



CRP No.4155 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-12-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CRP No.4155 of 2022

And

CMP Nos.21712 and 21714 of 2022

Dr.K.M.Kalifa Masthan Sahib Kadiri
Nagore Dargah Hereditary Trustee and
Dargah Kalifa, Nagaore,
D.No.9, Thalaimattu Street,
Nagore – 611 002,
Nagapattinam District.

.. Petitioner

vs.

- 1.Alhaj Haja Noordeen Sahib @ Dr.S.Syed Kamil Sahib
- 2.S.Sulthan Kalifa Sahib Alias Kannu Vappa Sahib
- 3.Muhalli Muthavalli Haja Najumudeen Sahib
- 4.Haji Mohalli H.K.Syed Yusoof Sahib



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5.Haji N.S.Syed Abul Fathah Sahib

6.Haji Kaji S.A.Shaik Hassan Sahib

7.M.S.Muhamed Backer Sahib

8.H.N.Syed Haja Muhaideen Sahib

9.Haji S.M.B.Sulthan Kabeer Sahib

10.S.Syed Muhamed Kaji Hussain Sahib

.. Respondents

PRAYER : This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed by the learned Principal District Judge, Nagapattinam in OS No.829 of 2022 dated 12.10.2022.

For Petitioner : Ms.V.S.Manimekalai

For Respondents : Ms.A.Ajimath Begum

ORDER

The suit was instituted for a declaration to declare that the memorandum of terms of settlement arrived at, on 29.10.2019, vide the



Mediation Award passed by the Mediation Committee, amongst the first to fourth defendants, in respect of their claim of right to succeed for succession to the existing vacancy to the eighth (8th) Hereditary Trusteeship of Nagaore, Dargah, Nagore, by the said Mediation Award, as by rotation, is null and void and not binding, since contrary to the Nagore Dargah Scheme Decree, on the Board of Hereditary Trustees, for the Management and Administration of the affairs of the Nagore Dargah, at Nagaore and other Thakias and Shrines connected therewith and directing the first to fourth defendants to pay cost of the suit to the plaintiff.

2. The plaintiff is the first Trustee of Nagore Dargah Hereditary Trustee and Dargah Khalifa at Nagore.

3. The suit was instituted mainly on the ground that the plaintiff was not a party to the Mediation nor signed any Agreement or otherwise.



4. That apart, the compromise had effected pursuant to the order passed in Contempt Petition No.3107 of 2016 dated 03.12.2019.

5. The learned counsel appearing on behalf of the revision petitioner mainly contended that the Wakf Tribunal may not have jurisdiction to deal with the Mediation Award passed pursuant to the orders of the High Court in the contempt proceedings.

6. The plaintiff has specifically raised the ground in paragraph-8 of the plaint that the Board of Trustees of Nagore Dargah at Nagore and also the other claimants successorship of the Eighth Trustee were not parties to the said Mediation Award and also without the consent of either of the parties and also where deliberate and bad faith is involved, which requires cooperation of both sides wherein one party is the Nagore Dargah Management and the administration and the all the claimants of Hereditary Trusteeship of Nagore Dargah, the Award of invalid Mediation cannot bind the Nagore Dargah at Nagore and also the other parties.



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7. When there is a specific averment in the plaint that the plaintiff was not a party to the Mediation Award and the Mediation Award was passed pursuant to the orders of the High Court in the contempt proceedings, the plaintiff instituted a suit before the Principal District Court at Nagapattinam.

8. Apart from the order passed by the High Court in the contempt proceedings, yet another proceedings before the Supreme Court were filed in SLP to Appeal (Civil) Nos.31959 to 31961 of 2018 and the Apex Court of India rejected the Special Leave Petition with the following observations:-

“Application seeking permission to file Special Leave Petition is rejected with observation that if the petitioner resorts to any substantive proceedings, including suit for declaration, the same be decided on its own merits and in accordance with law uninfluenced by the observations made in the



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impugned judgment”.

9. When there is a specific observation in the order passed by the Apex Court that the petitioner shall approach the Civil Court by instituting a suit, there is no impediment for the plaintiff to institute the suit for adjudication of the issues raised between the parties.

10. This being the facts and circumstances, the petitioner is at liberty to pursue the civil suit already filed and the reasons recorded for returning the plaint is not in consonance with the issues involved and consequently, the objection raised by the Civil Court for returning of plaint is declared as void and thus, the Principal District Court, Nagapattinam is directed to number the civil suit and try the same on merits and in accordance with law.

11. With the abovesaid directions, the present Civil Revision Petition stands allowed. However, there shall be no order as to costs.



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Consequently, the connected miscellaneous petition is also dismissed.

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Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

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Note: The Registry is directed to return the original plaint order to the learned counsel for the revision petitioner on record.



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S.M.SUBRAMANIAM, J.

Svn

To

The Principal District Judge,
Principal District Court,
Nagapattinam.

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