



C.R.P (MD) No.1550 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.1550 of 2022

Abdul Kadar

... Petitioner

Vs

1.The District Collector,
Dindigul.

2.The Assistant Commissioner,
Hindu Religious Charitable Endowment Department,
Dindigul.

3.The Executive Officer,
Kailashanathar Temple Campus,
Hindu Religious Charitable Endowment Department,
Natham, Dindigul district.

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the District Munsif cum Judicial Magistrate Court, Natham Dindigul District to take up the plaint filed in filing unnumbered OS CNR No.TNDG100009282022 and number the same and issue process in accordance with law.

For Petitioner : Mr.A.Shajahan

For Respondent : Dr.C.Guha Seela Rupan



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ORDER

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This petition is filed for a direction to the District Munsif cum Judicial Magistrate Court, Natham, Dindigul District to number the plaint filed in unnumbered OS CNR No.TNDG100009282022.

2.The petitioner has filed the above suit for permanent injunction with regard to the suit properties. The petitioner in his plaint itself has admitted that without knowing that the subject properties are temple properties he has purchased the properties and defendants 2 and 3 are attempting to disturb the petitioner's peaceful possession and enjoyment of the properties for the past six months and therefore, the petitioner has filed the plaint for the relief of permanent injunction. However, the trial Court has returned the plaint on 09.06.2022 with the following endorsements:

"1.In the plaint it was stated that D2 and D3 attempt to disturb the possession of the plaintiff for the past six months, if so, has HR & CE issued any notice to plaintiff, yes means produce the same? No means mention the date from



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when D2 and D3 attempted to disturb the possession.

2. In the plaint it was mentioned that D2 & D3 claimed that the suit properties belongs to HR & CE. In this situation how the suit for permanent injunction alone is maintainable?

3. Name of the temple and its EO are not mentioned.

4. How the suit is maintainable? Since there is an express bar U/S 108 of HR & CE Act.

5. Section 80 (2) CPC is not complied.

Hence Returned. Time 15 days."

3. It was represented by the petitioner on 20.06.2022 that (i) no notice was given to the petitioner by the temple officials (ii) the Sub Registrar has given report that the properties belong to HR and CE Department and (iii) the temple is disturbing the petitioner's possession and therefore, the permanent injunction is sought for. Again it was returned on 22.06.2022 as the previous return was not complied with properly and clearly. It was represented on 01.07.2022. However on 05.07.2022 it was directed to be called in the open Court.



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4.The learned Counsel for the petitioner submits that the Section 108 of HR and CE Act will not be applicable to this case, since it deals with the issues relating to the administration or management of religious institution and the HR and CE authorities cannot decide the title or possession. Further the petitioner has filed the suit only for permanent injunction against the respondents, since they are attempting to disposses the petitioner from the properties without following due process of law. Though the petitioner has re-presented the plaint by complying with the defects, the trial Court without considering the same is returning it again and again.

5.The learned Counsel for the petitioner has relied on the following decision in support of his contention:

i.Sri Vedagiri Lakshmi Narasimha Swami Temple and Induru Pattabhirami Reddi reported in AIR 1967 SC page 781;

ii.Anamallai Club Vs Government of Tamil Nadu and Others, reported in 1997 (II) CTC page 307;

iii.Sri Vallaba Ganesar Devasthanam, Sannadhi Street, Tiruvannamalai and others Vs A.Anandavadivelu Mudaliar and others, reported in 1980 I MLJ page 140;



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iv.Sayarakshai Kattalai and Arthajama Kattalai attached to Arulmigu Kayaroganaswamy and Neelayadakshi Amman Thirukoil, Nagapattinam represented by its Executive Officer Vs R.Radhakrishnan and another, reported in (2001) 3 MLJ page 73.

6.The trial Court returned the plaint by referring Section 108 of the Hindu Religious and Charitable Endowments Act and Section 108 of the HR & CE Act is extracted hereunder:

"108. Bar of suits in respect of administration or management of religious institutions, etc.—No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act."

7.This Court in Sri Vallaba Ganesar Devasthanam's case cited supra has held that the principal on which the



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jurisdiction of the civil court is excluded under Section 108 of the Act are now well-settled. If the dispute raised in the suit relates to the administration or management of a religious institution or any other matter for the determination of which a provision has been made in the Act the bar under Section 108 of the Act will be attracted. On the other hand if the question and ambit of section 108 of the Act, then the civil Court will have jurisdiction to entertain the suit and Section 108 cannot be invoked.

8. In yet another judgment in Sayarakshai Kattalai's case cited supra this Court has held that it is proper to take up the issue regarding the maintainability of the suit and thereafter the other points could be taken up for consideration. Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, which is being heavily relied upon the Counsel for the 3rd defendant to hold that the suit is barred and not maintainable. The legal position or principle as to exclusion of jurisdiction of the Civil Court is provided under Section 108 of the Tamil Nadu Act 22 of 1959. By now the legal position is well settled. If the dispute arise or suit relates to the



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administration or management of a religious institution, or any other matter for determination of which a provision has been made under the Act, a bar under Section 108 will apply or gets attracted. If the question that arises for adjudication in the present suit falls outside the scope and ambit of Section 108 of the Act, then the Civil Court definitely has the jurisdiction to entertain the suit and such a suit is not barred under Section 108 of the Act.

9.The petitioner claims that he has filed the suit for the relief of permanent injunction as against the respondent. In Rama Papiiah Vs Ellappa Gounder, reported in 1960 2 MLJ SN 26, this Court has held that an injunction which is preventing remedy, can be granted only by the civil court that there is no inherent power in any tribunal to grant an injunction and that a person has always got his remedy to approach the civil court for the relief by way of injunction whenever his possession is interefered with.

10.From the above discussion it is clear that there is no bar under Section 108 of the Hindu Religious and Charitable Endowments Act for the civil court to entertain



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the suit for permanent injunction. Therefore, the trial Court is directed to number the suit and proceed further in accordance with law.

11.In the result, the civil revision petition is allowed on the above terms. No costs.

30.11.2022

DSK

Note: Registry shall return the original plaint

To

The District Munsif cum
Judicial Magistrate,
Natham.



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B.PUGALENDHI , J.

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