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C.R.P. (PD) .No.3296 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.3296 of 2016

and

C.M.P.No.16815 of 2016

Arulmigu Selvavinayagar Thirukkcoil,
Rep. by its Executive Officer having Office
At the temple premises at No.56,
Muthu Mudali Street, Royapettah,
Chennai – 600 014.

.. Petitioner

Vs.

1.D.Mohandurai

2.M.Malathi

3.The Fit Person,
Arulmigu Selvavinayagar Thirukkcoil,
Having Office at Arulmigu Siddhi Buddhi Vinayagar
Thirukkcoil,
At No.56, Muthu Mudali Street,
Royapettah,
Chennai – 600 014.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.08.2016 in I.A.No.4002 of 2016 in O.S.No.1233 of 2011 on the file of the VI Additional City Civil Court, Chennai.



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For Petitioner : Mr.D.R.Sivakumar

For Respondents : No appearance

ORDER

(The matter is heard through “Video Conferencing”)

This Civil Revision Petition is filed against the fair and decretal order dated 09.08.2016 in I.A.No.4002 of 2016 in O.S.No.1233 of 2011 on the file of the VI Additional City Civil Court, Chennai.

2.Originally the suit was filed before this Court in O.S.No.5377 of 1997 and the same was transferred to the file of the VI Additional City Civil Court, Chennai and renumbered as O.S.No.1233 of 2011.

3.The petitioner is plaintiff in O.S.No.1233 of 2011 on the file of the VI Additional City Civil Court, Chennai. The respondents 1 & 2 herein are the defendants 1 & 2 in the said suit. The petitioner filed the said suit for recovery of possession and other reliefs by the then Executive Officer. The respondents 1 & 2 filed written statement on 29.04.2005 and are contesting the suit. In the said suit, the petitioner filed I.A.No.4002 of 2016 under Order I Rule 10 read



with Section 151 of the Code of Civil Procedure to implead the 3rd respondent as 3rd defendant in O.S.No.1233 of 2011. According to the petitioner, during pendency of the suit, the tenure of Trustees of the petitioner Temple expired and Joint Commissioner, Hindu Religious & Charitable Endowments Department by his proceedings dated 28.07.2011 bearing செ.மு.ந.க.எண்.6684/2011/அ1 appointed the 3rd respondent as Fit Person to petitioner Temple till appointment of new Trustees. The petitioner was appointed as Executive Officer of Arulmigu Rathna Vinayagar Temple during the First week of April 2015 in which the petitioner Temple is a group Temple. The petitioner after taking charge of petitioner Temple, filed the present application to implead the 3rd respondent as 3rd defendant as he is a necessary and proper party to the suit and prayed for impleading the 3rd respondent as 3rd defendant in the suit.

4.The respondents 1 & 2 filed counter affidavit denying all the averments in the affidavit and stated that application filed by the petitioner after conclusion of trial when the suit was posted for arguments is belated one and the same is not maintainable and prayed for dismissal of the application in I.A.No.4002 of 2016.



5.The learned Judge considering the averments in the affidavit and counter affidavit, by the order dated 09.08.2016 dismissed the said application holding that Fit person was appointed on 28.07.2011 and the petitioner has filed the present petition after five years of appointment of above such person and the above said application filed after conclusion of trial and at the stage of arguments is not maintainable.

6.Against the said order of dismissal dated 09.08.2016 made in I.A.No.4002 of 2016, the petitioner has come out with the present Civil Revision Petition.

7.Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

8.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

9.From the materials on record, it is seen that the petitioner has filed the present application for impleading the 3rd respondent, the Fit person appointed



for petitioner Temple as 3rd defendant, as he is necessary and proper party to decide the issue in the suit. The Courts have power under Order I Rule 10 of the Code of Civil Procedure to implead a person either as plaintiff or defendant if that person is necessary or proper party to decide the issue in the suit, at any stage of the suit. The term at any stage of the suit means before delivering judgment and suit is decided either way. In the present case, the suit is at the arguments stage and the learned Judge dismissed the application as not maintainable as the same has been filed at arguments stage. The learned Judge failed to see that the petitioner took charge of the Temple as Executive Officer only in the first week of April 2015. The learned Judge without property appreciating the materials placed before her, erroneously dismissed the application and thereby committed irregularity and illegality.

10. For the above reason, the impugned order of the learned Judge dated 09.08.2016 made in I.A.No.4002 of 2016 is liable to be set aside and it is hereby set aside and I.A.No.4002 of 2016 is allowed. The learned VI Additional Judge, City Civil Court, Chennai is directed to carry out necessary amendment and proceed with the suit.

11. With the above directions, this Civil Revision Petition is allowed.



Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No

Internet : Yes / No

To

The Learned VI Additional Judge,
City Civil Court,
Chennai.

V.M.VELUMANI, J.



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