



C.R.P.(PD)No.2526 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.07.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.(PD).No.2526 of 2017
and
C.M.P.No.11945 of 2017

G.Vijaychand Jhabak

.... Petitioner

vs

1. Yugpradhan Sri Jindatsuri Jain Padawadi
rep. By President,
Sri Jainn Sweatamber Moorthy Poojak Sangh,
Balaclava,
Coonoor – 643 102.
The Nilgiris.
2. Sri Jai Sweatamber Moorthy Poojak Sangh
rep. By its President
Shri Javarilal Parekh
S/o Late Shri Jaugraj Parekh,
Coonoor Drug Stores,
Upper Coonoor,
Bedford
Coonoor – 643 101
The Nilgiris
3. The Secretary,
Sri Jai Sweatamber Moorthy Poojak Sangh,
Mothichand Gulecha
S/o Tarachand Gulecha,
Care of Mothi and co.
Coonoor,
The Nilgiris.

4. Ajith Kumar Jhabakh

....Respondents



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Civil Revision Petition filed under 227 of the Constitution of India against the fair and final order dated 21.02.2017 made in I.A.No.1213 of 2015 in O.S.No.353 of 2015 on the file of the Subordinate Court, Udhagamandalam, The Nilgiris.

For Petitioner : Mr.S.Vinoth Kumar

For respondents : No appearance for R1 to R4

O R D E R

This Civil Revision Petition has been filed by the plaintiff against the fair and final order dated 21.02.2017 passed in I.A.No.1213 of 2015 in O.S.No.353 of 2015 on the file of the Subordinate Court, Udhagamandalam, The Nilgiris.

2. The petitioner herein/plaintiff has filed a suit in O.S.No.353 of 2015 seeking a declaration that the defendants 2 and 3 have no right, interest, entitlement or locus standi to install any other idol in the donated property and for consequential injunction restraining the defendant Nos.2 and 3 from installing any other idol in the suit property. The defendants 1 to 3 entered appearance and filed their written statement. Pending suit, the petitioner/plaintiff has filed I.A.No.1213 of 2015 seeking permission to sue the 1st defendant deity through the President and Secretary of the 2nd defendant Association.

3. The case of the petitioner in I.A.No.1213/2015 is that he is



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an ardent follower and disciple of Yugpradhan Sri Jindatsuri Dadasaheb, being the beneficiary under the 1st respondent/ 1st defendant Dadawadi and also a close relative of the Donor, Sri.J.Anopchand Jhabakh, who had an innate desire to dedicate the suit property for construction of the 1st respondent Dadawadi glorifying Yugpradhan Sri Jindatsuri Jain. The petitioner was supervising the construction of the entire Dadawadi premises in the donated property, being the 1st respondent and he has necessary right and locus standi to initiate and pursue the petition against the respondents. In the executive meeting, the 2nd respondent had recommended to form a Trust and register the same which was totally opposed by the hard liners in the Annual General Body Meeting held on 3.7.2015. The hard liners proposed to install one more idol of another sect who does not believe in the 1st respondent which is against the wishes of the Donor. The respondents 2 and 3 are making hectic attempts to install one more idol of the other sect by the end of October 2015 and in that regard, they have gone to Bangalore to meet the Guru of the other sect for fixing a date. The act of the respondents 2 and 3 is totally opposed to the wishes of the donor of the property and the petitioner, being a worshiper of the first respondent, has every right to oppose the same. The petitioner being



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interested in the trust seeks leave to institute the above suit for the reliefs claimed in the plaint as contemplated under law. The donor has gifted the suit property in favour of the first respondent deity who is represented by the President of the 2nd respondent association. The 2nd and 3rd respondents being the President and Secretary are now in defacto control of the first respondent deity against the wishes of the donor of the suit property. The 2nd respondent association consists of about 66 members and it may not be possible for the petitioner/plaintiff to file the suit individually as they are being represented by the President and Secretary of the unregistered association. The several correspondence filed along with the plaint would prove the fact that the President and Secretary of the 2nd respondent Association are in management of the 1st respondent deity and they are the fit and proper persons to represent the deity and the suit. Hence, he would pray to grant permission to sue the 1st respondent deity through the President and Secretary of the 2nd respondent association.

4. Per contra, it is stated by the respondents 1 to 3 that the petitioner has no locus standi to file the suit and also to seek the relief of injunction against these respondents. The petitioner is neither a member of the Sri Jain Sweatamber Moorthy Poojak Sangh



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nor a legal heir or a blood relation of the deceased Donor late Anopchand Jhabakh. The petitioner is not even a resident of Coonoor Town and he has no competence or any right to file the suit. The suit filed by him is nothing but an abuse of process of law and thus, the suit is not maintainable. The petitioner knows very well that the 2nd respondent is neither a legal entity or a registered society nor an Incorporated body and if the petitioner wants to file a suit against Sri Jain sweatamber Moorthy Poojak Sangh, he could do so, if he has any cause of action, by impleading all the members of the Sangh as parties to such suit. The Sangh has 66 members who are all from Coonoor. The respondents would further submit that the Court, by order in I.A.No.1213/2015 dated 5.11.2015, has ordered notice to the respondents, paper publication in one issue of Tamil daily Dinamalar edition, general notice and by way of tom tom beat and posted the case for hearing on 18.12.2015. But the petitioner has not taken out the paper publication in I.A.1213/2015 but he has taken out in the suit itself. Thus, the petitioner has not complied with the court's order. For the aforesaid reasons, the respondents seek to dismiss the I.A. and consequently, reject the plaint.

5. After hearing both sides, the trial Court, dismissed I.A.No.1213/2015. Aggrieved by the same, the present Civil revision



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Petition has been filed.

6. Heard the learned counsel for the petitioner. Though notice was served on the respondents, there is no appearance for the respondents.

7. It is not in dispute that the 2nd respondent is neither a legal entity nor a registered society or an incorporated body. The averments made by the petitioner in the petition can be gone into and decided only in the main suit and not in the interlocutory application. A suit cannot be filed against an unregistered Association. The allegation made against the unregistered association will bind on all the members of the association and hence, they all should be added as parties. On perusal of the records, it is seen that notice and paper publication was taken by the petitioner only in the suit and not in the interlocutory application as ordered by the Court below. Hence, the order dated 5.11.2015 has not been complied with by the petitioner. Therefore, this Court is of the opinion that there is no infirmity or irregularity in the order passed by the Court below.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Index:Yes/No
Speaking/Non-speaking order
vsi

To

The Subordinate Court, Udhagamandalam,
The Nilgiris.



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J.NISHA BANU,J.

Vsi

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