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C.R.P. (PD) .Nos.1481 & 1482 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.1481 & 1482 of 2016

and

C.M.P.No.8157 of 2016

C.R.P.(PD).No.1481 of 2016 :

1.Vajjiram

2.Velumani

3.Sivalingam

.. Petitioners

Vs.

1.The Executive Officer,
Arulmigu Sivasubramaniya Swamy Temple,
Kumaraswamy Pettai,
Dharmapuri – 636 701.

2.Thirumuruga Kirubananda Variyar Kalvi Sangam,
Rep. by its President S.Uthandi,
No.46, Dakshinamoorthy Madam Street,
Dharmapuri Town.

3.S.Uthandi

4.P.Nagarajan

5.State of Tamil Nadu,
Rep. by the District Collector,
Dharmapuri – 5.



6.Chief Educational Officer,
Dharmapuri – 5.

.. Respondents

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C.R.P.(PD).No.1482 of 2016:

1.Vajjiram

2.Velumani

3.Sivalingam

.. Petitioners

Vs.

1.The Executive Officer,
Arulmigu Sivasubramaniya Swamy Temple,
Kumaraswamy Pettai,
Dharmapuri – 636 701.

2.Thirumuruga Kirubananda Variyar Kalvi Sangam,
Rep. by its President S.Uthandi,
No.46, Dakshinamoorthy Madam Street,
Dharmapuri Town.

3.S.Uthandi

4.P.Nagarajan

.. Respondents

Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 12.04.2016 passed in I.A.Nos.280 & 279 of 2015 in O.S.No.34 of 2013 on the file of the Additional District Court, Dharmapuri.



In C.R.P.(PD).No.1481 of 2016:

For Petitioners : Mr.L.P.Shanmugasundaram
For R1 : Mr.V.R.Annagandhi
For RR 2 to 4 : No appearance
For RR 5 & 6 : Dr.S.Suriya
Government of Tamil Nadu (CS)

In C.R.P.(PD).No.1482 of 2016:

For Petitioners : Mr.L.P.Shanmugasundaram
For R1 : Mr.V.R.Annagandhi
For RR 2 to 4 : No appearance

COMMON ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

These Civil Revision Petitions are filed against the fair and decretal orders dated 12.04.2016 passed in I.A.Nos.280 & 279 of 2015 in O.S.No.34 of 2013 on the file of the Additional District Court, Dharmapuri.

2.The issues involved in both the Civil Revision Petitions are one and the same and hence, these Civil Revision Petitions are disposed of by this common order.

3.The petitioners are plaintiffs in O.S.No.34 of 2013. They filed the suit against the respondents 1 to 4 for declaration of title and perpetual



injunction, restraining the respondents from interfering with peaceful possession and enjoyment of the 'Sengunthar Mudaliar' community of Kumarasami Pettai. The respondents 2 and 3 filed written statement on 23.09.2013 and the 1st respondent filed written statement during February 2014 and are contesting the suit. Issues were framed and Trial commenced. Both the petitioners and respondents have let in evidence and closed their side. At that stage, the petitioners filed the present two applications I.A.No.279 of 2015 for amendment of plaint to include the relief of possession of suit property and I.A.No.280 of 2015 to implead the respondents 5 & 6 as party defendants in the said suit. According to petitioners, in the written statement filed by the respondents, they have stated that Government have taken possession of the suit property and is running a School. The respondents have not filed any document to show that entire suit property was taken possession by the Government. Even though the petitioners do not admit that Government has taken possession of the suit property, by way of abundant caution they are seeking amendment of plaint to include the relief of possession. In spite of due diligence, the petitioners could not file application for amendment earlier. Unless amendment is ordered, petitioners will be put to irreparable loss and hardship and no prejudice will be caused to the respondents. The 1st respondent filed counter



affidavit and submitted that applications are filed after commencement of Trial and when the suit is posted for arguments. The applications filed by the petitioners have to be dismissed on the ground of delay and laches. The petitioners filed the applications only to drag on the proceedings and harass the respondents. The suit is liable to be rejected as petitioners have not obtained leave to file the suit in representative capacity and prayed for dismissal of both the applications.

4.The learned Judge considering the averments in the affidavit and counter affidavit and taking note of the fact that respondents have stated in the written statement that Government has taken possession of the suit property and issue has been framed with regard to possession and petitioners were not diligent enough to file the present petitions earlier, dismissed both the applications by the order dated 12.04.2016 made in I.A.Nos.280 & 279 of 2015.

5.Against the said orders dated 12.04.2016 passed in I.A.Nos.280 & 279 of 2015, the petitioners have come out with the present Civil Revision Petitions.



6.The learned counsel appearing for the petitioners contended that property measuring 53,173 sq.ft comprised in Survey No.247 and 248, Vellay Gounden Pallayam Village, Kumarasami Pettai, Dharmapuri District, belonged to the Sengunthar Mudaliar community of Kumarasami Pettai. The said Sengunthar Mudaliar community through Sengunthar Mahajan Sangam constructed a temple viz., Arul Mighu Sivasubramaniam Samy Tirukovil in the said property with Lord Muruga as the main Deity. They have also constructed a building called Sengunthar Nilayam. They have leased out the said building to Dharmapuri Panchayat Union for running a School by entering into lease deed dated 11.09.1970. The learned Judge failed to see that in order to establish their own School in the above property, the 2nd respondent Society was formed by the community people on 29.12.1989 and School in the name of Thiru Muruga Kribananda Variyar High School was established in the year 1981 after the Municipal School was shifted to a separate building. The learned counsel appearing for the petitioners raised various grounds with regard to ownership of suit property and proceedings before the Joint Commissioner, HR&CE. He further contended that the respondents during Trial filed certain documents with regard to their possession that Government has taken over the School run by Sengunthar Mudaliar community. The learned Judge erred in holding that when the issue



was framed with regard to possession, the petitioners were not diligent enough to file the applications earlier. Without considering the claim of the petitioners, the learned Judge failed to see that amendment of plaint and impleading parties can be done at any stage of the proceedings to determine the real controversy between the parties and prayed for allowing both the Civil Revision Petitions.

7.The learned counsel appearing for the 1st respondent and the learned Government of Tamil Nadu (CS) counsel appearing for the respondents 5 & 6 in C.R.P.(PD).No.1481 of 2016 made their submissions in support of the order passed by the learned Judge and prayed for dismissal of both the Civil Revision Petitions.

8.Though notice has been served on the respondents 2 to 4 in both the Civil Revision Petitions and their names are printed in the cause list, there is no representation for them, either in person or through counsel.

9.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 1st respondent and the learned Government of Tamil Nadu (CS) counsel appearing for the respondents 5 & 6 in



C.R.P.(PD).No.1481 of 2016 and perused the entire materials on record.

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10. From the materials on record, it is seen that the petitioners have filed the suit for declaration and permanent injunction in respect of the suit property. The 1st respondent and respondents 2 and 3 filed separate written statements and are contesting the suit. The 1st respondent in the written statement has stated that Government has taken possession of the suit property and is running a School. In view of such plea taken by the 1st respondent, the Trial Court while framing issues, framed an issue with regard to possession. Both the petitioners and respondents conducted Trial based on the issues framed by the Court including the issue of possession. After parties completed their evidence and when the suit was posted for arguments, the petitioners have come out with the present two applications for amendment and impleading the respondents 5 & 6 as party defendants. The contention of the learned counsel appearing for the petitioners that during Trial, the 1st respondent has filed certain documents stating that Government has taken possession of the suit property which prompted the petitioners to file the present two applications is contrary to the materials on record and the same is not acceptable. The 1st respondent has taken such a stand in the written statement and an issue with regard to possession was framed by the Trial



Court. Therefore, the contention of the petitioners is not acceptable. As far as the contention of the learned counsel appearing for the petitioners that plaint can be amended and parties can be impleaded at any stage of the suit is concerned, as per the provisions of Order VI Rule 17 C.P.C., after commencement of Trial, only when the parties pleads and proves that inspite of due diligence, application for amendment could not be filed before commencement of Trial, the same can be allowed.

11. In the present case, the petitioners, except stating that they could not file applications before commencement of Trial, they have not given any reason for not filing the applications earlier when the 1st respondent has stated in the written statement that Government has taken possession and an issue has been framed in this regard. A reading of the affidavit filed in support of the present applications reveal that petitioners have not admitted the possession taken over by the Government. But according to them, they are filing the applications for amendment to include the relief of possession only by way of abundant caution. From the materials on record, it is clear that the petitioners are not diligent enough to seek amendment of plaint to include the relief of possession before commencement of Trial and the same has been rightly contended by the 1st respondent that these documents are filed only to



drag on the proceedings. As per the proviso of Order VI Rule 17 C.P.C., only when the Court is satisfied that the party, in respect of due diligence could not file application before commencement of Trial, the application for amendment can be ordered. In the present case, the learned Judge has given reason to hold that petitioners were not diligent enough to file the applications before commencement of Trial. The learned Judge has considered the entire materials and dismissed both the applications holding that both the applications are filed only to drag on the proceedings. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

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

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To

The learned Additional District Judge,
Dharmapuri.

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V.M.VELUMANI, J.
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