

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.235 of 2021
and
C.M.P.(MD)No.1408 of 2021

Chitra, W/o.Rajendran

.. Petitioner

Versus

1.M.Nedunkulam Marudhupandiar
Agamudaiyar Nalasangam,
Rep. by Secretary,
Thangamani,
S/o.Subbiah Servai,
M.Nedunkulam Village,
Nallukurichi Post,
Paramakudi Taluk,
Ramanathapuram District.

2.M.Nedunkulam Marudhupandiar
Agamudaiyar Nalasangam,
Rep. by Treasurer,
Ganesan,
S/o.Muthirulan Servai,
M.Nedunkulam Village,
Nallukurichi Post,
Paramakudi Taluk,
Ramanathapuram District.

3.Rajendran, S/o.Ramasamy

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.09.2019, passed in I.A.No.566 of 2018 in O.S.No. 16 of 2017, on the file of the District Munsif Court, Paramakudi.

For Petitioner : Mr.S.A.Ajmalkhan
For R1 : No Appearance
For R2 : Mr.D.Senthil
For R3 : No Appearance

ORDER

This Petition has been filed against the fair and decreetal order dated 09.09.2019, passed in I.A.No.566 of 2018 in O.S.No.16 of 2017, on the file of the District Munsif Court, Paramakudi.

2. The petitioner is the first defendant in O.S.No.16 of 2017, on the file of the District Munsif Court, Paramakudi. At the stage when the defendants' side evidence was to be recorded, the Secretary of the respondent Sangam/first plaintiff, named "Thangamani" was removed from the said post, for having acted against the interest of the respondent Sangam and in his place, the name was said to be substituted with one Balusamy, who was elected as Secretary on 02.09.2018. Aggrieved by the same, the present Civil Revision Petition has been filed.

3. The relevant portion of the impugned order of the learned District Munsif, Paramakudi, dated 09.09.2019, allowing I.A.No.566 of 2018 at the behest of the respondents 1 and 2/plaintiffs to implead the said Balusamy, who was elected as Secretary of the respondent Sangam on 02.09.2018, reads as under:-

"7. On perusal of case records it is found that the suit has been filed for declaration and consequential injunction. The suit has been pending for cross examination of DW3. The suit has been filed by Secretary and Treasurer of M.Nedungulam Marudhupandiyar Agamudaiyar Nala Sangam representing said Sangam. The petitioner has filed this petition to change the person representing the Sangam as Secretary, Thangamani, who was removed from the post to another person Balusamy who was elected for the post representing 1st plaintiff. The objection raised by the respondents was that said Thangamani has deposed the truth regarding the suit property and hence he has been removed from the post of Secretary and said Thangamani being the 1st plaintiff shall be transposed as defendant instead of impleading another person. It is pertinent to note that the said Thangamani has not filed the suit on individual capacity, he has filed the suit under the capacity of Secretary to M.Nedungulam Marudhupandiyar Agamudaiyar Nala Sangam representing said Sangam. But the proof affidavit filed on behalf of Thangamani as DW3 reveals that he has filed the proof affidavit in his individual capacity, not representing the Sangam as Secretary. The 1st plaintiff being the Secretary of M.Nedungulam Marudhupandiyar Agamudaiyar Nala Sangam, the present Secretary may represent the Sangam. Since Thangamani has not filed the suit under individual capacity and he has been examined under individual capacity and he has been removed from the post of Secretary, it is not necessary to transpose him as defendant. The respondents have not denied the fact that Balusamy has been elected as Secretary to Sangam. Therefore, to prosecute the suit further, it is just and necessary for the present Secretary to represent the 1st plaintiff Sangam. The respondents will not incur any loss or prejudice if this petition was allowed. Per contra, the petitioner will incur huge loss and great

prejudice if this petition was not allowed. In this circumstance, this Court is inclined to allow this petition. The point is answered accordingly."

4. Considering the above, there is no merit in the present Civil Revision Petition filed by the petitioner/first defendant. Therefore, the Civil Revision Petition is liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The trial Court is directed to complete the proceedings and the rights relating to the locus of the said Balusamy as Secretary of the respondent Sangam is left open to be canvassed by the petitioner during the stage of final arguments.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
smn2

30.03.2023

To

The District Munsif,
Paramakudi.

C.R.P.(MD)No.235 of 2021

C.SARAVANAN, J.

smn2

Order made in
C.R.P.(MD)No.235 of 2021

30.03.2023