

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 12-11-2019

Judgment pronounced on : 06-01-2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

O.S.A. No. 262 of 2019
and
CMP No. 22590 of 2019

D. Manoj Gulecha ... Appellant

Versus

1. Sri Chandraprabha Jain Swetambar Temple
through its Managing body Sri Choolai Bazaar Jain Sangh
@ Shri Choolai Jain Sangh, @ Shri Choolai Moortipujam
Jain Sangh @ Sri Sangh Choolai Bazaar
situated at No.38, Venkatachala Mudali Street
Choolai, Chennai - 600 112
and its working Committee consisting of

- a) Rajendra Kumar Kochar
- b) Hemchand Vaid
- c) Tarachand Kochar (died)
- d) Punamchand Dakalia
- e) Lalchand Lunavat (since expired)
- f) Sunilkumar Sancheti
- g) Heeralal Golecha
- h) Heerachand Nimani
- i) Rajendrakumar Kanuga

2. Sri Prakash Chand Golecha
3. J. Jadav Chand Kanuga
4. Ratan Chand Chhallani
5. G. Ashok Chand Dakalia
6. K. Tarachand Golecha
7. Suresh Chand Jhabak
8. Harak Chand Golecha
9. T. Shanthilal Golecha

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of
Original Side Rules r/w Clause 15 of the Letters against the
Order dated 18.02.2019 passed in Application No.1244 of 2019 in
C.S. No. 1014 of 2008 on the file of this Court.

For appellants : Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. M. Vikram V. Jain

For Respondents : Mr. P. Sunil
for Mr. T. Viswanatha Rao for R1

Mr. Satish Parasaran, Senior Advocate
for Mr. R. Parthasarathy for R8

No appearance for RR2 to 7 & 9

COMMON JUDGMENT

R. SUBBIAH, J

The respondents 3 to 9 herein, as plaintiffs, have filed the suit in C.S. No. 1014 of 2018 praying this Court to pass a Judgment and Decree framing a Scheme for the management and administration of the first defendant temple, which is a public trust and to appoint a Board of Trustees for the first defendant temple and consequently directing the defendants to hand over the charge of the affairs of the first defendant temple to the Board of Trustees constituted by this Court.

2. According to the plaintiffs, they are staunch devotees and regular worshippers at the first defendant temple and are known as Moorti Pujaks (Idol worshippers). The first defendant temple is one of the most ardent Jain temples of Chennai City and had been consecrated in the year 1896 AD. For administration of the first defendant temple, the fourth plaintiff was nominated as one of the members of a high level committee constituted to finalise the draft trust deed since the management and administration of the temple was in chaos and there were none who could take responsibility for the administration of the first defendant temple. Therefore, on 07.04.1985, the General Body of the temple unanimously resolved and passed a resolution to have a written trust deed for efficient management of the temple and its properties as per the statutory laws in force. In the resolution, it was also resolved to appoint Sri. Pannalalji Vaid and Sri. Lalchandji Lunawat, both members of the Sangh, to form an ad hoc committee comprising of experienced members of the Sangh to proceed with the preparation of trust deed. Subsequently, on 02.10.1989, a meeting of the Board of Trustees was convened in which office bearers of the Trust were unanimously elected.

3. It is further stated in the plaint that on 03.01.1993, the second defendant/second respondent herein has convened a meeting and declared himself as Potedar. This was protested and opposed by the Trust Board. Again, on 28.03.1993, a general body meeting of the Sangh was convened, which was presided by one Mr. Hansrajji Lunia, one of the Senior Most Members of the general body, but the said meeting witnessed

utter chaos at the instance of the second defendant/second respondent herein. Due to such acts of protest made by the second defendant/second respondent herein, many members of the Sangh stopped attending the general body meetings and also did not participate in the management of the temple affairs. Taking advantage of this situation, on 27.02.2000 the second defendant/second respondent herein convened a meeting in which the second respondent and one Sri Bhikam Chandji Vaid were elected as Potedars. However, even after the election of the second respondent as Potedar and inspite of convening several meetings, a written trust deed could not be drafted. This led to gross mismanagement and misappropriation of funds of the trust by the second defendant/second respondent, who abused and misused his position to misappropriate the funds of the trust. The accounts of the trust could not be audited as it was prevented by the second defendant/second respondent. According to the plaintiffs, the temple in question is a public trust dedicated for the worship by the Jain community. In order to streamline the administration of the temple and to effectively manage the income of the temple, it is necessary to frame a scheme degree without which the administration and management of the temple could not be regulated. It is in those circumstances, the plaintiffs have filed the suit.

4. Pending suit, the defendants 1 and 2 have filed an application in Application No. 1244 of 2014 praying to implead the appellant herein as proposed party to the suit. According to the applicants/defendants, the suit filed by the plaintiffs for framing a scheme decree is with an intention to take control of the temple and its properties. It is further submitted that the appellant, who is sought to be impleaded as one of the parties to the suit, is representing a section of the Jain Community and the appellant has proposed to convene a meeting of devotees cum purported members of the Choolai Jain Sangh on 17.02.2019 with an agenda to elect fresh management committee to administer the suit temple and its properties in the place of the present committee. Therefore, according to the defendants 1 and 2, in the interest of justice and to prevent untoward incidents in the administration of temple, the appellant is a proper and necessary party to the suit.

5. When the application for impleading the appellant as a party to the suit was taken up for hearing before the learned single Judge on 18.02.2019, it was contended by the plaintiffs that the appellant herein is not a proper and necessary party to the suit especially when the suit itself was filed for framing a scheme degree for proper and effective administration of the temple in question. It was also brought to the notice of the learned single Judge that the appellant, without any authority of law, has convened a meeting on 17.02.2019 where a team of people had been selected for administering the temple. The learned single Judge, accepting the contentions of the plaintiffs and finding that the suit itself has been filed for framing a scheme decree, declared the so-called meeting dated

17.02.2019 convened at the behest of the appellant as illegal and unlawful. The learned single Judge also dismissed the application filed by the defendants for impleading the appellant as one of the parties to the suit by concluding that the appellant is not a proper and necessary party to be impleaded.

6. Assailing the order dated 18.02.2019 of the learned single Judge dismissing the application for impleading the appellant, Mr. Ar.L. Sundaresan, learned Senior counsel for the appellant submitted that the appellant is a proper and necessary party to the suit, however, the learned single Judge dismissed the application and also declared the meeting conducted by the appellant on 17.02.2019 as null and void. According to the learned Senior counsel, the learned single Judge observed that there shall be no further election or general body meeting to elect or select the administering committee of the temple other than the present working committee with nine members representing the first defendant temple. Such an observation is erroneous inasmuch as the term of the said committee had expired long back. Presently, the Trust is administered in terms of the bye laws of the Trust deed, while so, the suit filed as such, for framing a scheme decree, is not maintainable. Further, by virtue of the order of dismissal, the right of the appellant, as a Member of the Sangh, has been curtailed and the members of the first respondent/plaintiff have been given a right to administer the temple indirectly in the guise of pendency of the present suit. The appellant has been one of the members of the Sangh and he has adequate interest and right in the first defendant/temple, while so, the learned single Judge ought to have allowed the application to implead the appellant as a party to the suit. The learned Senior counsel therefore prayed for allowing this appeal as prayed for.

7. Mr. Satish Parasaran, learned Senior counsel appearing for the 8th respondent herein, who is the sixth plaintiff in the suit, would contend that absolutely, there is no material to show that the appellant is a proper and necessary party to the suit. The learned Senior counsel for the 8th respondent/sixth plaintiff also invited the attention of this Court to the order dated 20.11.2013 passed by this Court in OA Nos. 1153 and 1154 of 2008 in Application No. 4970 of 2008 in C.S. No. 1014 of 2008. By the said order dated 20.11.2013, this Court has appointed a Chartered Accountant to scrutinise the books of accounts, ledgers, cash book, stock books/register, bank accounts etc., and find out if the income and expenditure are properly accounted for and to submit a report. As against the order dated 20.11.2013, O.S.A. No. 66 of 2015 was filed in which an order dated 17.10.2016 was passed by modifying the order of the learned single Judge in appointing a Chartered Accountant, instead, the Division Bench appointed Mr.G. Palaniappan, a retired Judicial Officer of this Court to record the evidence. It is further stated that

subsequently, the appeal was disposed of on 05.12.2016 by the Division Bench. While so, during the pendency of the suit, the appellant had illegally convened a meeting on 17.02.2019 and it was also deprecated by the learned single Judge while dismissing the application for impleading the appellant. When the suit itself was filed for framing a scheme decree, pending suit, the appellant ought not to have convened a meeting on 17.02.2019. Therefore, the learned Senior counsel for the 8th respondent/sixth plaintiff would pray for dismissal of the Original Side Appeal.

8. We have heard the counsel on either side and perused the materials on record. The suit was filed for framing a scheme decree for effective administration of the first defendant temple. Pending suit, the defendants 1 and 2 have taken out an application in Application No. 1244 of 2014 praying to implead the appellant herein as one of the parties to the suit. The said application was dismissed by the learned single Judge, against which, the defendants 1 and 2, who have taken out the application No. 1244 of 2014, have not filed any appeal, however, the person who was sought to be impleaded as a party to the suit has filed the present appeal. When the said application has been taken up for hearing, it was brought to the notice of the learned single Judge that the appellant has convened a meeting on 17.02.2019 in which some members were elected for administration of the first defendant temple. The learned single Judge, after hearing the counsel for the proposed party/appellant herein, declared as unlawful such a meeting convened on 17.02.2019 by the appellant herein. Thus, it is evident that the appellant was given opportunity to justify his impleadment inasmuch as he was represented by a counsel. The learned single Judge, after hearing the counsel on both sides, not only dismissed the application to implead the appellant as a party to the suit but also declared the meeting convened by him on 17.02.2019 as unlawful. In other words, the order declaring the meeting convened on 17.02.2019 as illegal has been passed after hearing the appellant through his counsel. The learned single Judge has also taken note of the fact that the suit itself was filed for framing a scheme decree, while so, impleading the appellant as a party to the suit has no nexus to the prayer in the plaint. The learned single Judge also found that the suit is ripe for trial and PW1 is in the witness box, therefore, at this stage, impleading the appellant may not be necessary. Further, the learned single Judge has also given liberty to the plaintiffs to approach this Court for appointment of an Interim Committee to administer the first defendant temple. Such observations made by the learned single Judge, in our view, does not require any interference. When the suit itself was filed for framing a comprehensive scheme decree, the appellant is not a proper and necessary party to the suit. Therefore, we are of the view that the order, which is impugned in this appeal, is well merited and the appeal deserves to be dismissed.

9. In the light of the above, the Original Side Appeal is dismissed by confirming the order dated 18.02.2019 passed in Application No.1244 of 2019 in C.S. No. 1014 of 2008. No costs. Connected CMP No. 22590 of 2019 is closed.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

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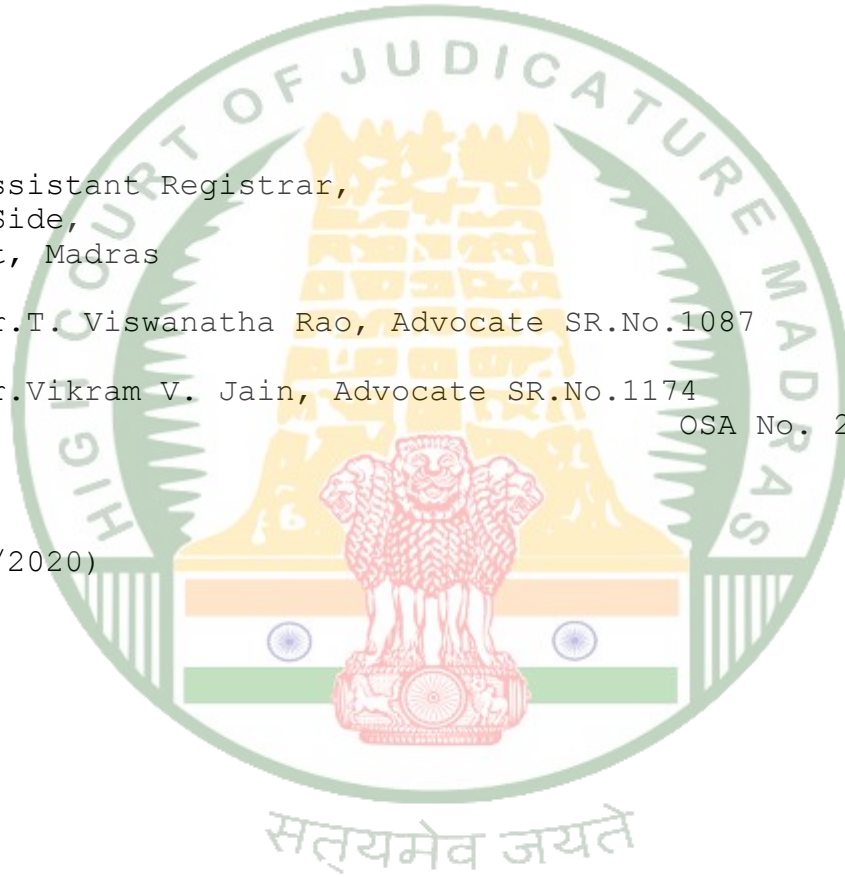
To
The Sub Assistant Registrar,
Original Side,
High Court, Madras

+1cc to Mr.T. Viswanatha Rao, Advocate SR.No.1087

+1cc to Mr.Vikram V. Jain, Advocate SR.No.1174

OSA No. 262 of 2019

GP(CO)
GMY(21/01/2020)



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