



C.R.P(PD)No.1836 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) No.1836 of 2016

Arulmighu Sathiyanaatha Swami Temple,
Thirukalimedu Village,
Kanchipuram Taluk,
rep. by its Trustees,

1. Sivarama Chettiar
2. T.Kuppusamy Chettiar
3. C.Kumaravel Chettiar

... Petitioners

Vs.

1. Arulmighu Sathyanatha Swamy Temple,
rep. by its Executive Officer,
having office at Arulmighu Katchapeswarar Temple,
Kanchipuram.
2. K.S.Ramalingam Chettiar
3. S.Thanigaivelu

... Respondents

This Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 08.09.2015 in I.A.No.474 of 2014 in O.S.No.62 of 2011 on the file of the Additional District Munsif Court, Kanchipuram.



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For Petitioners : Mr.R.Mubarak Basha

For Respondent 1 : Dr.S.Suriya,
Additional Govt. Pleader

For Respondents 2 & 3 : No Appearance

ORDER

This Civil Revision Petition has been filed by the petitioners challenging the fair and decreetal order passed by the learned Additional District Munsif, Kanchipuram in I.A.No.474 of 2014 in O.S.No.62 of 2011 dated 08.09.2015.

2. The revision petitioners are the proposed third defendants. The suit in O.S.No.62 of 2011 was filed by the first respondents/plaintiff, for a decree of permanent injunction against the 2 & 3 respondents/1 & 2 defendants restraining them and their men and agents from in any way putting up any construction in the suit property. After the filing of the suit, third respondent/second defendant as well as the second respondent/first defendant have filed their written statements on 04.11.2011 and 16.12.2011



respectively, denying the averments made by the first respondent/plaintiff.

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3. While the suit is pending, the revision petitioners/proposed third defendants have filed an Interlocutory Application in I.A.No.474 of 2014 under Order I Rule 10 of CPC r/w. Section 151 of C.P.C., seeking to implead the petitioners as third defendants in the suit.

4. The learned counsel for the revision petitioners/proposed third defendants submitted that the second respondent/first defendant Mr.K.S.Ramalinga Chettiyar was one among the three trustees, earlier elected by the Velala Chettiar Community of the Chetti Street, Kanchipuram. He was the last among them and he had resigned and the Velala Chettiar community of Chetti Street, Little Kanchipuram elected the present revision petitioners 1 to 3 as Executive Trustees in the General Body meeting held on 04.09.2011 and the same was mentioned in the affidavit filed in support of I.A.No.474 of 2014.



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5. He further submitted that the second respondent/first defendant remained ex-parte. Moreover, these revision petitioners are elected as trustees by the General Body of the Velala Chettiar Community of Chetti

Street, Kanchipuram. Further, the learned counsel relied on a common order dated 28.07.2009 passed by this Court in W.P.Nos.24203 of 2008 and 6282 of 2009. The Writ Petition No.24203 of 2008 has been filed, challenging the appointment of a fit person in the place of the first defendant and the relevant paragraph of the order is extracted hereunder:

7. As far as the appointment of the fit person is concerned, as per the counter affidavit filed by the official respondents, in paragraph 8, certain irregularities committed by the petitioner as a defacto trustee have been mentioned and according to the learned counsel basing on this alone the fit person was appointed. Apart from this, according to the learned counsel, under Section 45(1) a fit person can be appointed. However, the learned counsel for the respondents also admits that this order appointing the fit person dated 27.12.2008 was passed without providing an opportunity to the petitioner. When admittedly basing on certain alleged irregularities said to have been committed by the petitioner, a fit person has been appointed in the place of the petitioner, certainly this order is not a simplicitor appointing a fit person, but it causes stigma to the petitioner. When an order has been passed causing



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stigma to an individual, certainly the said officer or this individual has a right to be heard before passing of the said order. Apart from this, even according to the learned counsel appearing for the respondent department, on appointment of the fit person, the petitioner will lose his trusteeship though he is a defacto trustee. Under such circumstances, since the order which is under challenge is causing stigma to the petitioner that cannot be passed without providing an opportunity to the petitioner. Consequently, the order dated 23.09.2008

by which the fit person has been appointed is set aside. However, liberty is given to the respondents to pass an order after providing an opportunity to the petitioner. With this observation, the writ petition is disposed of.

and the Writ Petition No.6285 of 2009 has been filed, challenging the appointment of executive officer, in which it is observed that the revision petitioner Mr.K.S.Ramalinga Chettiar, the first defendant in the suit is only a defacto trustee and not a regular selected trustee and this defacto trustee can hold the office till the regular selection is made the community members. Apart from this, as per Section 45(3) of the HR&CE Act, even if the appointment is made for an Executive Officer, the second respondent/first defendant is not losing his post as a trustee. Since, under the said scheme, the duties and powers to be discharged by the executive officer as well as the Trustee can be defined only by the Commissioner. Further, the judgment of



this Court in W.P.Nos.15468 and 15469 of 2003 dated 23.07.2008 has held that when the trustees have been holding the office, the appointment of the Executive Officer has been upheld. For better appreciation, the relevant portion is extracted hereunder:

10. As per the judgment of this Court in W.P.Nos.15468 and 15469 of 2003 dated 23.07.2004 also even when the trustees have been holding the office, the appointment of

the Executive Officer has been upheld. As such in my opinion, the impugned order by which the Executive Officer is appointed is well within the rules. Consequently, the impugned order is sustained and writ petition No.6282 of 2009 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

In the result, the Writ Petition No.24203 of 2008, filed, challenging the appointment of a fit person was allowed and the Writ Petition No.6282 of 2009, filed, challenging the appointment of an Executive Officer was declined by going into the Scheme framed by this Court in A.S.No.319 of 1920 dated 08.02.1922.

6. Subsequently, the revision petitioners/proposed third defendants filed the Writ Appeal No.1155 of 2021 against the order dated 28.07.2009 made in W.P.No.6282 of 2009.



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7. The learned Additional Government Pleader appearing for the first respondent submitted that if this Civil Revision Petition is allowed, then, it will cause delay in disposing the suit, which is of the year 2011.

8. Heard the learned counsel for the petitioners and the learned counsel appearing for the first respondent.

9. It is an admitted fact that the suit was filed in the year 2011 and thereafter, the Interlocutory Application in I.A.No.474 of 2014 in O.S.No.62 of 2011 was filed by the revision petitioners/proposed third respondent in the year 2014. Further, the revision petitioners/proposed third defendants were elected as Executive Trustees on 04.09.2011 and the learned Additional District Munsif Judge, in the order dated 08.09.2015, held that the revision petitioners/proposed third defendants are not proper and necessary party for the adjudication of this case.



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10. The fact remains that, in the suit, the first defendant was Mr.K.S.Ramalinga Chettiyar, who was the trustee of Arulmighu Sathiyanaatha Swami Temple and after his resignation, the revision petitioners/proposed third defendants were elected as Executive Trustees by the Vellala Chettiyar Community on 04.09.2011. So, the revision petitioners/proposed third defendants wanted to get themselves impleaded in the place of Mr.K.S.Ramalinga Chettiyar, who is no more and not the trustee at present. Hence, this Court finds that the application filed by the revision petitioners to implead them as third defendants in the suit is valid, proper and sustainable in law and there will be no prejudice caused to the respondent/plaintiff, if, the revision petitioners are impleaded as the third defendants in the suit.

11. The Hon'ble Apex Court in 2014(1) CTC 763 held that the Executive Officer, who is the respondent in the revision petition cannot take over the management and administration of the temple for an indefinite period and as per the above judgment of the Hon'ble Apex Court, the trial Court ought to have allowed the impleading application filed by the revision petitioners/proposed third defendants.



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12. Further, the revision petitioners/proposed third defendants have brought to the notice of the first respondent/plaintiff about their appointment as trustess of the first respondent's temple, despite, no steps have been taken to implead the revision petitioners as the third defendants in the suit.

13. Subsequently, the revision petitioners/proposed third defendants have filed another suit in O.S.No.119 of 2012 for the following relief:

(i) declaring that the temple is a denominational institution of Velala Chetti Community of Chetty Street, Kanchipuram.

(ii) declaring the appointment of the fourth defendant as Executive Officer of the plaintiff's temple under Section 45(1) of Act 22/1959 by the second defendant without jurisdiction. Hence order of the first defendant passed in N.K.No.7792/2007/A2, dated 02.05.2011 is null and void.

14. If, the revision petitioners are not permitted to participate in the above case, the valuable right of the revision petitioners community will be



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deprived, if, any order is passed in the above suit in O.S.No.62 of 2011 against these revision petitioners it will have a bearing in O.S.No.119 of 2012.

15. In view of the above facts and circumstances of the case and the foregoing reasons, the order passed by the learned Additional District Munsif, Kanchipuram in I.A.No.474 of 2014 in O.S.No.62 of 2011 is liable to be set aside. Accordingly, the same is set aside. In the result, the Civil Revision Petition stands allowed. No costs. Consequently, connected C.M.P.No.9643 of 2016 is closed.

16. Since, the suit is of the year 2011, the Additional District Munsif Court, Kanchipuram is directed to dispose of the suit as expeditiously as possible preferably within a period of 12 months from the date of receipt of a copy of this order.

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Index : Yes/No
Speaking Order : Yes/No
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