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CRP.(PD).Nos.837 & 838/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(PD).Nos.837 & 838/2019 and CMP.No.5466/2019

[Video Conferencing]

- 1.The Devangudi Ramaswamy Mazhavarayar Educational Society, rep. by its Secretary, Tmt.G.Matharasi,
W/o Late Gopalakrishnan Mazhavarayar,
School Road,
South Sennianatham,
Sethiathope,
Bhuvanagiri Taluk,
Cuddalore District.
- 2.The Devangudi Gopalakrishna Mazhavarayar Higher Secondary School, rep. by its Secretary, Tmt.G.Matharasi,
W/o Late Gopalakrishnan Mazhavarayar,
School Road,
South Sennianatham,
Sethiathope,
Bhuvanagiri Taluk,
Cuddalore District.

.. Petitioners
in both CRPs

Vs.

- 1.S.K.Selvaraj
- 2.Kanagapitchai Pillai

.. Respondents
in both CRPs

Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 28.06.2018 made in I.A.No.321/2018 and I.A.No.322/2018 in O.S.No.113/2016 on the file of



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the learned Additional District Munsif, Chidambaram.

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For Petitioners : Mr.R.Thiagarajan
in both CRPs
For Respondents : No appearance
in both CRPs

ORDER

- (1) This Civil Revision Petition is directed against the order dated 28.06.2018 filed by the petitioners/plaintiffs in the Suit in O.S.No.113/2016 in I.A.No.321/2018 and I.A.No.322/2018 on the file of the learned Additional District Munsif, Chidambaram.
- (2) Brief facts that are necessary for disposal of this Civil Revision Petition are as follows:
- (3) The revision petitioners/plaintiffs filed the Suit in O.S.No.113/2016 on the file of the learned Additional District Munsif, Chidambaram, for permanent injunction restraining the 1st respondent/defendant from interfering with the petitioners/plaintiffs' peaceful possession and enjoyment of the Suit schedule property and for consequential reliefs.
- (4) The Suit was filed against the 1st respondent/defendant who was stated to be a stranger who does not have any right over the Suit property. The 1st respondent/defendant filed a written statement



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specifically denying the averments made in the plaint. It is further stated that the Suit property originally belonged to the family of one Narayana Padayachi, Senninatham Village and that the property, in a subsequent partition, was endowed for some charities in connection with the Sri Pidari Amman temple.

- (5) The specific case of 1st respondent/defendant is that the property is endowed for doing certain charities for the family deity of the original owners known as Sri Pidari Amman. It is stated that the legal heirs of Narayana Padayachi had no right to deal with the property which was completely dedicated for the charitable purpose. It is also stated that the Suit for permanent injunction is not maintainable as the title of the revision petitioners/plaintiffs is specifically denied. The written statement would certainly show that the respondent/defendant in the Suit has no independent right. A plea was also taken that the Suit as framed against the respondent/defendant is not maintainable.
- (6) It is to be seen that the reading of the written statement shows that the stand taken by defendant is that the legal heirs of the original owner have no right, title, possession or enjoyment over the Suit



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property and have no right to execute Endowment Deed dated 01.02.1958 in favour of M/s.Arulananda Secondary School, Sethiyathope, in respect of the Suit property.

- (7) During the pendency of the Suit, the 2nd respondent in the Civil Revision Petition filed petition to implead himself as a party to the Suit on the ground that the Suit property originally belonged to the temple by virtue of endowment created by his forefathers and that it is a public temple. It is stated by the 2nd respondent herein that he has a right to protect the interest of temple as a worshiper. It is further stated that the 1st respondent/defendant does not belong to the village where the Suit property is located and that he cannot represent the temple.
- (8) The Trial Court allowed the application filed by the 2nd respondent/defendant on the ground that he can be impleaded in the interests of justice to dispose of the Suit more effectively and to avoid multiplicity of proceedings. Aggrieved by the same, the petitioners/plaintiffs have preferred the above Civil Revision Petition.
- (9) Learned counsel appearing for the revision petitioners/plaintiffs



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submitted that petitioners/plaintiffs being 'Dominus Litis' are entitled to choose the persons against whom they want relief and cannot be forced to implead a third party to the Suit. Learned counsel also submitted that the 2nd respondent/defendant has no independent interest or right to represent the temple and therefore, the impleading petition filed by the 2nd respondent/defendant ought not to have been allowed. Learned counsel pointed out that the Lower Court has proceeded as if the petitioners/plaintiffs will not be seriously prejudiced by impleading a third party and that the order of Lower Court is therefore, cannot be sustained.

- (10) Learned counsel also relied upon the judgment of this Court in the case of ***Kulasekarapattinam Vs. Narayanayadivu and Ors.*** reported in **2021 (6) CTC 312**, wherein this Court has held as follows:

....“The second question of law is also related to the first question of law. In this case, the second appellant has assumed some kind of right over the Suit property by setting up title in favour of a third party. When the appellant failed to lead any evidence suggesting that the Suit property belonged to a third party, he cannot insist on the plaintiffs to implead



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such third party, as the plaintiffs are the dominus litis to choose the person against whom he seeks relief when the plea itself indicate that the third party is the owner of some other property by raising some doubt with regard to the identity of property, the second question of law also cannot have any significance”.

- (11) The judgment relied upon the learned counsel appearing for the petitioners/plaintiffs has no application to the facts of the case. In the said judgment, the Suit filed by the petitioners/plaintiffs therein was contested on the ground that the Suit property belonged to a third party and that the Suit is not maintainable without impleading the said third party after holding that the respondent/defendant in the Suit had not let in any evidence to suggest that the Suit property belonged to such third party. This Court held that the respondent/defendant cannot insist the petitioners/plaintiffs to implead a third party as the petitioners/plaintiffs are 'Dominus Litis' to choose a person against whom they want relief. In the present case, the Suit itself is filed against the person, who was not directly interested. The stand taken by the 1st respondent/defendant in the Suit in the written statement and the stand taken by the 2nd



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respondent in the Interlocutory Application to implead himself as a party, appears to be same.

(12) When a third party files an application as person having some interest over the property, the Court will consider the *bona fides* of such application. If the Court is convinced that the application is supported by materials and *bona fides*, it cannot be thrown out. In this case, it is alleged that the Suit is filed for a declaration to grab lands belonging to the temple by using a fraudulent deed. In such circumstances, the Lower Court is right in entertaining the application filed by the 2nd respondent/defendant to implead as a party. It is well settled that a worshiper can maintain a Suit to recover the property for the temple if it is encroached by a stranger. In this case, a stranger wants to protect the property of the temple. This cannot be discouraged if there is nothing on record to doubt the *bona fides*.

(13) In the present case, the petitioners/plaintiffs are unable to demonstrate that the Lower Court has allowed the application of an utter stranger who has no semblance right to implead himself to protect the interest of the temple. This Court and the Hon'ble



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Supreme Court has observed in many cases the necessity to protect the temple properties from encroachers.

- (14) Learned counsel appearing for the revision petitioners/plaintiffs submitted that the Civil Court has earlier given a finding with respect to the title of the revision petitioners/plaintiffs regarding the Suit property and that the revision petitioners/plaintiffs is one such party who has approached the Court to relitigate.
- (15) Learned counsel appearing for the revision petitioner/plaintiff has relied upon the order passed by the learned Additional District Munsif, Chidambaram in I.A.No.246/2018 in O.S.No.168/2017. The earlier Suit was filed by one M.Ramajayam against the revision petitioner/plaintiff for permanent injunction. The revision petitioner/plaintiff filed a petition in I.A.No.246/2018 under Order 7 Rule 11 (a) and (d) CPC to reject the plaint. Though the revision petitioner/plaintiff raised an issue that the Suit is barred under Order 2 Rule 2 and Section 11 of CPC, the Trial Court has given a specific finding that the plea of *res judicata* and bar of Suit raised by the revision petitioner/plaintiff under Order 2 Rule 2 CPC, was rejected on the ground that the issue regarding *res judicata* or bar



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under Order 2 Rule 2 CPC is a mixed question of law and fact and that the same cannot be decided in an application under Order 7 Rule 11 CPC.

- (16) However, it is to be noted that the application was ultimately allowed in favour of the revision petitioner/plaintiff therein on the ground that the Suit filed by the third party, is for permanent injunction and that the said Suit is not maintainable, in view of the admitted fact that the petitioner/plaintiff was not in possession. After noticing that the petitioner/plaintiff therein has filed another Suit for recovery of possession admitting that the petitioner herein is in possession of the property, it was stated that the Suit for injunction filed by the said third party against the revision petitioner is not sustainable. This Court is unable to find any issue or finding in the said judgment on merits. The learned counsel also relied upon the judgment of this Court in the case of ***Sm.Laxmi Siresj Vs. Sri Aduikesava Perumal Peyalwar*** reported in ***2010 (3) LW 62*** wherein several other decisions were relied upon. The facts in that case was different. In ***Bhogadi Kannababu & Others Vs. Vuggina Pydamma & Others*** reported in ***2006 (3) MLJ 105(SC)***, he



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Hon'ble Supreme Court has held that in an application for impleadment under Order 1 Rule 10 C.P.C., the Court would only decide whether the presence of the applicant would be necessary in order to enable the Court effectively and completely adjudicated upon and that the question of strict proof whether the applicants were also entitled to its rights involved in the proceedings, may not be germane for decision.

- (17) There is no difficulty in appreciating the position that any person interested can be impleaded and the Court has a discretion. The discretion has been properly exercised. This Court finds no circumstance warranting interference.
- (18) The presence of the 2nd respondent in the Suit in O.S.No.113/2016 is certainly necessary in the interest of the temple. Accordingly, the Civil Revision is **dismissed** confirming the order of the learned Additional District Munsif, Chidambaram, dated 28.06.2018 made in I.A.Nos.321&322/2018 in O.S.No.113/2016. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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S.S.SUNDAR, J.,

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To

1.The Additional District Munsif, Chidambaram.

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