



CRP. No.3763 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 02.07.2024**

**CORAM:**

**THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

**CRP. No. 3763 of 2023**

- 1 SILVER CLOUD ESTATES PVT LTD  
REP BY ITS MANAGER AND AUTHORISED SIGNATORY.

...Petitioner

Vs.

- 1 SILVER KELAVATH MARIAMMAN  
BOMMA DEVAR TRUST REP BY ITS SECRETARY S.  
SURESH HAVING OFFICE AT ALLUR THORAPALLI  
GUDALUR THE NILGIRIS.
- 2 STATE OF TAMIL NADU  
REP BY COLLECTOR OF NILGIRIS UDHAGAMANDALAM  
THE NILGIRIS.

...Respondents.

**PRAYER :** This Civil Revision Petition is filed under Article 227 of Constitution of India, to strike off the suit in OS NO 63/2017 on the file of the District Munsif at Gudalur The Nilgiris.



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For Petitioner : Mr. P.Wilson, Senior Counsel for  
Mr.Richardson Wilson  
For R1 : Mr.C.Prabakaran  
For R2 : Mr.B.Tamil Nidhi

### **ORDER**

This petition has been filed to strike off the suit in OS NO 63/2017 on the file of the District Munsif at Gudalur The Nilgiris.

2. The petitioner herein is the defendant in the suit O.S No. 63 of 2017 filed by the respondents herein before the District Munsif, Gudalur at the Nilgiris, for the relief of permanent injunction restraining the defendant not to cause any interference in entering the temple premise situated as described in the schedule of the property two acres of land with shrine with four boundaries in Gudalur Taluk in R.S. No. 938 part in this suit he filed the injunction application. on receipt of the summons the first defendant/petitioner filed this petition to strike off the plaint on the following grounds:

i. The Petitioner, being Presto Limited Company, through its Managing Director or the Directors and not through the manager. Hence,



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the suit as such framed is not maintainable and liable to be struck off.

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ii. The Plaintiff is an utter stranger to the properties and the Plaintiff is grossly abusing the process of court by filing suit against wrong persons to snatch an order.

iii. The suit on the face of it is vexatious and frivolous and averments do not stand for any legal scrutiny much less any Trial.

iv. The Petitioner has been wrongly dragged into an issue which has nothing to do with the suit property or with the cultivation or with the possession or with the Plaintiff and hence the suit is liable to be struck off as it is filed against wrong persons with ulterior motives.

v. The Plaintiff is a land grabber which is evident from the averments of the Plaint. The Plaintiff claims that a Temple "Sivan Kelaveth Mariamman, Bomma Devar Kovil Trust owns survey No 938 part of Thorapalli village by possessory rights and that the temple is taken over by the Trust. It is a fact that the suit property along with larger extent of lands belongs to one Mr.Ethelbert Joseph Francis Coelho who is the absolute owner of 128.30 Acres of land at Gudalur Village including lands in Old Survey No. 13/1B, R.S. No. 938, having purchased the same by him in his name vide Sale Deed dated 05.11.1966, registered as Document No. 518 of 1966 by paying valuable sale consideration. The small portion of 2 acres out of the said vast property is shown as suit property by the 1st Respondent in



the Plaintiff schedule. Apart from the said lands there are about 2000 Acres of land owned by the family of Coelho and these lands all together are commonly called as "Silver Cloud Estate From the date of purchase of the Petition property, he has been in possession, occupation and enjoyment of the main Property by doing cultivation without any hindrance whatsoever from any one till date. Hence the suit is bad for non joinder of necessary parties and for arraying wrong parties

vi. The Petitioner, M/s Silver Cloud Estate Pvt. Ltd is a Tea factory and has nothing to do with the ownership of the said property or with the suit property or to do with the plantation crops like coffee, cardamon and pepper cultivated in the suit property. The cultivation is done by Mr.Ethelbery Joseph Francis Coelho in the suit property as well as in the vast area of land owned by him. M/s. Silver Cloud Estate Pvt. Ltd has no control over the suit property or over the plantations.

Vii. The Plaintiff is nothing but a group of persons who with the ill intention of grabbing portion of the above referred suit land, formed a Trust, registering on 16.06.2017 claiming the Suit schedule mentioned property (2 Acres of land out of 128.30 Acres as the property belonging to an alleged deity. Having formed and registered the Trust Deed on 16.06.2017, the 1 Respondent/ Plaintiff has filed the impugned Suit in [O.S.No. 63 of 2017](#) on the file of the District Munsif, Gudalur at the Nilgiris seeking bare injunction against the Petitioner herein. Thus, the suit is bad for non-joinder of necessary parties and hence is liable to be dismissed in limine under OR 1 Rule 9 proviso of CPC. It is neither stated in the Plaintiff nor any document



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is filed to the effect that the 1 Respondent /Plaintiff is the owner of the Suit schedule mentioned property. Thus, it could be seen that the suit is the abuse of process of the court and the registration of the Trust is only for the purpose of grabbing the petitioner's property by the Plaintiff.

9. It is submitted that on the other hand, the Sale Deed dated 05.11.1966 does not state anything with regard to the existence of a deity in the Petition Property which is inclusive of the Suit schedule mentioned property. It is further submitted the revenue records like Adangal do not speak about either existence of the deity or the suit schedule mentioned property as having been owned by the first respondent plaintiff at any party of time in the past. The Adangal stands in the name of EJ Coelho and their family members which estate is called called Silver Cloud State. Thus, it is unambiguously clear that the Petitioner herein is not the owner of petition property nor to do with the possession which includes the Suit Schedule mentioned property also. The Petitioner is havng a tea factory in the estate comprising in S.No 188/A admeasuring 1.25 acres of land. Another factory of the petitioner called Oleoresin Factory is located in S.No 940 of Gudular village. Thus, it is clear that the petitioner is an utter stranger to the suit property.

IX. The Petitioner states that suit in O.S. No. 63 of 2017 filed by the the Respondent/Plaintiff seeking for bare injunction is an abuse of process of court. The Court below mechanically and erroneously has entertained the suit and issued the Summons dated 14.09.2017 directing M/ Silver Cloud



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Estates Pvt. Ltd. to appear before the Court below on 03.10.2017. Petitioner, being the manager, has nothing to do with the suit property. The 1st Respondent has filed a false and vexitious suit against the petitioner herein claiming that the Petitioner herein is owning lands adjacent to Survey number 938 part of Thorapalli Village and that the suit schedule property belongs to a temple and the temple has a possessory right over the suit property.

x There is no indication in the Sale Deed dated 05.11.1966 in favour of Mr Coelho as to the existence of duty deity temple in the Petition Property. This apart, the revenue records including Adangal do not say anything with regard to the existence of any diety in the Petition Property. No documentary evidence with regard to the existence of the diety has been produced by the Plaintiff Trust in support of their claim.

3. By submitting the above grounds the learned senior counsel appeared for the petitioner submits that without any prime facie material the plaintiffs Trust filed the vexatious suit against the first defendant/petitioner herein who has not right over the suit property. In fact, one E.J. Coelho and his family members are owned the property the present petitioners having tea factory in the Estate. Hence, he prayed to strike of the suit as vexatious one.



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4. The learned counsel for the plaintiff submits that the entire extent of land of 128.30 acres of land in Gudalur village in S.No. 938 part is not belongs to the alleged E.J. Coelho wherein shrine of deities are there the defendant caused interference. Hence, the plaintiff trust approached the Court since temple is maintained by the priest they preferred this plaint which is maintainable in law. Before the Trial Court they produced the trust deed as well as letter given by the RDO and photographs showing the existence of temple and the Trial Court rightly take the case on file. Further contend that temple situated in S.No. 938 part, by way of possession they are entitled to enjoy the suit property to an extent of two acres with three different structures with shrines of dieties is there for more than one thousand years but defendant owned property on the Southern and Northern tried to encroach the same hence the plaintiff filed the suit.

5. Heard both sides, the petitioner submits that near about 128.30 acres including suit property belongs to one E.J. Coelho which called as Silver Cloud Estate in which plaintiff trust has no right to claim the same. Further, the petitioner claimed that in the he purchased the property through



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sale deed dated 05.11.1966, wherein it is not mentioned about the existence of deities in the petition mentioned property for more than thousand years. This court is of the view that the existence of deities is a matter for trial mere allegations to strike off plaint as such is not maintainable. Further, the learned counsel for the petitioner submits that notice was not issued to the Government/second respondent as mandated under Section 80 CPC. The petitioner is entitled to take such defence before the Trial Court. Furthermore, the learned counsel relied the order passed in CMA No. 1 of 2018 dated 05.06.2020 through which to prove their right over the property against which appeal was preferred and the same is pending before this Court. The said findings would not support the case of the petitioners at this stage. Accordingly, this petition is dismissed. No Costs. consequentially, connected miscellaneous petition is closed.

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**T.V.THAMILSELVI,J.**

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