



C.R.P.(PD).No.3560 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 03.09.2024

Coram

THE HON'BLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.3560 of 2024
and C.M.P.No.19281 of 2024

S.Rajagopal (Died)

1.R.Indirani

2.R.Ravichandran

3.R.Baskar

4.C.Janaki

5.Vijayalakshmi

6.R.Parameswari

7.R.Ramesh Kumar

8.Kalaiselvi

... Petitioners

(Cause title accepted vide order of this Court dated 22.08.2021
made in C.M.P.No.18149 of 2024)

-Versus-

Sri Selva Vinayagar @

Elaikattu Vinayagar Temple,

Rep by its Hereditary Trustee

Selvi S.V.Hamsa @ Hamsavardani

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in Memo Sr. No.66164 of 2023 dated 09.08.2023 in A.S.No.25 of 2023 passed by the learned V Additional Judge, City Civil Court, Chennai.



C.R.P.(PD).No.3560 of 2024

For the Petitioners : Mr.S.Ambigapathi

WEB COPY

ORDER

This Civil Revision Petition arises against the order passed by the learned V Additional Judge, City Civil Court, Chennai, in Memo Sr. No.66164 of 2023 dated 09.08.2023 in A.S.No.25 of 2023.

2. A.S.No.25 of 2023 arises out of O.S.No.6312 of 2019 on the file of the VI Assistant Judge, City Civil Court, Chennai. The plaintiff in the said suit is Sri Selva Vinayagar @ Elaikattu Vinayagar Temple. It was represented by its hereditary trustee, one Selvi S.V.Hamsa @ Hemasavardani. The defendant in the said suit is one S.Rajagopal. He passed away pending the proceedings and his legal heirs are the Civil Revision Petitioners.

3. O.S.No.6312 of 2019 was decreed by the learned VI Assistant Judge, City Civil Court, Chennai, on 12.10.2022.

4. As against the said decree, Mr.S.Rajagopal preferred an appeal. Now, pursuant to the order of the Court in C.M.P.No.2 of 2023, the Civil Revision Petitioners were brought on record as his legal heirs.



C.R.P.(PD).No.3560 of 2024

WEB COPY

5. In the meanwhile Selvi S.V.Hamsa @ Hamsavardani also passed away and therefore, the counsel for the plaintiff filed a memo to record the fact that one Geetha represents the plaintiff – Temple. The said memo was ordered by the learned Appellate Judge, against which the present revision.

6. Heard, Mr.S.Ambigapathi, for the Civil Revision Petitioners.

7. Mr.S.Ambigapathi, would submit that the said Geetha has not produced the legal heir certificate or any other record before the HR & CE Department to show that she is the hereditary trustee of the temple. Therefore, he would plead that she is not entitled to contest the appeal.

8. In addition he will argue that the said Rajagopal is not a tenant and he is the hereditary trustee of the institution. Therefore, he would seek for the order being revised. He would further rely upon the Judgment of the Rajasthan High Court in ***Kalu Ram Vs. Charan Singh and Anr.***, (AIR 1994 Raj 31) and that of the Supreme Court in ***Hafizun Begum Vs. Md. Ikram Heque and Ors.***, (AIR 2007 Supreme Court 2680) to state that the Judgment of the lower



C.R.P.(PD).No.3560 of 2024

Appellate Court is contrary to these verdicts.

WEB COPY

9. I have carefully considered the argument of Mr.S.Ambigapathi.

10. O.S.No.6312 of 2019 is a suit, presented seeking the relief to quit and deliver the vacant possession of the property which is in occupation of the predecessor in interest of the Civil Revision Petitioners. After contest, the suit came to be decreed on 12.10.2022. An appeal has been preferred in A.S.No.25 of 2023 and it is pending on the file of the Principal Sessions Judge, City Civil Court, Chennai.

11. Pending the appeal, both the hereditary trustee, Selvi S.V.Hamsa @ Hamsavardani as well as the original defendant have passed away. In so far as the original defendant is concerned there is no issue regarding his legal representatives. They have been brought on record, pursuant to an order in C.M.P.No.2 of 2023 dated 01.12.2023. With respect to Selvi S.V.Hamsa @ Hamsavardani, one Geetha filed a memo stating that she has assumed the office of hereditary trustee of the plaintiff-Temple and is continuing to administer the temple.



C.R.P.(PD).No.3560 of 2024

WEB COPY

12. Taking into consideration these facts, the Appellate Judge amended the cause title and brought on record Geetha instead of Selvi S.V.Hamsa @ Hamsavardani. In so far as the argument of Mr.Ambigapathi that no record has been produced appointing the said Geetha as hereditary trustee.

13. Suffice to say under Section 2 (11) of Code of Civil Procedure, even an inter meddler of the property can be a legal representative. All legal heirs are legal representatives, but converse that all legal representatives are not legal heirs is true. It is this proposition that had been laid down by the learned Judge in **Kalu Ram's case** (cited supra). This is a direct application of Section 2 (11) of CPC and no one can have a quarrel over the said verdict.

14. In so far as the Judgment in **Hafizun Begum's case** (cited supra) is concerned, the issue before the Supreme Court, whether a legal representative is a dependant for the purpose of the Motor Vehicles Act. The said rule cannot be extended to the present case. The Motor Vehicles Act is a special legislation which excludes its jurisdiction on the Civil Court. The principles of Motor Vehicles Act cannot be extended to a case where on the death of one hereditary



C.R.P.(PD).No.3560 of 2024

trustee another hereditary trustee, wants to continue the proceedings.

WEB COPY

15. Mr.S.Ambigapathi, would refer to Order XXII of CPC to plead that legal heirship of a party must be proved. That provision would apply in case of a living person. That is not the situation here. The plaintiff is not Selvi S.V.Hamsa @ Hamsavardani. The plaintiff is a temple and it has to be represented by a living person. It is a representative capacity which is sought for by Geetha. Even if she was not appointed by the HR & CE Department, in case she is in the position of hereditary trustee, she is obviously entitled to represent the institution. This is because, as pointed above any person including an inter meddler in the estate of the plaintiff has to be brought on record. The learned Appellate Judge has saved the right of the Civil Revision Petitioners, permitting them to urge the issue as regards the right of Geetha to continue the proceedings in the appeal. Therefore, no prejudice has been caused to the petitioners.

16. In the result, I find no reason to interfere with the order dated 09.08.2023 in Memo SR. No.66164 of 2023 in A.S.No.25 of 2023. Accordingly, this Civil Revision Petition stands dismissed. No costs.



C.R.P.(PD).No.3560 of 2024

Consequently, the connected miscellaneous petition is closed.

WEB COPY

03.09.2024

Jer

Index : yes / no
Internet : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order

To

The V Additional Judge, City Civil Court, Chennai.



WEB COPY



C.R.P.(PD).No.3560 of 2024

V.LAKSHMINARAYANAN, J.,
Jer

C.R.P.(PD).No.3560 of 2024 &
C.M.P.No.19281 of 2024

03.09.2024