



C.R.P.No.2899 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.08.2023

CORAM :

The Hon'ble Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2899 of 2018

1.G.Barathan

2.K.Subramanian

.. Petitioners

-VS-

1. The Madras Collectorate Colony Residents Welfare Association,
Regn.No.248/1972, rep by its President
Mrs.Shanmugavalli Sekar
No.15/33, Collectorate Colony,
Aminjakarai, Chennai-29.

2. Collectorate Colony,
V.O.C Colony & Part of Ayyavoo Colony Residents
Welfare Association, Rep by its
Secretary K.Perumal, No.6/12, Munirathinam Street,
Ayyavoo Colony, Aminjakarai, Chennai-29.

(Mrs.Shanmugavalli Sekar is substituted in the place
of M.Sekar as the President of the 1st respondent
Association vide Court Order dated 16.08.2023
made in CMP No.6542/2023 in CRP(PD) No.
2899 of 2018)

.. Respondents



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Civil Revision Petition filed under Section 115 of Civil Procedure Code against the judgment and decree dated 22.02.2018 in CMA No.22 of 2017 which confirmed the order passed in I.A.No.11268 of 2016 in O..S.No.4476/2016 on the file of XIII Assistant City Civil Court, Chennai.

For Petitioners : Ms.J.Amritha Sarayoo
For respondents : Mr.B.Mohan
: For R.1
Mr.R.Krishnamurthy
For R.2

ORDER

This Civil Revision Petition arises against an order passed in CMA No.22 of 2017. CMA No.22 of 2017, in turn, arose out of an order passed in I.A.No.11268 of 2016. The said Interlocutory Application No.11268 of 2016 was filed in O.S.No.4476 of 2016.

2. O.S.No.4476 of 2016 is a suit for permanent injunction restraining the defendants therein viz., the defendants 1 to 3 therein from in any manner interfering with administration and day-today affairs of the temple and for a preliminary decree of accounting from the second defendant.



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3. The case of the plaintiff is that “Arulmigu Sri Karpaga Vinayagar Alayam” was constructed in the vacant land allotted by the Madras Collectorate Co-operative Building Society. The allotment was made in the year 1979 and the Temple had been constructed therein in the year 2016. It was decided to have Kumbabishekam for the Temple. A committee was formed which empowered the second defendant/civil revision petitioner to collect funds and to maintain accounts. He was granted the power of collection as he was the Temple Convenor.

4. It is the case of the plaintiff that after Kumbabishekam was over, the second defendant did not submit accounts. According to the plaintiff, several opportunities were given to the second defendant, but he was evading submission of the same.

5. It is the further case of the plaintiff that a Meeting was held on 19.06.2016, whereby, new set of office bearers were elected. Enraged by the fact that he was pushed out of the Committee, the second defendant set up the third defendant and few other persons and formed the first respondent Society.



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The plaintiff further alleged that the second defendant brought henchmen to the Temple and attempted to disturb the peace that was prevailing there. Therefore, left with no other option, the plaintiff brought forth the suit with the aforesaid prayers.

6. Pending suit, he took out an application for interim injunction restraining the defendants from interfering with the management and administration of the Temple. The second respondent took a stand that the Society itself is defunct and is not entitled to present the plaint. Apart from that fact, he denied the alleged incident on 13.08.2016 and claim that there was no complaint against him from any quarters regarding his administration for more than 25 years. He would state that only because he questioned the “self proclaimed president” regarding the manner in which he is conducting himself, the present suit came to be filed. He would also state that the character of the Temple is sought to be changed. He would state there is no prima-facie case in favour of the plaintiff and sought for dismissal of the application.

7. The trial Court, considering the aspects of the case, felt that there is



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prima-facie case in favour of the plaintiff and granted an order of interim injunction. Aggrieved by the same, an appeal was preferred which ended in dismissal, against which, the present revision came before me.

8. Heard Ms.J.Amritha Sarayoo, learned counsel for the revision petitioner and R.Krishnamurthy, learned counsel appearing for the contesting respondent and Mr.B.Mohan, learned counsel for the respondent supporting the civil revision petitioner.

9. Ms.J.Amritha Sarayoo, learned counsel would submit as follows:

(a) First, the Society itself had become defunct and therefore, the Society could not have continued with the proceedings. She would state that subsequently, pending revision, Society has been struck off from the rolls maintained by Registrar of Societies and therefore, it is non existent and cannot continue with the proceedings.

(b) Secondly, she would state that the authorisation given to the President is a tampered one because the second respondent had filed an



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affidavit before the Court stating that the alleged meeting dated 25.08.2016 never took place.

(c) Thirdly, she would state that the respondent Mrs.Shanmugavalli Sekar does not have the locus standi to continue with the proceedings because what is claimed is a public right of occupying public office and does not relate to the estate of the deceased Sekar.

(d) Fourthly, she would state that by installation of “Hundi”, the very character of the Temple is sought to be changed.

(e) Finally, she would allege that on account of an order of injunction, a person, who had been incharge of the Temple for almost three decades and who is a senior citizen, is prevented from performing his prayers as well as from performing archanas in the Temple.

10. Mr.Mohan, learned counsel would effectively support these submissions.



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11. Mr.R.Krishnamurthy, learned counsel seeks time in the matter and would state that Mrs.Vijayakumari Natarajan is not available in Chennai and therefore, would want time. I refused to grant time and therefore, he was constrained to argue the matter on merits.

12. I have heard the learned counsel appearing on both sides and have considered the case.

13. Taking up the first issue whether the Society which has been struck off can continue a proceedings, I have to point out that striking out of a Society from the Register does not mean it is dissolved within the meaning of Society Registration Act. It is only on the dissolution of the Society, the Society loses its character and the Registrar is called upon to appoint a Liquidator for winding up of the Society. Till the Society is wound up, it is in a moribund status and it can always be revived. I can take judicial notice of the fact that the Government has passed orders permitting Societies which have been struck off to be revived on submission of resolution of the general body, of accounts as



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well as on passing appropriate resolutions. Till a Society is wound up, it continues to be alive and any person, who is defacto occupying the position, can represent the same. This is because the properties of a Society vests in its office bearers. This has been so held in the case of ***Illachi Devi (D) By Lrs and Others vs Jain Society AIR 2003 SC 3397***. In the said judgment, the Supreme Court has held that the Society, registered under the Society Registration Act, is not a juristic person, but, nonetheless, it had directed the issue to be raised at the time of disposal. It is always open to Ms.Amritha Sarayoo to raise this issue at the time of trial and get the suit dismissed. However, looking at the seriousness of the allegations and it being a religious institution, the court below have held that interim injunction would follow. I am not inclined to unsettle settled matters.

14. Insofar as the second aspect is concerned viz., the authorisation that has been given to Mr.Sekar to present the plaint, a perusal of the typed set of papers shows that the plaint was presented on 26.08.2016 and a resolution was passed authorising him to present the suit on 25.08.2016. In other words, one day before the presentation of the plaint, authorisation had been given to



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Mr.Sekar. Ms.Amritha Sarayoo would argue that the said authorisation has not been filed before the trial Court. If there is no resolution, it would be fatal to the proceedings. However, as seen from the order of the lower Appellate Court, one day before the suit has been presented, the resolution had been passed. Mr.B.Mohan would state that his client who is alleged to have signed the minutes by which the authorisation was given, has sworn to an affidavit that no such meeting had taken place. This is also an issue which has to be gone only at the time of trial.

15. The Court below at the time of deciding interlocutory application receives evidence by way of an affidavit by virtue of Order 19 Rules 1 and (2) of Civil Procedure Code. It does not record evidence, though it can. In this case, neither the plaintiff nor defendants have bothered to grace the witness box and therefore, the Court was constrained to go only as per the affidavits filed before it.

16. Prima Facie it has taken that a Meeting has taken place and Mr.Sekar had been authorised by the Society. This does not mean that the



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Resolution passed by the Society is final and binding through out the proceedings. It falls on the plaintiff to prove to the satisfaction of the trial Court that a meeting, in fact, took place on 25.08.2016 and resolution was passed authorising Mr.Sekar to present the plaint. The mere fact that it was raised at the time of interlocutory application, does not mean that the authorisation exists for the suit also. This is the issue which can be gone into at the time of trial and therefore, I am not inclined to interfere with the order at present. Therefore, I reject the second point raised by Ms.Amritha Sarayoo.

17. On the third point, it is alleged that Mr.Sekar passed away and Mrs.Shanmugavalli Sekar was impleaded as a party to the proceedings. According to Ms.Amritha Sarayoo and Mr.B.Mohan, Mrs.Shanmugavalli Sekar has no right to continue the proceedings. It is here that I have to refer to the application in CMP No.6542 of 2023. It was not the case of Mrs.Shanmugavalli Sekar, filing an application to come on record, but on the contra, it was Mr.Barathan, the 1st petitioner, who filed the application. In that affidavit, it has been stated that Mrs.Shanmugavalli Sekar has been elected as a President of the Society on the death of Mr.Sekar. Therefore, I have to go as



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per the averments made in the affidavit and in the light of that, I find no mistake of Mrs.Shanmugavalli Sekar continuing the proceedings for and behalf of the Society as even the civil revision petitioner has alleged that she has subsequently been elected as a President.

18. Whether Mrs.Shanmugavalli Sekar was in fact elected as President subsequent to the death of her husband is also a matter for trial. In case, the plaintiff fails to prove the meeting dated 25.08.2016 and in the alleged meeting, Mr.Sekar was elected as President, the suit will have to face its consequences. For the present, since there is an allegation that Mrs.Shanmugavalli Sekar has been elected as President, she is entitled to continue the proceedings,

19. Now, I turn to moulding of the reliefs. Having dismissed the revision does not mean that I have to bring down the curtains of the entire issue. During the course of arguments, Ms.Armitha Sarayoo and Mr.B.Mohann would contend that under the strength of the interim order, the worshipers are prevented from entering into the temple.



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20. Careful perusal of the prayers sought for in the interim injunction shows that it is only an injunction relating to day-to-day administration of the Temple. Being a Temple, constructed by a Society, the members of the Society cannot be prevented from offering their prayers including performing of archanas. The prayer sought for by the plaintiff was only with respect to management and administration of the Temple and not with offering and worshipping of the Deity. Similarly, when the character of the Temple has been one of a private one, it is not open to the parties to change the character merely by the fact that they have assumed office pending litigation.

21. Therefore, I make it clear that dismissal of the revision will not prevent the persons either from offering prayers or performing archanas to Deity. The findings given herein are all prima facie. I am sure that the trial Court would not be influenced by any of the observations made by me or by the appellate Court while disposing of the suit.



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22. With the above observations, the Civil Revision Petition is dismissed.

No costs.

23. Since the suit is pending from 2016 and pleadings have been completed, the learned trial Judge is requested to take up the matter as expeditiously as possible and dispose of the suit on or before 28.02.2024.

23.08.2023

Index : Yes/No
Internet : Yes/No
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To

XIII Assistant City Civil Court, Chennai.



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V.LAKSHMINARAYANAN,J.,

SI

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