



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2021

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) No.1809 of 2021

and

C.M.P. (MD) No.9718 of 2021

WEB COPY

Rev.Sr.V.Catherin Vimala ... Revision Petitioner/Petitioner/
Nil/Nil/Nil

1.Retnasamy ... 1st Respondent/1st Respondent/
Auction Purchaser/Nil/Nil

2.Shahul Hameed ... 2nd Respondent/2nd Respondent/
10th Respondent/Petitioner/Plaintiff

3.Charismatic Service Trust,
represented by its Founder and
Managing Trustee,
Rev.Fr.John Joseph,
Market Road, Marthandam and Post,
Nalloor, Vilavancode Taluk,
Kanyakumari District.

4.Rev.Fr.John Joseph

5.Sis.Hiller Mary ... Respondents 3 to 5/
Respondents 3 to 5/Respondents 1 to 3/
Respondents 1 to 3/Defendants 1 to 3

6.Joseph Alphonse (Died)
Br.Maria Joseph (Died)
Br.Pious (Died)
Sis. Ugin Fernando (Died)
Br.Santhana Rajan (Died)

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to direct the Principal District of Kanyakumari at Nagercoil to number E.A.CF.No.1209 of 2021 in E.A.No.282 of 2011 in E.P.No.40 of 2004 in O.S.No.58 of 1997 on the file of the learned Principal District Judge of Kanniyakumari at Nagercoil and dispose the same in accordance with law and on merits.

For Petitioner: Mr.V.Raghavachari Senior Counsel for
Mr.B.S.Mitra Neesha

For R1 : Mrs.Chitra Sampath Senior Counsel for
Mr.T.Wins



ORDER

The above Civil Revision Petition is filed seeking a direction to the learned Principal District Judge, Nagercoil, Kanyakumari District to number E.A.CF.No.1209 of 2021 in E.A.No.282 of 2011 in E.P.No.40 of 2004 in O.S.No.58 of 1997, which has been returned frequently for compliances, despite the fact that the returns are complied with by the learned counsel appearing for the petitioner.

2.The petitioner has filed E.A.CF.No.1209 of 2021 in E.A.No.282 of 2011 invoking the provisions of Order XXI Rule 97 and 101 of the Code of Civil Procedure, challenging the auction sale conducted pursuant to the orders in E.P.No.40 of 2004 on the ground that item numbers 1 to 5, which have now been sold in auction, are the properties belonging to the petitioner and it is only the 6th item of property, which stands in the name of the judgment debtor.

3.The specific case of the petitioner is that both the Charismatic Centre (the petitioner herein) and the Charismatic Service Trust, which is the judgment debtor, are different and separate entities. This application had been filed by the petitioner herein on 11.03.2020 and the said petition was returned asking the petitioner to provide documents to prove as to whether the petitioner was a Trust or a Company and to produce documents to show the identity of the petitioner. The petition was once again re-presented after compliance of the returns on 10.08.2021. The said petition was returned once again on 18.08.2021 and the same has been represented on 30.09.2021. It appears that it is once again returned on 25.08.2021 with a different set of queries. The same was complied with and re-presented and finally, the matter was returned once again on 04.10.2021 stating that the previous return number 1 had not been answered satisfactorily.

4.A perusal of the return would indicate that the learned Judge has sought for the following clarification:-

"As per the representation, the Charismatic Centre is only an establishment and not a Trust or a Company. Charismatic Centre was founded by Rev.Fr.John Joseph. The Charismatic Trust is also founded by the father John Joseph. Therefore, the legal identity of the Charismatic Service Centre to be shown clearly".

5.It is rather perplexing that the learned Judge, who is exercising the ministerial role while numbering the petition has traversed into the merits of the petition, which has to be gone into only after the petition is numbered and the respondent enters appearance. The returns made by the learned Principal District Judge touch upon the merits of the case and it is also seen that despite the earlier returns being complied with, the learned Principal District Judge, Nagercoil, Kanyakumari District, is coming forward with an entirely new set of returns.



6.As pointed out time and again, the role of the Judicial Officer while considering a petition for numbering the same is a restricted role and the learned Judge cannot touch upon the merits or otherwise of the petition's plaint. In fact, when the matter had come up for admission, the respondent was already represented by a counsel and this Court had heard the learned counsels on either side. This Court therefore directs the learned Principal District Judge, Nagercoil to number E.A.CF.No.1209 of 2021 in E.A.No.282 of 2011 within a period of two weeks from the same being re-presented. Registry is directed to return the original petition to the learned counsel appearing on behalf of the petitioner, after obtaining necessary acknowledgment.

7.With the aforesaid direction, the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Principal District Judge,
Nagercoil,
Kanyakumari District.

COPY TO:-

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

C.R.P. (MD) No.1809 of 2021

03.12.2021

VR (CO)

GC(22.02.2022) 3P 4C