



C.R.P(MD)No.864 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)No.864 of 2015(PD)

and

M.P(MD)Nos.1 & 2 of 2015

Freedra Rani

...Petitioner/Petitioner/7th Defendant

.vs.

**1.Thangam Religious and Charitable Trust,
Represented by its Trustee and Executor
appointed as per registered Will dated 16.08.2012
(No.102/2012), D.Hari, Advocate,
No.109, Court Road,
Nagercoil, Kanyakumari District.**

**2.D.Hari,
S/o.Damodharan Thampi,
Advocate and Executor-cum-Trustee,
Appointed as per registered Will dated 16.08.2012
(No.102/2012),
No.109, Court Road, Nagercoil,
Kanyakumari District.**

**...Respondents 1 & 2/
Respondents 1 & 2/Plaintiffs**

**3.Rugmoni Ammal
4.G.Hariharan
5.Lakshmi Ramasundaram
6.C.Ramasundaram
7.D.Vijila
8.N.Thiyagarajan**

**...Respondents 3 to 8/Respondents 3 to 8/
Defendants 1 to 6**



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.6 of 2014 in O.S.No.83 of 2013 on the file of District Judge, Kanyakumari at Nagercoil dated 25.09.2014.

For Petitioner	:Mr.M.P.Senthil
For R2	:Mr.H.Thayumanasamy
For R1, R3 to R8	:No appearance

ORDER

This revision is directed against the dismissal of I.A.No.6 of 2014, which was taken out by the 7th defendant under Order 7, Rule 11 of CPC seeking rejection of the plaint in O.S.No.83 of 2013 on the file of the District Court, Kanyakumari Division at Nagercoil.

2. The bone of contentions of the revision petitioner, as a petitioner in the said application, is that no prior leave was sought for by the plaintiffs before instituting the suit under Section 92 of CPC. He would also state that the said error cannot be cured subsequently and despite, the trial Court agreeing with the contentions of the 7th defendant, proceeded to dismiss the said application on the ground that the counsel for the plaintiffs had represented that the plaint would be amended. The



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grounds of revision are also on the same lines as that of the contentions raised in the application for rejecting the plaint.

3. Heard Mr.M.P.Senthil, learned counsel for the petitioner and Mr.H.Thayumanasamy, learned counsel for the second respondent and perused the records.

4. It is seen from the plaint filed by the respondents 1 & 2 herein before the District Court that the relief sought for are as follows:

“A.Decree declaring that the 2nd plaintiff is entitled to manage and administer plaint trust and plaint scheduled properties as the executor / trustee appointed as per the registered Will dated 16.08.2012 (No.102/2012) executed by Smt.S.L.Thangam who died on 21.05.2013 and to perform the charities and religious services as stated in the said Will and as directed by this Hon'ble Court.

B.Decree for framing a scheme for the proper management and administration of plaint trust and plaint schedule trust properties and also by specifying the religious and charitable purposes of the plaint trust and for the performance of those Religious and Charitable matters at all times to come.”



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5. I have also perused the Will, dated 16.08.2012, which is registered as Document No.102/2012. From the reading of the said Will, it is clear that the testator desired that a Trust should be formed to carry out the charities and religious services that have been mentioned in the Will. Admittedly, till date the trust has not been formed.

6. The learned counsel for the respondents would submit that the Trust is being formed and the deed has been submitted for registration, but, however, the same has been returned.

7. It is seen from the first prayer in the plaint that the first plaintiff is Thangam Religious and Charitable Trust, represented by its Executor / Trustee. Admittedly, no such trust is in existence, as on date. Therefore, the suit as framed by the first plaintiff is not maintainable in the eye of law. Insofar as the second plaintiff is concerned, he is the Executor appointed under the registered Will dated 16.08.2012. In the light of the reliefs sought for in the plaint, namely, entitling the second plaintiff to manage the trust and trust properties and also for framing the scheme for the management of the trust and trust properties, I am afraid that the second plaintiff also cannot maintain the suit. However the counsel for



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the second respondent states that the trust would take wings and thereafter the plaintiff would frame a proper suit and file it before the competent Court. The learned counsel for the petitioner submits that right from the date of institution of the suit, the plaintiffs have been enjoying an interim order which has been in force, even till date. However, the said statement of the counsel for the petitioner is disputed by the counsel for the respondent stating that the interim order was not extended after 2016. He has filed an application to vacate the stay granted in the persent Civil Revision Petition. However, leaving this issue open, I deem it fit to allow the Civil Revision Petition with the following directions:

8. The suit as framed is not maintainable in the eye of law and the application under Order 7 Rule 11 of CPC stands allowed. In view of the fact that the respondents/plaintiffs have been enjoying an interim order over a decade, subject to the factum of the interim order being in force till date, there shall be an order of status quo for 8 weeks from the date of receipt of a copy of this order, within which time the respondents/plaintiffs shall, if they so deem it fit, institute a fresh legal proceedings against the defendants in O.S.No.83 of 2013. However, it is made clear



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that the said status-quo shall be available to the respondents only in the event they are being able to satisfy the interim order was in force in O.S.No.83 of 2013 and in the event, if the interim order has been in force, the status-quo shall be available to the plaintiffs only for a period of 8 weeks. It is for them to work out their remedy before the appropriate Court in a manner known to law.

9. This Civil Revision Petition is allowed with the above directions. It is also brought to the notice of this Court that the suit in O.S.No.83 of 2013 which was pending on the file of the District Court, Kanyakumari has now been transferred and renumbered as O.S.No.48 of 2019 before the III Additional District Court, Tirunelveli. No costs. Consequently, connected miscellaneous petitions are closed.

31.10.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
AM



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WEB COPY

To

- 1.The District Court,
Kanyakumari at Nagercoil.
- 2.The III Additional District Court,
Tirunelveli.



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P.B.BALAJI,J.

am

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