

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.4459 of 2013

and

M.P.No.1 of 2013

PL.Govardhan

.. Petitioner

Vs.

Arulmigu Mallikeswarar Devasthanam,
Represented by its
Executive Officer,
Having office at Linghi Chetty Street,
Chennai – 600 001.

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the order dated 21.08.2013 passed in I.A.No.10503 of 2011 in O.S.No.877 of 2007 on the file of the XVII Assistant City Civil Court, Chennai.

For Petitioner : Mr.L.Prabakar
for Mr.S.Kothandaraman

For Respondent : Mr.V.Gugan
for Mr.S.D.Ramalingam

ORDER

The matter is heard through Video Conferencing.

2. This Civil Revision Petition is filed to set aside the order dated 21.08.2013 passed in I.A.No.10503 of 2011 in O.S.No.877 of 2007 on the file of the XVII Assistant City Civil Court, Chennai.

3. The petitioner is the first defendant in O.S.No.877 of 2007. The respondent filed the suit for recovery and other relief. The petitioner filed written statement on 28.05.2007. The petitioner in July 2011 filed I.A.No.10503 of 2011 to reject the plaint under Order VII Rule 11 C.P.C., as suit is not maintainable. The respondent filed counter and opposed the same. The learned Judge, by the order dated 21.08.2013, dismissed the said petition.

4. Against the said order of dismissal dated 21.08.2013 made in I.A.No.10503 of 2011 in O.S.No.877 of 2007, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel appearing for the petitioner contended that the suit property was leased out to petitioner's father and petitioner's father was permitted to carry out the repairs on the assurance that he will not be evicted. The petitioner's father has spent considerable amount in repairing the property. The lease amount was Rs.38/- and enhancement of Rs.7,985/- cannot be enforced as a valid contract. In the suit, the petitioner filed written statement and took a stand that suit itself is not maintainable. The respondent filed I.A. to receive the additional documents. In the affidavit filed in the said petition, the respondent has stated that Executive Officer was appointed as a fit person to look after the office of the Temple. The said averment was not made in the plaint. While amending the plaint, the said averment cannot be taken and suit filed by the Executive Officer is not maintainable. The respondent filed the petition stating that Executive Officer was appointed as a fit person only to get over the maintainability of the suit. The learned Judge failed to consider the Judgment of the Division Bench of this Court reported in *2003 (I) Law Weekly 386, [Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy Vs. T.M.Muthuswamy Padayachi, etc. & others]*, wherein it has been held that Executive Officer is not

competent person to file the suit on behalf of the Temple. The case of the petitioner is not that suit is barred by any law but Executive Officer is not the competent person to file the suit. The learned Judge erred in holding that said suit can be cured at any time. The Executive Officer has no right or power to take legal proceedings unless it is specifically pleaded in the pleading that Executive Officer is authorised to file the suit and hence the suit is not maintainable. When there is no pleading, the respondent cannot produce the document to substantiate his contention and prayed for allowing the Interlocutory, reject the plaint and allow the Civil Revision Petition.

6. Per contra, the learned counsel appearing for the respondent contended that the Executive Officer can maintain the suit on behalf of the Temple when the Commissioner granted such power to the Executive Officer in the Appointment Order. In the present case, there are no trustees and Commissioner, in the Appointment Order made it clear that Executive Officer is the person to sue and to be sued. The respondent has filed additional document which would clearly show that Executive Officer has power to institute the suit. When the petitioner has not made out any case for rejection of plaint, he has not made out any ingredients under Order VII Rule 11 C.P.C.

The order of the learned Judge is valid and prayed for dismissal of the Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

8. The defendant in the suit filed the present Civil Revision Petition challenging the order of dismissal of the I.A.No.10503 of 2011 filed by him to reject the plaint. The rejection of plaint is dealt in Order VII Rule 11 of C.P.C. Six grounds are mentioned in Order VII Rule 11 of C.P.C. and if the defendant satisfies any one of the conditions, the plaint has to be rejected. In the present case, the petitioner has not sought for rejection of plaint on any one of the grounds mentioned in Order VII Rule 11 of C.P.C. On the other hand, the petitioner is seeking rejection of plaint on the ground that suit filed by the Executive Officer is not maintainable. The Executive Officer is defined under Section 6 (9) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The Commissioner of the Tamil Nadu Hindu Religious and Charitable Department has power to appoint the Executive

Officer as per Section 45 of the Act. The Commissioner has power to assign the duties and power to be exercised by the Executive Officer in respect of administration of properties of Religious Institutions. Whether Commissioner authorised Executive Officer to sue and be sued in relation to properties of Religious Institutions can be decided only by appreciating the powers and duties assigned to the Executive Officer in the Appointment Order issued by the Commissioner of the Tamil Nadu Hindu Religious and Charitable Department.

9. From the records, it is seen that the petitioner has filed the application for rejection of plaint only when the Executive Officer filed application for permission to file additional document including his Appointment Order. The petitioner contends that the said Appointment Order was ante-dated and issued subsequent to filing of the suit. This contention as well as the contention of the petitioner that suit is not maintainable as Executing Officer has no power to file the suit cannot be decided in the application for rejection of plaint. These contentions can be decided only by appreciating the evidence let in by the parties in in the trial.

10. The petitioner has not sought for rejection of plaint under any one of the conditions mentioned in Order VII Rule 11 of C.P.C. and therefore the order of dismissal of Interlocutory Application does not suffer any infirmity warranting interference by this Court.

11. In the result, the present Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

23.09.2020

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Index : Yes / No
Internet : Yes / No

To

The XVII Assistant Judge,
City Civil Court,
Chennai.

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V.M.VELUMANI, J.

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