



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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|--------------|------------|
| RESERVED ON  | 24.09.2021 |
| DELIVERED ON | 22.10.2021 |

CORAM :

**THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**C.R.P(MD)No.777 of 2020**

**and**

**C.M.P. (MD)Nos.5217, 7352 of 2020**

**and 1163, 1225 of 2021**

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Sree Shanmuga Seva Sangam Nattar Arakattalai,  
Rep. By it's Secretary,  
Muru.Solaimalai.

... Petitioner/Defendant

**Vs.**

Sadhu Dharmanandha Saraswathi Swamigal Trust,  
Rep. By its Secretary,  
G.Venkatachalapathi.

... Respondent/Plaintiff

**PRAYER:** Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to O.S.No.310 of 2013 on the file of the Sub-Court, Palani and strike of the plaint and allow the present Civil Revision Petition.

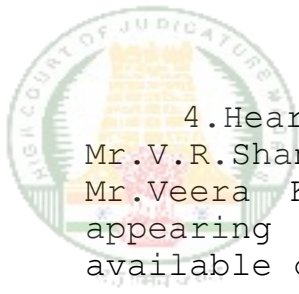
|                |                                                                      |
|----------------|----------------------------------------------------------------------|
| For Petitioner | : M/s.Chitra Sambath<br>Senior Advocate for<br>Mr.V.R.Shanmuganathan |
| For Respondent | : Mr.Veera Kathiravan<br>Senior Advocate for<br>Mr.T.Ilangovan       |

**O R D E R**

The Civil Revision Petition has been filed by the revision petitioner to strike off the plaint in O.S.No.310 of 2013 on the file of the Sub-Court, Palani.

2.The respondent herein/plaintiff/Sadhu Dharmanandha Saraswathi Swamigal Trust, has filed a suit through its Secretary in O.S.No.310 of 2013 on the file of the Subordinate Court, Palani, for permanent injunction against the revision petitioner herein/defendant/ Sree Shanmuga Seva Sangam Nattar Arakattalai.

3.Against the said suit in O.S.No.310 of 2013, the revision petitioner herein/defendant has filed this Civil Revision Petition for striking off the plaint filed by the respondent herein/plaintiff.



4.Heard M/s.Chitra Sambath, learned senior counsel for Mr.V.R.Shanmuganathan, appearing for the revision petitioner and Mr.Veera Kathiravan, learned Senior counsel for Mr.T.Ilangovan, appearing for the respondent. Perused the material documents available on record.

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5.The revision petitioner/defendant has filed this Civil Revision Petition to strike out the plaint in O.S.No.310 of 2013 filed by the respondent herein/plaintiff.

6.The respondent herein/plaintiff has filed a suit in O.S.No.310 of 2013 on the file of the Subordinate Court, Palani, for permanent injunction not to disturb his possession and construction. The suit was filed by the Sadhu Dharmanandha Saraswathi Swamigal Trust, through its Secretary.

7.Now the revision petitioner/defendant has filed this instant Civil Revision Petition for striking off the plaint in O.S.No.310 of 2013 on the file of the Subordinate Court, Palani, on the following grounds:

(i).The present filed in O.S.No.310 of 2013 is a clear abuse of process of court. It is submitted that the respondent herein as plaintiff earlier filed a suit in O.S.No.148 of 1996 on the file of the Sub Court, Palani. In the said suit respondent relied on Will, dated 02.07.1970 to claim title over the suit property. The said suit after detailed discussion came to be dismissed by the Judgment dated 05.03.2002 and held the Will, dated 02.07.1970 was not proved. As against the same first appeal was filed in A.S.No.150 of 2002 on the file of the learned District Judge, Dindigul and the same was dismissed by Judgment and Decree, dated 27.02.2006. The suit schedule property in the present suit is one and the same. The subject matter in both the suits are identical. As against the dismissal of first appeal second appeal before this Court in S.A.No.184 of 2008 was filed and the same is still pending at the stage of notice to respondents. Suppressing the same, present suit is filed against very same suit schedule property by merely changing the name of Secretary representing the plaintiff society in the present suit.

(ii)In the present suit respondent relied on a Will dated 21.11.1972 said to have executed by one Vallinayagathammal in favor of plaintiff society. It is submitted that even the said Will relied on by respondent/plaintiff was subject matter of earlier suit in O.S.No.81 of 1976. In the said suit Will dated 21.11.1972 was relied on and after elaborate consideration, which held to be invalid and unproved. The said judgment and decree in O.S.No.81 of 1972 has become final since no appeal was filed.

(iii).A bare perusal of dates of the Judgment in earlier suit in O.S.No.148 of 1996 namely 05.03.2002 and the date of formation of



plaintiff trust in the second suit in O.S.No.310 of 2013 namely 13.05.2020, will easily prove that the present plaintiff is nothing but a puppet plaintiff at the hands of plaintiff in the earlier suit. Therefore, present suit is completely barred under Section 11 of Civil Procedure Code".

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8.The Judgment in O.S.No.81 of 1976, dated 27.07.1979, passed by the learned Subordinate Judge, Palani, was filed along with this Civil Revision Petition. The aforesaid suit was filed by the Palani Pandiya Vellalar Pothu Matam, Palani and two others; through its Managing Trustees and President Arunaiappan against one Samiappa Goundar alias Palanichamy Goundar. The plaintiff in the said suit had filed the suit for recovery of possession and mandatory injunction. In the said suit, the defendant had admitted that the title of Sadhu Dharmanandha Saraswathi Swamigal and he is also a tenant under him. The defendant has also relied an oral agreement for sale and questioned the Will, dated 21.11.1972.

9.The learned Subordinate Judge, Palani, has stated in paragraph No.10 of the Judgment, dated 27.07.1979 in O.S.No.81 of 1976, is extracted hereunder:

*"The plaintiff had not taken any steps for the production of the original through it was admittedly in the custody of Venkatachalam Pillai. On a careful consideration of the evidence on record, I have no hesitation to hold that the plaintiffs have not established that the Will, dated 11.11.1972 executed by Sadhu Dharmananda Saraswathi Swamigal is true and valid. The issue is found against the plaintiff. "*

10.But, admittedly, the defendant in that case was a tenant. He cannot question the title of the plaintiff. The findings regarding the Will is not on merits.

11.Another suit in O.S.No.148 of 1996 filed by the Managing Madadhipathi of Sri Sadhu Dharmanandha Saraswathi Swamigal Madam, Palani, through his power agent against five defendants for declaration and recovery of possession based on the Will executed by Saraswathi Swamigal on 02.07.1970.

12.In O.S.No.81 of 1976 and O.S.No.148 of 1996 the suit properties are same as in S.No.84/1 to an extent of 1.17 acres.

13.The fifth defendant in O.S.No.148 of 1996 had disputed the Will dated 02.07.1970 and he has claimed his right as Secretary to the plaintiff's madam. The Will, dated 02.07.1970 was also not proved by that plaintiff and hence, the suit was dismissed by the learned Subordinate Judge, Palani. Against the said Judgment, the



plaintiff in O.S.No.148 of 1996 has preferred an appeal in A.S.No.150 of 2002 on the file of the Additional District and Sessions Court,/Fast Track Court, Dindigul and the same was also dismissed on 27.02.2006.

14.Now, S.A.No.184 of 2008 was filed and the same is pending before this Court.

15.Thereafter, the suit in O.S.No.310 of 2013 was filed by Sadhu Dharmanandha Saraswathi Swamigal Trust through its Secretary for permanent injunction.

16.Title of the property was also not decided in O.S.No. 81 of 1976. The suit was also filed against the tenant.

17.In O.S.No.148 of 1996, the plaintiff has filed the suit on the basis of the Will, dated 02.07.1970 which was negatived. But, the second appeal is still pending before this Court.

18.Now, the respondent herein/plaintiff in O.S.No.310 of 2013 was filed on the basis of Will, dated 21.11.1972 which was not negatived on merits. The learned Subordinate Judge, Palani has decided the suit against the plaintiff only on non-production of the Will. The plaintiff's Trust was also registered only on 13.05.2002. Now, the copy of the Will was also produced along with the plaint. The defendants also not a party to the suit in O.S.No.81 of 1976.

19.When the title of property is in question, the plaintiff has to amend the prayer for declaration of title.

20.In view of the foregoing reasons, the findings of the earlier suit is not at all barred the present suit.

21.Finally, this Civil Revision Petition is dismissed with Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

**Note** :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

1.The Subordinate Judge,  
Palani.

2.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+1 CC to M/s.T.ILANGO VAN, Advocate ( SR-32290[F] dated 22/10/2021 )

+1 CC to M/s.V.R.SHANMUGANANTHAN, Advocate ( SR-32468[F] dated 25/10/2021 )

+1 CC to M/s.V.R.SHANMUGANATHAN, Advocate ( SR-32659[F] dated 26/10/2021 )

Order made in  
**C.R.P (MD) No. 777 of 2020**  
**22.10.2021**

**VR (CO)**

**RS (27.10.2021) 5P 7C**