



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2021

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.1958 of 2021

and

C.M.P. (MD) No.10551 of 2021

1.All the Members of Charismatic Centre Church,
Marthandam,
Rep. by petitioners 2 to 6

2.P.Mariya Rethinam

3.J.Melchi Bai

4.R.Loorthu Mary

5.F.Kala

6.C.M.Angel

.. Revision Petitioners/ Petitioners/
3rd Party's

-vs-

1.Retinaswamy

... 1st Respondent/ 1st Respondent/
Petitioner

2.Charismatic Service trust,
Rep., by its Founder and Managing Trustee,
Rev.Fr.John Joseph,
Trustee of Charismatic Service Trust,
Office at Trust Home, Market Road,
Marthandam & Post, Nallor Village,
Vilavancode Taluk, Kanyakumari District.

3.Rev.Fr.John Joseph

4.Sister Hellar Mary

5.Sister Sahaya Mary Jeyarani ... Respondents 2 to 5/
Respondents 2 to 5/ Defendants 1,2,3,5

6.Sahul Hameed

... 6th Respondent/ 1st Respondent/
10th Accused

Prayer :- Petition filed under Article 227 of the Constitution of India to direct the Principal District Judge of Kanyakumari at Nagercoil to number E.A.CF.No.3665 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 Subordinate Judge's Court, Kuzhithurai and dispose the same in accordance with law and on merits.



For Petitioners : Mr.M.R.Sreenivasan

For R1 : Mr.T.Wins

ORDER

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This Civil Revision Petition is filed seeking a direction to the learned Principal District Judge, Kanyakumari at Nagercoil to number E.A.CF.No.3665 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 petitioners.

2.This Court, in an earlier occasion, passed an order on 03.12.2021 in the case of **Rev.Sr.V.Catherin Vimala vs. Retnasamy and others** in **C.R.P. (MD) No.1809 of 2021**. The order dated 03.12.2021 reads as follows:-

"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."

3.Thus, following the above, this Civil Revision Petition is allowed and the learned Principal District Judge, Kanyakumari at Nagercoil is directed to number E.A.CF.No.3665 of 2021 in E.A.No.282 of 2011 within a period of two weeks from the same being re-presented. No costs. Consequently, connected miscellaneous petition is closed.

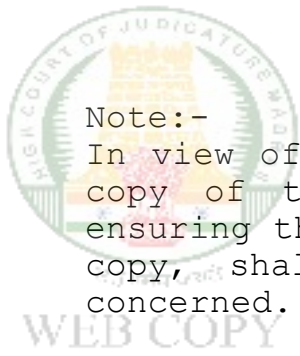
Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar



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 Principal District Judge,
Kanyakumari at Nagercoil.

2 The Subordinate Judge,
Kuzhithurai.

+1CC to M/s.M.R.SREENIVASAN, Advocate (SR-38722[F] dated 15/12/2021)

C.R.P.(PD) (MD) No.1958 of 2021
Dated: 13.12.2021

abr

MS/15.02.2022/4P.4C