



A.NO.3643 OF 2022 IN CS DR.NO.18802 OF 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

APPLICATION NO.3643 OF 2022

IN

C.S. DR.NO.18802 OF 2022

1.N.Sivakumar
2.Subramani
3.Vidyavathi

.. Applicants/
Plaintiffs

VS.

1.Arulmigu Muthumariamman Thirukoil
Thanikachalam Nagar E Block Bakthargal Arakattalai
Rep. By its Chairman
147/142 E Block, Anna Salai,
Ponniyammanmedu, Thanikachalam Nagar,
Ponniyammanmedu, Ambattur,
Tiruvallur, Tamil Nadu – 600 110.

2.Arumugam

.. Respondents/
Defendants

PRAYER: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 92 of CPC with a prayer to allow the institution of Suit against the 1st defendant (i.e.) the Trust herein under Section 92 of CPC.



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For Applicants / Plaintiffs : Mr.S.Girissh
For Respondents / Defendants : Mr.K.Lavan

ORDER

This Application has been filed by the applicants / plaintiffs to grant leave under Section 92 of Code of Civil Procedure to institute Suit against the first respondent / first defendant Trust.

2.It is the contention of the applicants/plaintiffs that the first respondent Trust was registered under the Indian Trust Act, 1882 and registered as Document No.737/2018 and there exists a Temple for more than 40 years in the name of Arulmigu Muthumariamman Thirukoil in Thanikachalam Nagar. The Temple was formed by the public and has been functioning out of the financial contributions made by the public in and around the locality. Besides the Temple, there is also Sannidhis for Vinayagar and Murugan. The Trust was formed for the main purpose to establish a temple in the name of Arulmigu Muthumariamman Thirukoil and to manage and administer it. However, no such temple has been established till date, rather an already existing temple in the name of Arulmigu Muthumariamman



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Thirukoil has been taken over by the Trust. The second respondent / second defendant, without passing any resolution among the Trust Members, has unilaterally started to collect fixed/specific exorbitant amount from the public for doing poojas. According to the applicants / plaintiffs, it goes against the interest of the temple and the purpose of establishment of the Trust. All the voluntary contributions, donations made to the temple is collected in the name of the Trust and receipts are issued in the name of the Trust and this also goes against the interest of the donors. The Trust and Temple are independent identities, but the second respondent, being the Chairman, is seeking to usurp the Temple under the Trust. Hence, complaining certain acts of the second defendant, the present application has been filed to institute a Suit against the first respondent / first defendant Trust.

3.It is the contention of the second respondent / second defendant in the counter that the first applicant / first plaintiff was the Treasurer of the Trust and he was removed from the Trust by a Resolution dated 12.12.2021 and the Suit has been filed only to vindicate his personal right. In fact, the Assistant Commissioner, Hindu Religious and Charitable



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Endowments Department, Padi, Chennai, vide proceedings dated 24.08.2022, appointed one Mr.Achi Sivaprakasam, Executive Officer of Eraveeshwaran Thirukoil, Vysarpadi, to manage Arulmigu Muthumariamman Temple, Thanikachalam Nagar. Similarly, the wife of the first applicant / first plaintiff also filed a Writ Petition viz., W.P.No.18413 of 2022 before this Court as against the Authorities under Hindu Religious and Charitable Endowments Department as well as the respondents. Similarly, a Suit in O.S.No.23 of 2022 also has been filed by the respondents herein before the District Munsif Court, Madhavaram. Hence, the applicants have no public interest in the Temple and the Trust and hence, it is the contention of the second respondent/ second defendant that leave cannot be granted.

4.Heard the submissions made on either side.

5.It is the contention of the learned counsel for the applicants / plaintiffs that only the second respondent / second defendant is acting as a Chairman and collected huge amount from the general public under the pretext of the Trust and therefore, in the interest of the general public, leave



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has to be granted.

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6.Learned counsel for the respondents / defendants would submit that the Suit is nothing but to vindicate personal right of the plaintiffs. What was sought in the Suit is to remove the second defendant from the Chairmanship. Hence, it is the contention that absolutely there is no breach of Trust has been pleaded and established, whereas the temple has been taken over by the Authorities under the Hindu Religious and Charitable Endowments Department and it is under their management. Therefore, filing the Suit for framing a Scheme does not arise at all. It is the further contention that the other Trustees already filed an Original Application in O.A.No.3 of 2022 before the Joint Commissioner, Hindu Religious and Charitable Endowments Department for framing a Scheme which is also pending. Hence, the very Suit is nothing but abuse of process of law and thus, it cannot be entertained.

7.As far as the grant of leave under Section 92 of Code of Civil



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Procedure is concerned, the Court has to see whether there is any breach of Trust by any of the persons who are in the helm of affairs. The first applicant/ first plaintiff appears to be the Treasurer of the Trust and the second applicant / second plaintiff is one of the Trustees. The main allegation in the entire plaint as well as in this application appears to be with regard to the collection of certain amount in the name of the Trust for the temple and the second respondent / second defendant is acting as a Chairman of the Trust. The materials produced before this Court further indicates that the first applicant / first plaintiff has already been removed from the post of Treasurer by way of resolution dated 12.12.2021.

8. Similarly, the wife of the first applicant / first plaintiff filed a Writ Petition before this Court in W.P.No.18413 of 2022 not only against the Authorities under the Hindu Religious and Charitable Endowments Department but also against the second respondent / second defendant herein. The second respondent / second defendant has been arrayed as fifth respondent in the above writ petition. The writ petition has been originally filed under the pretext that the second respondent / second defendant herein



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has locked the temple and not allowed the petitioner therein and others. This

Court has disposed of the writ petition on 19.07.2022 with a direction to the Authorities to consider the representation given by the wife of the first applicant / first plaintiff for taking over the temple by the Hindu Religious and Charitable Endowments Department and also to appoint a fit person to manage the affairs of the temple.

9.Now, it appears that pursuant to the directions of this Court in the above writ petition, the temple has been taken over by the Authorities under the Hindu Religious and Charitable Endowments Department and a fit person also has been appointed to manage the affairs of the temple. This fact has not been disputed. Further, some of the Trustees also filed an Original Application before the Joint Commissioner, Hindu Religious and Charitable Endowments Department for framing a Scheme in O.A.No.3 of 2022 and the said application is also pending before the Joint Commissioner.

10.Similarly, the second respondent / second defendant herein



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also filed a Suit against the applicants in O.S.No.23 of 2022 before the District Munsif Court, Madhavaram and the same is also pending.

11.From the above documents, particularly the nature of the pleadings, makes it clear that the main grievance of the applicants / plaintiffs is with regard to their removal from the posts of Treasurer and Trustee and the Suit has been filed in fact only to vindicate their personal rights and the main relief sought is to remove the second respondent / second defendant from the post of Chairman.

12.Considering the above, this Court is of the view that when a Suit has been filed under the pretext of public right, to vindicate the personal right of the plaintiffs, leave cannot be granted to the parties. Further, for such relief an application to frame a Scheme is already pending with the Authorities under Hindu Religious and Charitable Endowments Department, which has a control over the temple. The temple is now under the control of the Hindu Religious and Charitable Endowments Department and a fit person has also been appointed to manage the affairs of the temple. Therefore, this



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Court is of the view that the Suit is nothing but abuse of process of law and therefore, leave cannot be granted.

13. Accordingly, the Application filed for grant of leave is rejected and consequently, the un-numbered Suit is also rejected. No costs.

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Index : Yes / No
Neutral Citation : Yes / No
Speaking / Non-speaking order
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N. SATHISH KUMAR, J.

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