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CRP.No.2879 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.06.2023

DELIVERED ON : 11.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

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and

CMP.No.20798 of 2021

Rajendran : Petitioner/Appellant/Petitioner

Vs.

1. Krishnamoorthy

2. Ramasamy

3. Kalaigar

4. Loganathan

5. The District Collector
Ariyalur.

6. Revenue Divisional Officer
Udayarpalayam Division
Ariyalur District.

7. The Inspector of Police,
Udayarpalayam Division,
Ariyalur District.

: Respondents/Respondents/Defendants 1-7/
Defendants 1 -7

8. Manikandan

: Respondent/Respondent/2nd Plaintiff/
8th Respondent



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10. Sivadasan
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: Respondents 9-10/Proposed Respondents/
Respondents 9-10

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the Order and decretal Order dated 20.09.2021 passed in I.A.No.1 of 2020 in A.S.No.23 of 2019 on the file of the Special Court No.I, Jayankondam.

For Petitioner : Mr.S.Nagarajan
For Respondents : Mr.K.Gandhi Kumar for R-1
Mr.B.Tamil Nidhi
Additional Government Pleader (CS)
for R-5 to R-7

:No Appearance-R-2 to R-4 and R-8 to R-10

ORDER

This Civil Revision Petition has been filed to set aside the decretal Order passed by the learned Judge, Special Court-I, Jayankondam in I.A.No.1 of 2020 in A.S.No.23 of 2019 dated 20.09.2021.

2. The Petition had been filed by the Plaintiff in A.S.No.23 of 2019 on the file of the learned Special Judge, Jayankondam, Ariyalur District. The Suit was filed by the Revision Petitioner as Plaintiff in O.S.No.103 of 2011 on the file of the learned District Munsif seeking declaration to declare the Plaintiff as Nattamai of hereditary trustee of Sri Mariamman



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Temple, Chinna Valavetti and seeking permanent injunction against the Defendants 1 to 4 not to interfere in the affair of the Sri Mariamman Temple. After due trial, the Suit was dismissed.

3.The brief facts of the case which are relevant for considering this revision are as follows:

3.1.The subject matter of the Suit is the Sri Mariamman Temple situated in Valavetti Village. The Plaintiff in O.S.No.103 of 2011 had sought declaration to appoint them as Nattamai of Valavetti Village and also hereditary trustee of the Sri Mariamman Temple, Chinna Valavetti. The Defendants 1 to 4 had filed written statement stating that there are three Villages by the same name viz., Periya Valavetti, Nadu Valavetti, Chinna Valavetti and there are 11 branches belonging to Cheepili, Kalathi, Pattayakarar, Sathanooran, Veeramundan, Therku Kottai, Maanamutti, Sangapedaran and the general people belonging to 11 branches nominate a person representing the same Village. They do not conduct Election but the person nominated by each branch appoints the Nattamai as a consensus candidate, only to maintain the Temple and organize the festival. The Suit filed by the Plaintiff seeking declaration is not maintainable. The Plaintiff ought to have impleaded 11 branches as proper and necessary parties in the



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Suit. After trial, the Suit was dismissed on the ground that the proper parties were not impleaded. Therefore, the Plaintiff preferred Appeal in A.S.No.23 of 2019 pending on the file of the learned Special Judge, Jayankondam. During pendency of the same, the Plaintiff as Appellant filed I.A.No.1 of 2020 in A.S.No.23 of 2019 seeking to implead the sons of Sivasamy by name Viswalingam and Loganathan. The said Petition was resisted by the Defendant as Respondent on the ground that the Petition seeking to implead the legal heirs of Sivasamy as Respondents/Defendants in the Suit is not at all maintainable as the claim is time barred.

3.2.After hearing the enquiry, the learned Special Judge, Jayankondam by an Order dated 20.09.2021 dismissed the Petition in I.A.No.01 of 2020 in A.S.No.23 of 2019.

3.3.Aggrieved by the same, the Plaintiff before the learned District Munsif, Jayankondam who is the Appellant before the learned Special Judge, Jayankondam had preferred this Civil Revision Petition under Section 115 of Civil Procedure Code, seeking to set aside the Order of dismissal in I.A.No.1 of 2020 in A.S.No.23 of 2019 dated 20.09.2021.



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4.The learned Counsel for the Respondents submitted that the Order passed by the learned Special Judge, Jayankondam is a well-reasoned order which does not warrant any interference by this Court exercising power of Revision under Section 115 of Civil Procedure Code. The learned Counsel for the Respondent also filed additional typed set which is a proceeding of Revenue Divisional Officer/Executive Magistrate dated 09.04.2022 regarding the dispute among 11 branches and seeking good conduct from the Members of the rival parties by executing bond for maintaining peace in the Village.

Point for consideration:

Whether the Order passed by the learned Judge, Special Court No.I, Jayankondam in I.A.No.1 of 2020 in A.S.No.23 of 2019 dated 20.09.2021 is to be set aside as perverse?

5.The learned Counsel for the Revision Petitioner replied that the Suit itself was dismissed by the learned District Munsif on the ground of proper and necessary parties were not impleaded. Based on appreciation of evidence let in by both the parties, the learned District Munsif had stated that in the written statement of Defendant-1 that the Plaintiff had not



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impleaded all the 11 branches who are having right over the administration of the Temple and conduct festival. He had in his deposition stated that he is not insisting for the same, at the same time, the learned District Munsif had observed that the legal heirs of Sivasamy were not impleaded as proper and necessary parties in the Suit. The Suit suffers for non-joinder of necessary parties and on rival contention and on appreciation of evidence, the learned District Munsif arrived at a conclusion that the Suit as framed is not maintainable and dismissed the Suit.

6. Aggrieved by the dismissal of the Suit, the Plaintiff preferred the Appeal. In the Appeal, the Plaintiff seeks to implead the legal heirs of Sivasamy as proper and necessary parties which was resisted by the Defendant stating that it is a time barred. By the time, the same was raised by the Defendant in the written statement, the Plaintiff had not impleaded them. After the Suit had been dismissed, after appreciation of evidence, the Plaintiff cannot be permitted to implead proper and necessary parties after the expiry of period of limitation. On that ground, the learned Special Judge, Jayankondam had dismissed the I.A.No.1 of 2020 in A.S.No.23 of 2019. Aggrieved by the same, this Civil Revision Petition had been filed.



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7.The submission of the learned Counsel for the Petitioner seeking to implead the legal heirs of Sivasamy after the period of limitation cannot at all be accepted by any Court of law. The contention of the learned Counsel for the Revision Petitioner is found unacceptable in the light of the Order of dismissal in I.A.No.1 of 2020 in A.S.No.23 of 2019 by the learned Special Judge, Jayankondam. When the Plaintiff seeks to implead the legal heirs of deceased Sivasamy, the limitation period to implead the parties (time for impleading), had already expired. If the same is allowed, it will cause prejudice to the Defendants who had raised such a plea in the written statement in the Suit in O.S.No.103 of 2011. Immediately after filing of written statement by the Defendant-2 in the Suit in O.S.No.103 of 2011 if the Plaintiff had impleaded the legal heirs of Sivasamy in the Suit as Defendants, this Petition under Order I, Rule 10 of CPC or under Order XX, Rule 4 of CPC before proceeding with the trial in the Suit, this Petition would have been allowed. After dismissal of the Suit after full trial on appreciation of evidence when the learned District Munsif had given a finding that the Suit as framed is not maintainable as all necessary parties had not been impleaded. The Suit suffers from non-joinder of necessary parties the attempt of the Plaintiff as Appellant to implead necessary parties under Order I Rule 10 of CPC during pendency of Appeal cannot be



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permitted as the contents of the written statement had clearly raised such issues. Therefore, if the same is allowed it would cause prejudice to the Defendants as the valuable defence of the Defendants raised in the written statement in the Suit before the learned District Munsif, Jayankondam will be lost in Appeal.

8. Therefore, the Order passed by the learned Special Judge, Jayankondam dismissing the I.A.No.1 of 2020 in A.S.No.23 of 2019 dated 29.01.2021 is found proper. The submission of the learned Counsel for the Revision Petitioner cannot at all be accepted. The same is rejected.

9. In the light of the above discussions, the point for consideration is answered in favour the Respondents and against the Revision Petitioner. The Order passed by the learned Special Judge, Jayankondam dismissing the I.A.No.1 of 2020 in A.S.No.23 of 2019 dated 29.01.2021 is not perverse.

In the result, this ***Civil Revision Petition is dismissed.*** The Order passed by the learned Special Judge, Jayankondam dismissing the I.A.No.1



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of 2020 in A.S.No.23 of 2019 dated 29.01.2021 is confirmed. No costs.

Consequently connected miscellaneous petition is closed.

11.03.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

dh

To

1. The District Munsif,
Jayankondam.

2. The Special Judge,
Jayankondam.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery judgment made in

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