

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).No.3643 of 2019
and C.M.P.No.23879 of 2019**

Tmt.Ram Priya Dilip

...Petitioner

Vs

1.J.Chandrakumar

2.M.Malaichamee

3.P.Swaminathan

4.Devar Educational and Charitable
Trust (Registered),

at No.42, Police Commissioner Office Road,
Egmore, Chennai – 600 008.

(as per order in C.M.P.No.1874 of 2006 dated
08.04.2009 New Trustees are substituted
in the place of Old Three Trustees)

5.D.Thangavel

6.P.Murgesan Pandian

7.S.P.Subramanian

8.Ram Manohari

9.Vasantha Rajakumari

...Respondents

(amended as per order in CMP.No.20/2014

dated 11.10.2014 legal heirs of the 1st respondent,
3rd respondent brought on record)

Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 23.07.2019 made in C.M.P.No.1350 of 2018 in A.S.No.118 of 2006 on the file of the 6th Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.A.Babu
For Respondents
R1 to R5 & R7 : Mr.K.Sellathurai
R6, R8 & R9 : No appearance

ORDER

The 4th respondent in A.S.No.118 of 2006, now pending on the file of the 6th Additional City Civil Court, Chennai is the revision petitioner herein.

2.C.M.P.No.1350 of 2018 came to be filed in the said First Appeal by three third parties, J.Chandrakumar, Mr.Malaichamee and P.Swaminathan, seeking permission to be substituted as trustees instead of the existing appellants, D.Thangavel, P.Murugesha Pandian and S.P.Subramanian. It must

be pointed out that the first appellant is Devar Educational and Charitable Trust (Registered). Devar Educational and Charitable Trust (Registered) was originally represented by three trustees and by this particular application and permission was sought to substitute the existing trustees by the newly appointed trustees. The revision petitioner/4th respondent in the said appeal is one of the plaintiffs. The plaintiffs had filed O.S.No.9366 of 1991, against the defendants, Devar Educational and Charitable Trust (Registered) and seven others. Defendants 2 to 7 were shown as trustees of Devar Educational and Charitable Trust (Registered) and the 8th defendant is the revision petitioner herein. The said suit had been filed for a judgment and decree directing the division of the schedule mentioned property as metes and bounds and for the past mesne profits and future mesne profits. In effect, it is a suit for partition. A judgment was delivered on 20.10.2000. As against the said judgment, Devar Educational and Charitable Trust (Registered) had filed A.S.No.118 of 2006 and were represented by three trustees. By the present application which they had filed, they wanted to substitute the names of the three trustees.

3.The grievance expressed by Mr.A.Babu, learned counsel for the petitioner is that the appellants had filed another application, namely, C.M.P.No.1351 of 2018. In the affidavit filed in support of the said application, they claimed that Devar Educational and Charitable Trust (Registered) had merged with yet another Trust, namely, Pasumpom Trust by a resolution dated 15.05.2005. That application was withdrawn. Mr.A.Babu, learned counsel therefore wondered as to how the trustees could continue to maintain the appeal without the main actual Trust being made a party appellant to the appeal. His apprehension was that if subsequently at some later point of time, if there was ever an execution petition to be filed, then there was a possibility of Pasumpom Trust filing either a claim petition or an application under Section 47 CPC seeking that they were not a party either to the suit or to the first appeal and therefore, they are not bound by the decree passed either in the suit or in the first appeal.

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4.Heard Mr.Sellathurai, learned counsel appearing for the respondents 1 to 5 and 7.

5.An affidavit had been filed by one of the newly impleaded party, Mr.M.Malaichamee, wherein he had stated that the trustees are discharging their duties and maintaining the Devar Educational and Charitable Trust (Registered) from the date of resolution. That resolution was passed on 15.08.2018, wherein, the new trustees had been appointed. Therefore, I would only observe that if at all any decree is to be passed, then it would not lie in the mouth of Pasumpom Trust to either question the said decree or to challenge the same or to state that they were not party to the proceedings. This is particularly because a conscious decision had been taken to withdraw C.M.P.No.1351 of 2018. Very consciously, they have been continuing the First Appeal proceedings under the name of Devar Educational and Charitable Trust (Registered) represented by its trustees and I am confident that the said Trust would prosecute the appeal till the end of the litigation and would not encourage claim in the name of Pasumpom Trust.

6. With the said observation, the order under revision is upheld and is not interfered with. The Civil Revision Petition is disposed of with the above observations. No order as to costs. Consequently, connected miscellaneous petition is closed.

19.04.2021

cse

Index: Yes/No

Internet: Yes/No



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C.V.KARTHIKEYAN, J,

cse

To

The 6th Additional Judge,
City Civil Court, Chennai.



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