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C.R.P.Nos.839 and 840 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.Nos.839 and 840 of 2018
CMP Nos.6924, 6938, 6940 & 6941 of 2021
and CMP No.4642 of 2018

1.Mr.Kabeer

2.Mr.Karimullah

... Petitioners
in both petitions

Vs.

1.Mr.Syed Nymuddin

2.Mr.Syde Mynuddin

Trustees and Muthavallis
Syed Shah Vajiudi & Avulya Darga and Mosque
No.2D, Bade Sahib Street,
Thalayatham,
Gudiyatham.

3.Mr.Ameenuddin

4.Mr.S.Y.Mohammed Ali

President
Syed Shah Vajiudi & Avulya Darga and Mosque
Thalayatham, Gudiyatham.

5.Mr.S.Y.Sowkath Ali,

Muthavalli,
Syed Shah Vajiudi & Avulya Darga and Mosque
Thalayatham, Gudiyatham.

... Respondents
in both petitions



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Prayer in CRP No.839 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed in I.A.No.501 of 2017 in O.S.No.54 of 2017 dated 24.11.2017 on the file of the District Munsif Court at Gudiyatham, Vellore District.

Prayer in CRP No.840 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed in I.A.No.502 of 2017 in I.A.No.235 of 2017 in O.S.No.54 of 2017 dated 24.11.2017 on the file of the District Munsif Court at Gudiyatham, Vellore District.

For Petitioners : Mr.K.Mohanamurali
in both petitions

For Respondents : R1 - Died
in both petitions

M/s.Ajimath Begam for R2

R3 to R5 – No Appearance

COMMON ORDER

The 1st and 2nd defendants are the petitioners in both these Civil Revision Petitions. These Civil Revision Petitions have been filed challenging the fair and final order passed in I.A.Nos.501 of 2017 and 502 of 2017 by the District Munsif Court, Gudiyatham, dated 24.11.2017.



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2.The 1st and 2nd respondents/plaintiffs filed a suit seeking for the relief of permanent injunction against the petitioners. The cause of action for filing the suit was that the plaintiffs and their ancestors were always in possession and enjoyment of the suit property and that an attempt was made by the petitioners/defendants 1 and 2 to commit trespass into the suit property and hence, the suit was laid seeking for the relief of permanent injunction. The pleadings were also complete and the suit was at the stage of framing of issues. Along with the suit, I.A. No.235 of 2017 was filed by the plaintiffs seeking for the relief of interim injunction pending disposal of the suit.

3.Two applications came to be filed in I.A.Nos.501 of 2017 and 502 of 2017 by the petitioners/defendants 1 and 2. The first application was filed to implead the proposed defendants 4 and 5 in the main suit and the second application was filed to implead the proposed respondents 4 and 5 in the injuntion application in I.A.No.235 of 2017. The plaintiffs contested these applications on the ground that the proposed parties are neither necessary nor proper parties in the suit and sought for the dismissal of the applications.



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WEB COPY 4. The Court below on considering the rival contentions, through fair and final order dated 24.11.2017 dismissed both the applications. Aggrieved by the same, the petitioners/defendants 1 and 2 have filed these Civil Revision Petitions.

5. Heard Mr.K.Mohanamurali, learned counsel appearing on behalf of the petitioners and Ms.Ajimath Begam, learned counsel appearing on behalf of the 2nd respondent.

6. The petitioners filed the impleading applications mainly on the ground that the proposed parties are the President and the Muthavalli of the Waqf viz., Syed Shah Vajiuddi and Avulya Mosque and Durga, Gudiyatham as per the orders issued by the Tamil Nadu Waqf Board and they are in actual possession and Management of the Waqf and its properties including the suit property and hence, they should be made as parties in the suit and in the Interlocutory Application. The plaintiffs resisted these applications mainly on the ground that the Trust has already been held to be a private Trust in the earlier proceedings and it was confirmed up to this Court and the applications have been filed only to



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drag on the proceedings and that the proposed parties are neither necessary nor proper parties in the suit.

7.The Court below took into consideration the earlier judgments that were passed and gave a finding to the effect that the suit property belonged to a private Trust and the said judgment has become final and it has neither been challenged by the petitioners/defendants 1 and 2 nor by the proposed parties, who were sought to be impleaded in the suit and the application. The further finding that was given by the Court below is that the petitioners/defendants 1 and 2 had taken different stands in the written statement filed in the suit and in the affidavit filed in support of the impleading applications.

8.The suit was laid by the plaintiffs mainly on the ground that they are in administration of the suit properties and that the petitioners/defendants 1 and 2 were attempting to trespass into the suit property and put up a foundation in the suit property. The allegation was directed against the petitioners/defendants 1 and 2 in their individual capacity. When a written statement was filed by the petitioners/defendants 1 and 2, they took a very specific stand at



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Paragraph No.28 that they were going to the Mosque for doing their prayers and the suit has been filed only to prevent them from going to the Mosque and there is absolutely no merit in the suit.

9.In the affidavit that was filed in support of the applications, the petitioners apart from taking a stand that the proposed parties are the President and the Muthavalli of the Waqf, also took a stand that the petitioners were prevented from doing their repair works in the Mosque. These two contradictory stands loomed large in the eye of the Court below and the applications came to be dismissed.

10.The proposed parties viz., 4th and 5th respondents filed individual counter affidavits in the above applications. They took a very clear stand that they are maintaining the Waqf and its properties and that the plaintiffs do not have any right, title or interest over the suit property and they are not in the Management of the Waqf,

11.The Court below while dealing with the impleading applications took into consideration the earlier judgments that were passed till this Court in S.A.No.1403 of 1983 and came to a conclusion that the Trust in



question is a private Trust and that this judgment has not been challenged by the proposed parties. Hence, the Court below came to a conclusion that the proposed parties cannot be held to be proper or necessary parties in the suit.

12.The main issue that is involved in the suit is with regard to the interference of the petitioners/defendants 1 and 2 in the suit property and it was an individual relief that has been claimed against the petitioners. The main thrust of the suit is not on the management or administration of the Trust. The plaintiff is the *dominus litis* and who has to be added as a party in the suit is something to be decided only by the plaintiff. The only exception is where parties are seeking to implead in a suit and while dealing with the same, the Court must only see if they are necessary or a proper party without whose presence the suit cannot be decided. The Court below found that the proposed parties are neither necessary nor proper parties. The proposed parties have not approached this Court challenging the order passed by the Court below. It is the petitioners/defendants 1 and 2, who have approached this Court questioning the impugned order. The finding of the Court below to the effect that the proposed parties are neither necessary nor proper parties



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does not suffer from any illegality or infirmity and this Court does not find any ground to interfere with the same in exercise of its revisional jurisdiction.

13.In the result, the fair and final order passed by the Court below in the applications are sustained and both the Civil Revision Petitions stand dismissed. The Court below is directed to dispose of the suit in O.S.No.54 of 2017, within a period of three months from the date of receipt of copy of this order and file a compliance report before this Court. No Costs. Consequently, connected miscellaneous petition are closed.

09.12.2022

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
ssr



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To
The District Munsif Court,
Gudiyatham, Vellore District.



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N. ANAND VENKATESH, J.

ssr

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