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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	16.02.2022
DELIVERED ON	25.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.1978 of 2021

and

C.M.P. (MD)No.10620 of 2021

Kayambu

...Petitioner/Petitioner/1st Defendant

Vs.

1.S.Periyasamy

...R-1/R-1/Plaintiff

2.The Joint Commissioner,
H.R. & C.E.,
Sivagangai.

3.The Assistant Commissioner,
H.R. & C.E., Paramakudi,
Ramanathapuram.

...R-2 & R-3/R-2 & R-3/D-2 & D-3

[No relief sought against the respondent Nos.2 & 3. Hence, notice to the respondent Nos.2 & 3 may be dispensed with].

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order, dated 20.10.2021 in I.A.No.3 of 2021 in O.S.No.21 of 2021 on the file of the learned District Munsif Cum Judicial Magistrate Court, Ilayankudi and allow this Civil Revision Petition with Costs.

For Petitioner	:Mr.G.Prabhu Rajadurai
For R-1	:Mr.N.Tamil Mani
R-2 & R-3	:Dispensed with

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 20.10.2021 in I.A.No.3 of 2021 in O.S.No.21 of 2021 passed by the learned District Munsif Cum Judicial Magistrate, Ilayankudi.

2.The parties are referred to as per the rank mentioned before the Court below.



3.The 1st respondent/plaintiff has filed a suit in O.S.No.21 of 2021 on the file of the learned District Munsif Cum Judicial Magistrate, Ilayankudi, for declaration and permanent injunction. During the pendency of the aforesaid suit, the appellant/1st defendant has filed a interlocutory petition in I.A.No.3 of 2021 in O.S.No.21 of 2021 for rejection of the plaint filed by the plaintiff. The said petition was dismissed. Against the said dismissal order, dated 20.10.2021, the appellant/1st defendant is before this Court.

4.Heard on either side. Perused the material documents available on record.

5.This Civil Revision Petition is filed on the ground that the relief sought for by the plaintiff is barred under Section 108 of the Tamilnadu Hindu Religious and Cultural Endowments Act (hereinafter referred as 'Act'). The Court below has failed to consider that there is no rival claimant to the office of the Trusteeship as it is already settled in the name of the plaintiff's father and that by virtue of the registered Will the temple is to be administrated by the plaintiff and the 1st respondent as Joint Trustees.

6.The 1st respondent/plaintiff has filed the suit in O.S.No.21 of 2021 for declaration to declare him as hereditary trustee for Karuppanaswamy Temple in Vani village and also seeking for permanent injunction.

7.The revision petitioner/1st defendant has filed a petition under Order 7 Rule 11(2) of Civil Procedure Code, to reject the plaint on the ground as per Section 108 of the Act, the Civil Court has no jurisdiction to try the case.

8.The issue is to be decided in this case is whether the plaintiff is a hereditary trustee of the suit temple?

9.Admittedly, the father of the plaintiff and the 1st defendant was the hereditary trustee which was upheld by this Court in S.A.No.191 of 2014. Now, the plaintiff and the 1st respondent are sons. The dispute between the petitioner and the 1st defendant is that who is the hereditary trustee of the disputed temple.

10.The ingredients of Section 108 of H.R. & C.E. Act, is extracted hereunder:

"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



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or deciding which provision is made in this Act shall be instituted in 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.

11.The Section 108 has two limbs. The first relates to the administration or management of a religious institution. The second relates to any other matter or dispute, for the determination of which, a provision is made in the Act.

12.But, the second limb is contemplated to Sections 63 & 64 of the Act, as what are the powers given to Joint Commissioner or Deputy Commissioner.

13.The relevant portion of the Judgment reported in 2013 (2) MWN (Civil) 793 in the case of Andavan V. Subramaniam, is extracted hereunder:

....
"the authorities appointed under the Tamil Nadu Hindu Religious and Charitable Endowments Act can only decide the status of office of trusteeship, whether it is hereditary or not and they are not competent to decide as to which of the competing claimant is a hereditary trustee or whether both are joint hereditary trustees. The said question has to be decided only by the Civil Court by filing a suit."

14.In view of the foregoing reasons, the learned District Munsif Cum Judicial Magistrate, Ilayankudi has rightly dismissed the petition in I.A.No.3 of 2021 in O.S.No.21 of 2021. This Court has no valid reason to interfere with the order passed by the Court below.

15.Finally, the Civil Revision Petition is dismissed by confirming the fair and decreetal order, dated 20.10.2021 in I.A.No.3 of 2021 in O.S.No.21 of 2021 passed by the learned District Munsif Cum Judicial Magistrate, Ilayankudi. No Cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To
The District Munsif Cum Judicial Magistrate,
Ilayankudi.

+1 CC to M/s.N.TAMILMANI, Advocate (SR-8591[F] dated 25/02/2022)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-9046[F] dated
28/02/2022)

C.R.P. (MD) No.1978 of 2021
25.02.2022

CK (CO)
KB (07.03.2022) 4P 4C