



C.R.P.(MD).No.1547 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 19.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1547 of 2019

and

C.M.P(MD) No.8211 of 2019

1. Chithambaram
2. T.Othiyandi
3. R.Ravindran
4. P.Athimuthu
5. D.Pauldurai
6. R.Karthikeyan
7. M.Raj

... Revision Petitioners/Petitioners 1 to 7/
Defendants 10, 11, 13 to 16 and 21

-vs-

1. Athinarayanaperumal
2. Parthasarathi

... Respondents/Respondents 1 and 2/
Plaintiffs 1 and 2

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.243 of 2018 in O.S.No.67 of 2018, dated 15.04.2019 on the file of the Sub Court, Thiruchendur.

For Petitioners : Mr.R.Rajaraman

For Respondents : Mr.D.Rajkamal
for Mr.J.Ashok



C.R.P.(MD).No.1547 of 2019

ORDER

WEB COPY

The present Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.243 of 2018 in O.S.No.67 of 2018, dated 15.04.2019 on the file of the Sub Court, Thiruchendur.

2. The petitioners herein are the defendants 10, 11, 13 to 16 and 21 and the respondents herein is the plaintiffs before the Court below.

3. The learned counsel appearing for the petitioners would submit that the very suit in O.S.No.67 of 2018, on the file of the Sub Court, Thiruchendur, is hit by principle of *res judicata* and also the same is hit by limitation. However, the learned counsel, while advancing his arguments, has not put forth any objection in respect of *res judicata* and focused his arguments only in respect of the limitation. It is the submission of the learned counsel for the petitioners that when Section 70 of the Hindu Religious and Charitable Endowments Act, provides only 90 days to file a original suit, the filing of the suit after the period of 90 days is barred by limitation.



C.R.P.(MD).No.1547 of 2019

WEB COPY

4. At this juncture, this Court deems it appropriate to extract Section 70 of the Hindu Religious and Charitable Endowment Act, as follows:

70. Suits and appeals.—(1) Any party aggrieved by an order passed by the Commissioner—

(i) under sub-section (1) or sub-section (2) of section 69 and relating to any of the matters specified in section 63, section 64 or section 67 ; or

(ii) under section 63, section 64 or section 67 read with sub-section (1)(a), 2 or (4)(a) of section 22 or under section 65

may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order, and the Court may modify or cancel such order, but it shall have no power to stay of order of the Commissioner pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under sub-section (1), may, within ninety days from the date of the decree, appeal to the High Court.



C.R.P.(MD).No.1547 of 2019

WEB COPY

5. Though Section 70 of the Hindu Religious and Charitable Endowment Act provides 90 days to file the suit and appeals, from the plain reading of Section 70 of the Act, this Court could not infer anything for the exclusion of application under Section 5 of the Limitation Act. Therefore, the very submissions made by the learned counsel for the petitioners that the suit is hit by Limitation could not be inferred from the perusal of the plaint pleadings.

6. At this juncture, the learned counsel for the petitioners put forth the second line of argument, that even for the delay of condonation, no application has been filed. But this was objected by the respondent and contended in the counter statement filed in Civil Miscellaneous Petition, that they have moved an application for condonation of delay.

7. Therefore, this Court is of the view that even if there is any delay in filing the appeal, since the suit has already been numbered, at the best, the non filing of Section 5 of the Limitation Act application could only be termed as a procedural irregularity. Therefore, this Court could not find any infirmity in the order passed by the Court below.



C.R.P.(MD).No.1547 of 2019

WEB COPY

8. In the result, this Civil Revision Petition is **dismissed**. Considering the pendency of the suit since 2018, the Court below is directed to dispose of the suit in O.S.No.67 of 2018 as expeditiously as possible, preferably within a period of six months from the date of receipt of the copy of this order. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

19.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Sub Court,
Thiruchendur.



WEB COPY



C.R.P.(MD).No.1547 of 2019

C.KUMARAPPAN,J.

ebsi

C.R.P(MD)No.1547 of 2019

19.09.2023