



C.R.P.No.1657 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.1657 of 2016

and

C.M.P.No.10759 of 2019

K.Mohmed Ali

... Petitioner

Vs.

Kamal

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.06.2018 in I.A.No.475 of 2016 in O.S.No.26/2016 on the file of the Principal District Munsif Court, Vandavasi, Thiruvannamalai District.

For Petitioner : Mr.R.Mubarak Basha

For Respondent : Mr.V.R.Appasamee

ORDER

This Civil Revision petition has been filed challenging the fair and final order passed in I.A.No.475 of 2016 in O.S.No.26 of 2016 by the Principal District



C.R.P.No.1657 of 2019

Munsif Court, Vandavasi, Thiruvannamalai District dated 29.06.2018 dismissing the application filed by the petitioner under Order 7 Rule 11 of CPC to reject the plaint.

2. The respondent/plaintiff filed a suit in O.S.No.26 of 2016 before the Court below seeking for the relief of permanent injunction restraining the petitioner / 1st defendant from interfering with the peaceful possession and enjoyment of the suit property and to declare document No.5 of 2015 as null and void. The suit was filed on the ground that the property comes under the Administration of Saithani Bi Dargah and Shazath Bi Dargah and that the respondent /plaintiff is the treasurer of the said Dargah. Various allegations have been made in the plaint and it is not necessary to get into those allegations. The suit admittedly was filed by the respondent / plaintiff in his individual capacity and he did not file it in his capacity as a treasurer of the Dargah.

3. The petitioner / 1st defendant filed an application under Order 7 Rule 11 to reject the plaint mainly on the ground that the suit is not maintainable since it has been filed by the respondent / plaintiff in his individual capacity and not in his



capacity as the treasurer of the Dargah. The petitioner also took a stand to the effect that he had filed an earlier suit in O.S.No.69 of 2015 against the Tamil Nadu Wakf Officials and one Shoukath Ali for the relief of permanent injunction and the same was pending, concealing the said fact, the present suit was filed by the respondent /plaintiff.

4. The Court below dismissed the application mainly on the ground that the issue raised by the petitioner / 1st defendant did not fall within any of the ingredients under Order 7 Rule 11 of CPC. Aggrieved by the same, the present Civil Revision Petition has been filed before this Court.

5. Heard Mr.K.Mohamed Ali, learned counsel for the petitioner and Mr.V.R.Appasamee, learned counsel for the respondent.

6. While considering an application for rejection of plaint filed under Order 7 Rule 11 of CPC, the Court is only expected to look into the averments made in the plaint and nothing more. The main ground that has been raised by the petitioner for the rejection of Plaint is that the respondent/ plaintiff has filed the



suit in his individual capacity, even though the entire pleadings runs on the footing that he is representing the Dargah. On carefully going through the plaint, it is apparent that the respondent / plaintiff is not claiming any right in his individual capacity and the entire pleadings is on the basis that the suit property comes within the administration of the Dargah. If that is the case, the respondent / plaintiff cannot maintain the suit in his individual capacity. On this simple and straight forward ground, the suit itself must be held to be not maintainable. Even if this suit is prosecuted and is taken to its logical end, the suit will get dismissed on the preliminary issue of maintainability and hence, it will be a complete waste of judicial time to prosecute a suit which is not maintainable on the face of it. The Court below failed to consider this vital aspect and went wrong in dismissing the application filed for rejection of plaint.

7. In the light of the above discussion, this Court has no hesitation to interfere with the proceedings in O.S.No.26 of 2016 pending on the file of the Principal District Munsif Court, Vandavasi, Thiruvannamalai District and accordingly, the same is hereby rejected / struck off. If at all the concerned Dargah



C.R.P.No.1657 of 2019

/ trust has any grievance with respect to the suit property, it will be left open to the

Dargah / trust to workout their remedy in the manner known to law. The order passed in this Civil Revision Petition by striking off the suit will not stand in the way of Dargah / Trust to institute a fresh suit, if so advised. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

05.01.2023

Internet : Yes

Index : Yes

Speaking Order / Non Speaking Order
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To

The Principal District Munsif Court, Vandavasi, Thiruvannamalai District.



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C.R.P.No.1657 of 2019

N.ANAND VENKATESH.,J
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