



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )  
Wednesday, the Fourth day of March Two Thousand Twenty

PRESENT

**The Hon`ble Mrs.Justice R.THARANI**

**CMP(MD) No.2268 of 2020**

**in**

**CROSS OBJECTION(MD)No.25 of 2015**

**in**

**SA(MD) No.341 of 2015**

GANESAN ASARI

... PETITIONER/1<sup>st</sup> RESPONDENT

Vs

1 S.SONAIMUTHU

... 1<sup>st</sup> RESPONDENT/APPELLANT

2 STATE OF TAMIL NADU

REPRESENTED THROUGH THE DISTRICT COLLECTOR,  
MARUTHUPANDIYAR NAGAR, SIVAGANGAI TOWN,  
SIVAGANGAI DISTRICT.

3 THIRUPPUVANAM PANCHAYAT UNION

REPRESENTED BY ITS COMMISSIONER,  
MANAMADURAI TALUK, SIVAGANGAI DISTRICT.

4 THE PANCHAYAT PRESIDENT

THIRUPPACHETHI, MANAMADURAI TALUK,  
SIVAGANGAI DISTRICT.

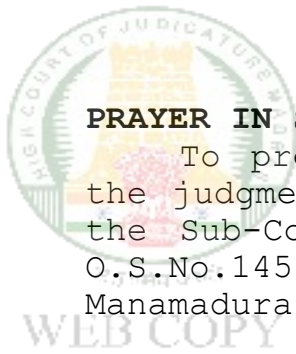
5 MUTHURAJA

... 2 to 5 RESPONDENTS/2 TO 5 RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass on order of Injunction restraining the 1st respondent from proceeding further towards performing Balasthabanam and Vasthu Pooja on 5.3.2020 or any other date for Sri Siddhi Vinayagar Temple at Rameshwaram main Road, Thiruppachethi, Sivagangai District as stated in the said invitation-notice pending disposal of the above Second Appeal.

**Prayer in CROSS OBJECTION(MD)No.25 of 2015 in SA(MD) No.341 of 2015:**

To prefer this memorandum of Cross Objection in s.A.No.341 of 2015 against the judgment and decree in A.S.No.26 of 2012 on the file of the Sub Court, Sivagangai dated 19.08.2014, reversing the judgment and decree passed in O.S.No.145 of 2003 dated 10.11.2011 on the file of the Principal District Munsif, Manamadurai.



**PRAYER IN SA(MD) No.341 of 2015:**

To prefer the memorandum of grounds of Second Appeal against the judgment and decree passed in A.S.No.26 of 2012 on the file of the Sub-Court, Sivagangai dated 19.08.2014 which was reversed in O.S.No.145 of 2003 on the file of the Principal District Munsif, Manamadurai dated 10.11.2011.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.NATARAJAN, Advocate for the petitioner and of MR.C.VAKEESWARAN, Advocate for R1 and of Mrs.V.P.M.VAISHNAVI, Government Advocate for R2 to R4 and the fifth respondent not appeared either in person or by an advocate, the court made the following order:-

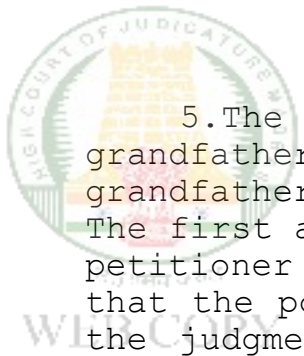
This petition is filed seeking injunction restraining the first respondent from proceeding further towards performing Balasthabanam and Vasthu Pooja on 05.03.2020 or any other date for Sri Siddhi Vinayagar Temple at Rameshwaram Main Road, Thiruppachethi, Sivagangai District.

2.The petitioner is the plaintiff in O.S.No.145 of 2003. The first respondent is the appellant in S.A.No.341 of 2015 and the fourth defendant in the said suit. The respondents 2 to 5 are the respondents 2 to 5 in the second appeal and defendants 1 to 3 and 5 in the suit.

3.The petitioner has filed a suit in O.S.No.145 of 2003 for declaration and injunction and the suit was dismissed by the trial Court. Against which, the petitioner filed an first appeal in A.S.No.09 of 2008 and the first appeal suit was allowed and the case was remanded back to the trial Court and an Advocate Commissioner was appointed to measure the property. After remand, again the suit was dismissed. Against the judgment, the petitioner has filed an appeal in A.S.No.26 of 2012 and the appeal was partly allowed and an order of injunction was granted subject to the condition that the plaintiff should not be evicted without due process of law. Against the order passed by the first Appellate Court, a second appeal was filed by the fourth defendant and the same is pending. In the second appeal, the petitioner /plaintiff filed this petition praying for an order of injunction.

4.The brief substance of the petition is as follows:

The suit property was given to the grand father of the petitioner as Inam by way of the document Ex.A.1 dated 27.04.1909. The petitioner's grandfather viz., Periyasamy Asari put up a Vinayagar temple in a portion of the property and he resided in the other portion of the property by putting up a shed. After his grandfather, the father of the petitioner constructed a tiled house and the petitioner and his family are residing there and the petitioner is functioning as Poojari for the said Vinayagar Temple.



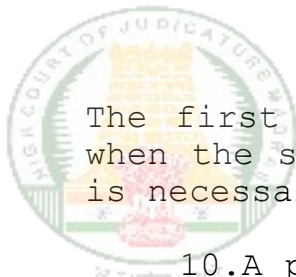
5.The fourth defendant accepted the Inam Sasanam given to the grandfather of the petitioner and he accepted the occupation of the grandfather and the father of the petitioner in the suit property. The first appellate Court upheld the possession and enjoyment of the petitioner in S.No.178/03 and the first appellate Court has held that the possession of the petitioner cannot be disturbed. Against the judgment and decree of the first Appellate Court, the first respondent has filed second appeal in S.A.(MD)No.341 of 2015. Thereafter the petitioner has filed a cross objection regarding the denial of the relief of declaration.

6.The first respondent is claiming himself as a trustee and he is making arrangements to perform Balasthabanam and Vasthu Pooja on 05.03.2020 for the said Siddhi Vinayagar @ Melapillaiyar Temple. The administration of the temple was given to the grandfather of the petitioner through Ex.A.1. The petitioner's grandfather put up the temple. After him father of the petitioner, now the petitioner, who is administering the same and they are performing periodical Pooja services.

7.In O.S.No.131 of 2002, though the first respondent has admitted Ex.A1, the first respondent has not impleaded the grandfather and the father of the petitioner in the suit. The first respondent with a mala fide intention to illegally and unlawfully grab the property and to evict the petitioner, issued a notice in the name of politicians and he is attempting to establish his control over the temple. If at all any body could renovate or carry out the repair work, it is only the petitioner. The first respondent is not a Trustee. But the first respondent by using his influence is taking steps to carry out renovation works. Hence, the present petition has been filed.

8.On the side of the respondents, it is stated that the suit property is situated in S.No.178/3. But the temple is situated in S.Nos.178/4, 178/5. The suit is not filed for the administration of the temple. Further the first respondent used to conduct the temple festivals and that notice for the festival was issued one Month ago. The petitioner is claiming a right over the temple and its administration by way of filing this miscellaneous petition. The first respondent has to repair the temple and for that Balasthabanam and Vasthu Pooja are necessary. Only due to political crutches, the petitioner has come forward with this petition.

9.On the side of the petitioner, it is stated that the petitioner conducted pooja regularly and only after the filing of the suit, the first respondent prevented the petitioner from carrying out the temple festivals. The intention of the first respondent is to grab the administration of the temple and to evict the petitioner illegally and the first respondent has no right over the temple. As soon as the petitioner came to know about the attempt of the first respondent, the petitioner has approached this Court.



The first respondent has no locus standi to conduct the festival, when the second appeal is pending and hence, an order of injunction is necessary .

10.A perusal of the plaint in S.No.178/03 reveals that the suit was filed for declaration and for injunction. In A.S.No.26 of 2012, an order of injunction, not to be evicted without due process of law was granted to the petitioner. Against that order, the fourth defendant filed a second Appeal in S.A.No.341 of 2015. From the verification of the lower Court records, it is seen that the temple is situated in S.Nos.178/4 and 178/5. Admittedly, the suit property is in Survey No.178/03 and the said administration of the temple is not the subject matter of the suit.

11.In the above circumstances, to safeguard the rights of the petitioner, a direction is to be given to the first respondent. The first respondent is prevented to extend the construction of the temple in Survey No.178/03 and the first respondent is directed not to disturb the possession of the petitioner without due process of law.

12.With the above observation, this civil miscellaneous petition is disposed of.

sd/-  
04/03/2020

/ TRUE COPY /

/ /2020  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

- 1.THE SUBORDINATE JUDGE, SIVAGANGAI
- 2.THE PRINCIPAL DISTRICT MUNSIF, MANAMADURAI.

+1 CC to M/s.C.VAKEESWAEAN, Advocate ( SR-4774[I] dated 04/03/2020 )  
+1 CC to M/s.S.NATARAJAN, Advocate ( SR-4859[I] dated 05/03/2020 )

ORDER IN  
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IN  
CROSS OBJECTION(MD)No.25 of 2015  
in  
SA(MD) No.341 of 2015 in  
Date :04/03/2020

vsg  
AE/PN/SAR-III (07.07.2020) 4P 5C