

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.Nos.3503 of 2019 and
CMP.No.22997 of 2019

Mukesh Chand Gulecha

..Petitioner

Vs.

- 1.Shree Chandraprabhu Maharaj
Juna Jain Mandir Trust(Regd),
Represented by its Secretary,
No.345, Mint Street, Chennai-600 079
 - 2.The Dadabadi Sri Jin Kushalsuriji Jin Chandrasuriji Trust,
Represented by its Managing Trustee,
No.370, Konur High Road, Chennai-600 023
 - 3.Rajesh Samdaria
- ..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 22.04.2019 passed in IA.No.1 of 2019 in OS.No.14334 of 2010 passed by the learned VII Additional Judge, City Civil Court, Chennai.

For Petitioner

: Mr.ARL.Sundaresan,
Senior Counsel
for Mr.K.G.Vasudevan

For Respondents

For R1	: Mr.A.E.Ravichandran
For R3	: Mr.K.V.Sanjeev Kumar
R2	: notice served

ORDER

This civil revision petition is filed against the order dated 22.04.2019 passed in IA.No.1 of 2019 in OS.No.14334 of 2010 passed by the learned VII Additional Judge, City Civil Court, Chennai, thereby dismissing the petition to implead the petitioner as proposed defendant in the suit filed by the first respondent herein.

2. The learned Senior Counsel appearing for the petitioner submitted that the first respondent filed suit for injunction restraining the second respondent herein from interfering and involving with the plaintiff's administration, management, construction and any other work relating to the Shree Sumathinath Bhagawan Jain Swethamber Temple. The petitioner was the Joint Secretary of the plaintiff Trust. Now the first respondent is acting as against the interest of the plaintiff Trust and filed suit. In fact, the land in which the temple is situated belong to the first defendant and it was given only to administer the temple and management of the said temple. Beyond the said power, the plaintiff has no other power to restrict the first defendant. Further the court below dismissed the petition only on the ground that there is a personal issue

between the plaintiff and the petitioner herein and as such he filed as against the interest of the plaintiff Trust. Therefore, the petitioner is a proper and necessary party to decide the suit. He further submitted that by the order dated 25.03.2019, the President of the Trust categorically stated that the plaintiff who is the Secretary of the plaintiff Trust has been acting unilaterally without getting proper instruction from the other trustees. In fact, the President requested him to act in consultation with the Trust Board, but he is acting unilaterally contrary to Trust deed. Therefore, the Trust Board has no objection to implead the petitioner as one of the defendant in the suit filed by the plaintiff.

3. The learned counsel for the plaintiff submitted that originally the suit was filed before this Court in CS.No.447 of 2007 and thereafter in the year 2010, it was transferred to the file of the VII Additional City Civil Court, Chennai and renumbered as OS.No.14334 of 2010. After examination of PW1 and while DW1 was in box for cross examination, the petitioner herein filed this petition only to drag the proceedings. In fact, the suit property itself was situated in the land belong to the Government which was leased out to the management of the plaintiff Trust. The

temple was in dilapidated condition and as such the temple was demolished and yet to construct new temple. While being so, the second respondent herein objected the same. Therefore, the plaintiff was constrained to file the suit for injunction as against the second respondent herein. In fact, the Secretary is fully authorised by the Board of Trust to file suit. Except the Secretary, no one has power to file suit on behalf of the plaintiff Trust. He further submitted that the petitioner has filed the petition on his personal capacity and not in the capacity of the Secretary. Therefore, there are two rival groups in the plaintiff Trust and as such the petitioner only to defeat the interest of the plaintiff Trust filed the petition after petition and drag the proceedings unnecessarily. In fact DW1 was in box. The present petition has been filed, that too after period of nine years from the date of the suit. He further submitted that the letter dated 25.03.2019 was issued by the President of the petitioner Trust only after filing the petition filed by the petitioner herein to implead himself as party. Therefore, it shows that there are rival group and colluding with each other filed the petition.

4. The learned counsel for the third respondent submitted that

he was impleaded as one of the devotee of the temple and he is also one of the trustee of the plaintiff Trust. In fact, as against impleadment of the third respondent herein, the second respondent namely original first defendant filed civil revision petition before this Court and the same was also dismissed and also confirmed the order passed by the court below. The petitioner also filed petition on his personal capacity and not in the capacity of the Joint Secretary of the plaintiff Trust. He further submitted that he filed petition to implead himself as party only to protect the plaintiff Trust and temple. The first respondent as well as the second respondent acted as against the interest of the Trust. Therefore, he filed petition to implead himself as party to protect the interest of the plaintiff and the present petition is filed only to drag the proceedings and nothing else.

5. Heard Mr.A.R.L.Sundaresan, Senior Counsel appearing for the petitioner, Mr.A.E.Ravichandran, the learned counsel for the first respondent and Mr.K.V.Sanjeev Kumar, the learned counsel for the third respondent.

6. The first respondent filed suit for injunction as against the second respondent herein in the year 2007 before this Court in CS.No.447 of 2007. Thereafter it was transferred to the file of the VII Additional City Civil Court, Chennai and renumbered as OS.No.14334 of 2010. After commencement of trial, the plaintiff evidence was closed and when DW1 was in box for cross examination, the present petition has been filed by the petitioner herein to implead himself as party.

7. The learned Senior Counsel contended that the plaintiff Trust is having power only to manage and administer the temple and the plaintiff cannot claim any relief as against the second respondent. Therefore, the suit itself filed with false and malicious grounds and against the interest of the plaintiff Trust.

8. On perusal of the affidavit filed in support of the petition to implead himself as party revealed that he filed petition on his personal capacity and not in the capacity of Joint Secretary. The plaintiff Trust is represented by its Secretary and he has power to file suit. After filing petition, President of the Trust by letter dated 25.03.2019 stated that the

Secretary of the plaintiff Trust has been acting unilaterally and without consultation of the other Board of Trustees. It shows that there is a rival party dispute in the plaintiff Trust and they are supporting the case of the second respondent herein. Therefore, if at all the Plaintiff Trust represented by its Secretary act as against the interest of the plaintiff Trust, the other Board of Trustees can agitate the matter separately in the manner known to law. In the present suit the petitioner is not a necessary and proper party to decide the suit.

9. The further reasons stated in the order of the court below are that it is seen that the proposed party is intending to vent out his personal grievance in the administration of plaintiff Trust and being the Joint Secretary of the Plaintiff Trust, his interest is against the interest of the plaintiff Trust. Meticulous care should be taken by the court to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered in the pending litigation.

10. Now, the learned Senior Counsel submitted that the court below dismissed the petition and observed that the proposed party is

intending to vent out his personal grievance in the administration of the plaintiff Trust, which has to be expunged since it is against the interest of the petitioner herein. Considering the above, the said observation is hereby expunged. Further, the trial court is directed to dispose of the suit within a period of three months from the date of receipt of copy of this order.

11. With the above observations, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

15.02.2021

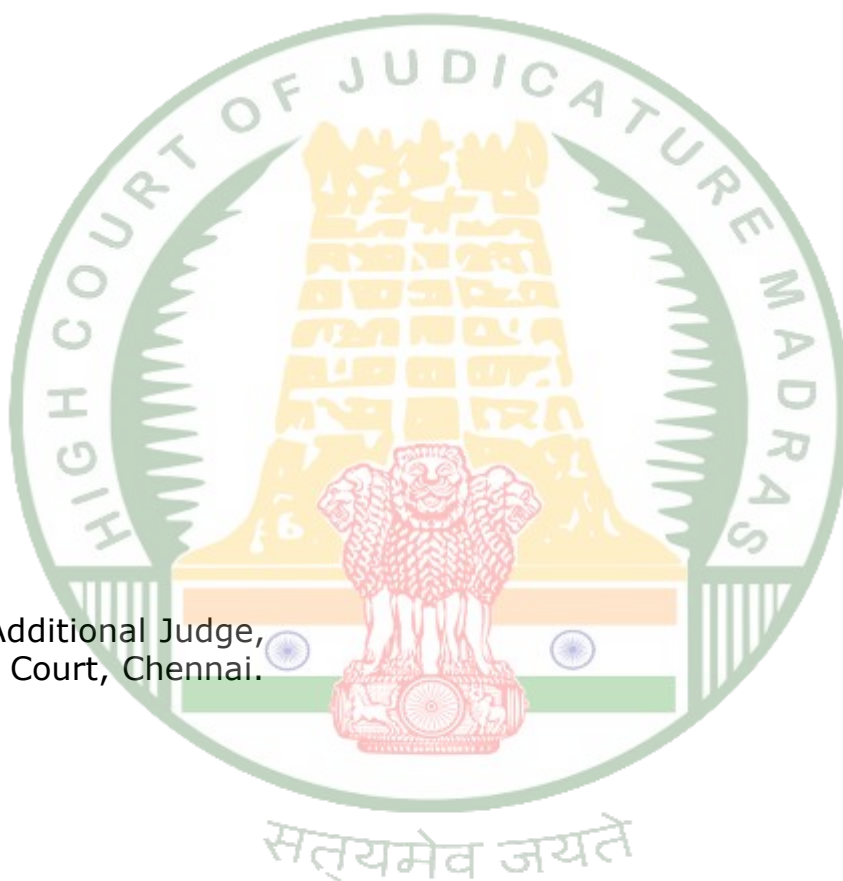
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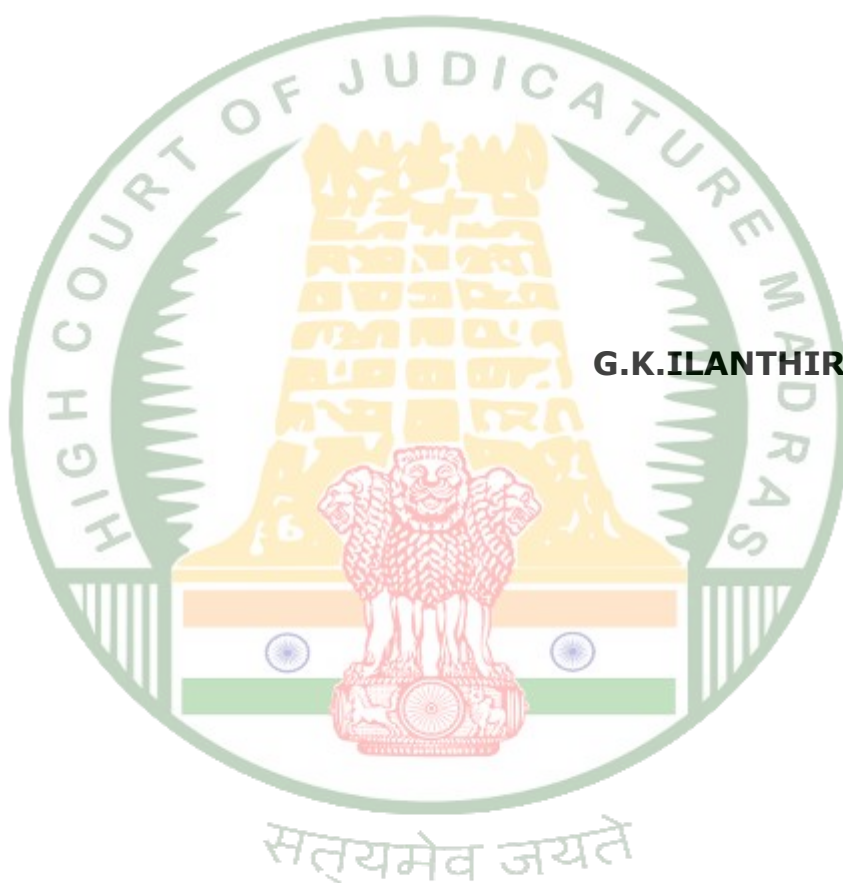
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To

The VII Additional Judge,
City Civil Court, Chennai.



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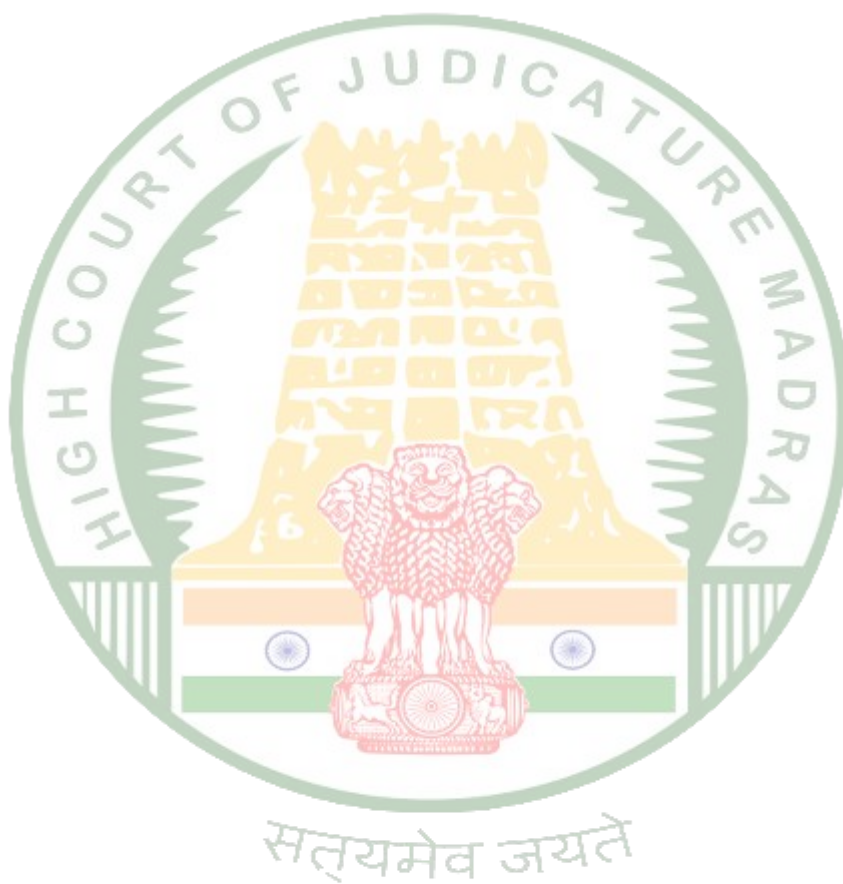


G.K.ILANTHIRAIYAN,J.

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