set aside the same.

For Appellant

(in both C.R.Ps.): Mr.N.Vallinayagam, Senior Counsel  
For Mr.V.R.Shanmuganathan

For 1<sup>st</sup> Respondent

(in both C.R.Ps.): Mr.D.Venkatesh



For 2<sup>nd</sup> Respondent  
(in both C.R.Ps.)

: Mr.C.Arul Vadivel @ Sekar

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**COMMON JUDGMENT**

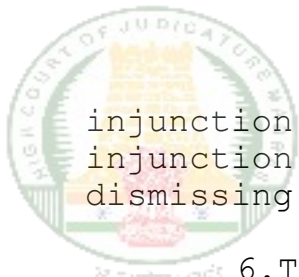
Heard the learned counsel on both the sides.

2.The Civil Miscellaneous appeals C.M.A.(MD)Nos.53 and 54 of 2017 are filed against the order passed in I.A.Nos.166 and 168 of 2016 in C.M.A.No.24 and 23 of 2013 dated 09.11.2016 on the file of the learned Principal District Judge, Dindigul. One Chinnasamy represented Sri Shanmuga Seva Sangam Nattar Trust in all this proceedings. C.M.P.(MD)Nos.5879 and 5880 of 2019 were filed to substitute one Solaimalai as the Secretary of Sri Shanmuga Seva Sangam Nattar Trust in the place of Chinnasamy as appellant in C.M.A.(MD)Nos.53 and 54 of 2017. C.M.P.(MD)Nos.7324 and 7325 of 2019 are filed to implead Chinnasamy as the second respondent in C.M.P.(MD)Nos.5879 and 5880 of 2019. C.M.P.(MD)Nos.7577 and 7580 of 2019 were filed to amend the short cause title in C.M.P.(MD)Nos.5879 and 5880 of 2019 impleading the Trust (defendant in O.S.No.310 of 2013) as the first respondent.

3.The Civil Revision Petitions in C.R.P.(MD)Nos.2591 and 2592 of 2016 are filed by Solaimalai against the order passed in I.A.Nos.166 and 168 of 2016 in C.M.A.Nos.24 and 23 of 2013 dated 09.11.2016 on the file of the learned Principal District Judge, Dindigul.

4.It is seen from the records that a Sangam was started by Sadhu Dharmanandha Saraswathi Swamigal and a property measuring 1.17 acres in Survey No.84/1 was assigned by the Government and that Sadhu Dharmanandha Saraswathi Swamigal dedicated the property to the Sangam, which was registered on 09.08.1963 as Register No.56/1963 and the Sangam constructed building after getting prior approval. After the demise of Sadhu Dharmanandha Saraswathi Swamigal, the subsequent office bearers of the Sangam continued the activities and created a Trust in the name 'Sri Shanmuga Seva Nattar Trust' under a registered Trust Deed No.5/1981 dated 19.02.1981.

5.The respondent, Sadu Dharmanandha Saraswathy Swamigal Trust filed a suit in O.S.No.310 of 2013 before the Sub Court, Palani for a relief of injunction and the appellant herein was the defendant in the suit and one Chinnasamy defend the suit on behalf of the appellant Trust. In that suit, the respondent, Sadhu Dharmanadha Saraswathi Swamigal Trust filed an interlocutory application in I.A.No.464 of 2013 for injunction and a temporary injunction order was granted on 10.10.2013. The appellant herein represented by Chinnasamy, filed an application in I.A.No.477 of 2013 to vacate the



injunction order. On 29.10.2013, the learned Sub Judge made the injunction absolute by allowing the I.A.No.464 of 2013 and by dismissing the I.A.No.477 of 2013.

6. Then the appellant herein represented by Chinnasamy, filed two miscellaneous appeals in C.M.A.Nos.23 and 24 of 2013 before the learned District Judge, Dindigul and got an interim stay order. The respondent, Sadhu Dharmanandha Saraswathy Swamigal Trust, filed petitions in C.M.P.Nos.2 and 3 of 2014 to transfer the cases in C.M.A.Nos.23 and 24 of 2013 to the District Court, Coimbatore or to the District Court, Karur. The aforesaid petitions were dismissed. One Verra subbiah filed an application in I.A.No.236 of 2014 in C.M.A.No.23 of 2013 to implead himself as the President of Sri Shanmuga Seva Sangam and subsequently he withdraw the petition. Veera Subbiah also filed an application in I.A.No.691 of 2014 in O.S.No.310 of 2013 to implead him as the second defendant and the petition is pending, before the Sub Court, Palani.

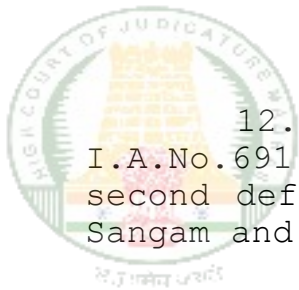
7. Since C.M.A.Nos.23 and 24 of 2013 were dismissed for default, the said Chinnasamy filed I.A.Nos.166 and 168 of 2016 to restore the C.M.A.Nos.23 and 24 of 2013 and both the petitions were dismissed. Against which, C.M.A. (MD) Nos.53 and 54 of 2017 were filed by Chinnasamy.

8. One Solaimalai represented himself as the Secretary has filed two petitions in C.M.P.(MD) No.5879 and 5880 of 2019 to substitute himself as the appellant in C.M.A. (MD) Nos.53 and 54 of 2017 and he filed an amendment petitions in C.M.P.(MD) Nos.7577 and 7580 of 2019 to amend the cause title, describing the Sri Shanmuga Seva Sangam Nattar Trust as the first respondent.

9. The appellant herein represented by Chinnasamy in C.M.A. (MD) Nos.53 and 54 of 2017 was not added as a party in C.M.P. (MD) Nos.5879 and 5880 of 2019 and he filed petitions in C.M.P. (MD) Nos.7324 and 7325 of 2019 to implead him as the second respondent in C.M.P. (MD) Nos.5879 and 5880 of 2019.

10. The said Solaimalai filed C.R.P. (MD) Nos.2591 and 2592 of 2016 against the order passed in I.A.Nos.166 of 2016 and 168 of 2016 claiming himself as the Secretary of the Sri Shanmuga Seva Sangam Nattar Trust.

11. On the side of the petitioner in C.M.P. (MD) Nos.5879 and 5880 of 2019, it is stated that the said Solaimalai is the Secretary of the Sri Shanmuga Seva Sangam Nattar Trust and the said Chinnnsamy, the ex-Secretary was removed from the post of Secretaryship and his name is to be substituted in the place of Chinnasamy.



12. It is seen that one Veera Subbiah has filed a petition in I.A.No.691 of 2014 in O.S.No.310 of 2013 to implead himself as the second defendant as the President of the Secretary of Sri Shanmuga Sangam and the petition is pending.

13. On the side of the appellant/Chinnasamy, it is stated that the said Solaimalai, who was the former member of the Sangam was removed from the primary membership in the general body meeting held on 15.09.2015 and that the said Veera Subbiah was removed from the membership of the Sangam in the general body meeting held on 17.08.2014 and his removal from the membership from the Sangam was duly informed to the District Registrar, Palani in Form - VII.

14. On side of the appellant/Chinnasamy, it is stated that the alleged new Sri Shanmuga Seva Sanga Nattar Trust was registered only on 29.09.2014, whereas the suit was filed on 10.10.2013 and that the appellant herein represented by the said Chinnasamy was contesting the case and that I.A.Nos.166 and 168 of 2016 were filed by the appellant herein represented by the said Chinnasamy on 12.08.2016 and that the said Veera Subbiah did not file any restoration petition to restore the C.M.A.Nos.23 and 24 of 2013 and that the said Veera Subbiah filed an impleading petition in I.A.No.236 of 2014 in C.M.A.No.23 of 2013, later withdraw the same and the said Solaimalai also did not file any restoration petition to restore C.M.A.Nos.23 and 24 of 2013.

15. On the side of the appellant/Chinnasamy, it is stated that the revision petitioner in the capacity of the Secretary of the Sri Shanmuga Seva Sangam Nattar Trust Sangam Trust filed another suit in O.S.No.147 of 2016 on 29.04.2016 before the District Munsif Court and the same was dismissed and an appeal was filed against the judgment and decree before the Sub Court, Palani. Veera Subbiah, who is no way connected to the suit, had filed copies of the judgment and decree by obtaining the same from the revision petitioner, Solaimalai and that itself show that there is collusion between Veera Subbiah and Solaimalai and that since Veera Subbiah and Solaimalai are colluding parties and since the appellant herein represented by Chinnasamy is all along contesting the suit, substituting Solaimalai in the place of the appellant herein represented by Chinnasamy will be against the interest of the original Sangam.

16. On the side of the appellant/Chinnasamy, it is stated that the appellant herein represented by Chinnasamy filed vakalath, written statement, affidavit and petition in the capacity of Secretary of 'Sri Shanmuga Seva Sangam' and that 'Sri Shanmuga Seva Sanga Nattar Trust', is no way connected with 'Sri Shanmuga Seva Sangam' and that at the time of registration of 'Sri Shanmuga Seva Sanga Nattar Trust' on 29.09.2014, it is specifically noted that the Trust does not have any movable or immovable properties. That itself



shows that the present Trust and the Trustee have no connection with the suit properties. The said Solaimalai with some malafide intention is seeking to substitute himself in the place of the appellant and he has failed to implead the appellant herein represented by Chinnasamy who is contesting the suit in O.S.No.310 of 2013 all along.

17.It is seen that all along the suit in O.S.No.310 of 2013 was contested by the appellant herein represented by Chinnasamy and it is seen that the original Sangam was splited into two and a new Sangam was created. It is seen that since the revenue records are in the name of Shanmuga Seva Sangam Nattar Trust, a new Sangam was subsequently created to overcome the discrepancy in the name of the original Sangam. The earlier Sangam represented by Chinnasamy, is contesting the case so far and it is seen that the new Sangam represented by Solaimalai, wants to substitute itself in the place of the earlier Sangam. C.M.A.(MD)Nos.53 and 54 of 2017 are filed only by the appellant herein represented by Chinnasamy and it is seen that the appellant represented by Chinnasamy is a necessary party to the original suit.

18.Regarding C.M.P.(MD)Nos.5879 and 5880 of 2019, when all along the said Chinnasamy was contesting the case, substituting the said Solaimalai in the place of Chinnasamy will affect the interest of Sri Shanmuga Seva Sangam Nattar Trust and hence, the said Solaimalai can be impleaded as a party to the original suit as one of the defendants and he cannot substitute Chinnasamy in the suit or in the civil miscellaneous appeals.

19.Hence, C.M.P.(MD)Nos.5879 and 5880 of 2019 are dismissed with liberty to the said Solaimalai to file impleading petition in the original suit. Since C.M.P.(MD)Nos.5879 and 5880 of 2019 are dismissed, the petitions in C.M.P.(MD)Nos.7324 and 7325 of 2019 to implead Chinnasamy as a respondent in C.M.P.(MD)Nos.5879 and 5880 of 2019 are dismissed as infructuous and connected C.M.P.(MD)Nos.7577 and 7580 of 2019 are dismissed.

20.C.M.A.(MD)Nos.53 and 54 of 2017 and C.R.P.(MD)Nos.2591 and 2592 of 2016 are filed against the dismissal of the restoration petitions in I.A.Nos.166 and 168 of 2014 to restore C.M.A.Nos.23 and 24 of 2014 on the file of the District Court, Dindigul.

21.C.M.A.Nos.23 and 24 of 2014 were filed against the injunction order in I.A.No.464 of 2013 and against the dismissal of the petition in I.A.No.477 of 2013 to vacate the injunction order passed by the Sub Court, Palani. Both the orders were passed in interim petitions. Deciding the C.M.A.Nos.23 and 24 of 2014 will not be helpful to decide the dispute.



22. In the above circumstances, deciding the civil miscellaneous appeals and civil revision petitions will cause further delay in the suit proceedings. Hence, it is decided that Civil Miscellaneous Appeals and Civil Revision Petitions are to be disposed of with a direction to the lower Court to dispose of the original suit within a period of four months from the date of receipt of copy of this order.

23. With the above direction, C.M.A. (MD) Nos. 53 and 54 of 2017 and C.R.P. (MD) Nos. 2591 and 2592 of 2016 are dismissed. Consequently connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (CS)

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/ /2020

Sub Assistant Registrar (CS)

Mrn

To

1. The Principal District Judge, Dindigul.
2. The Sub Judge, Palani.

COPY TO

The V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 COPIES)

+2 CC to M/s. C. ARUL VADIVEL@SEKAR, Advocate SR-101678 & 101675

+1 CC to M/s. D. VENKATESH, Advocate SR-101705

+1 CC TO MR. V. R. SHANMUGANATHAN, Advocate Sr. No. 101438

C.M.A. (MD) Nos. 53 and 54 of 2017  
and  
C.R.P. (MD) Nos. 2591 and 2592 of 2016  
**26.11.2019**

NS (CO)

TR (23.01.2020) 7P 9C