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C.M.P.No.662 of 2023  
in A.S.No.178 of 2022

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

|                                   |                                     |
|-----------------------------------|-------------------------------------|
| <b>Reserved on:</b><br>29.02.2024 | <b>Pronounced on:</b><br>29.04.2024 |
|-----------------------------------|-------------------------------------|

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.P.No.662 of 2023

in

A.S.No.178 of 2022

K.Raja

.. Petitioner

**Vs.**

1.K.R.Nataraj

2.Govindharajan

3.Karuppa Gounder

4.K.Subramaniam

5.K.B.Rammohan

6.N.Srinivasan

7.B.Gopalakrishnan

8.K.B.Venkatesan

9.Hemalatha



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10.K.R.Manickam (died)

11.B.Srinivasan

12.S.M.Sivasamy

13.Jayamani

14.Mani Gowder @ Masthi Gowder

Sadayappa Gounder (died)

15.Thanneer Pandal Charitable Trust,  
Rep. by its Trustee K.R.Manickam,  
16, Market Street,  
Kembanaickenpalayam,  
Sathyamangalam.

16.Ganesan

(Impleaded as legal heir of D-10 as per order  
in I.A.No.762 of 2013 dated 23.01.2023)

17.V.Lakshmikanthan

(Impleaded as legal heir of D-1 as per order  
in I.A.No.761 of 2013 dated 23.01.2023)

18.Shanmugam @ Karuppusamy

(Impleaded as per order in I.A.No.653 of  
2013 dated 09.07.2013)

(Amended as per order in I.A.No.893 of  
2013 dated 07.11.2013)

19.Padmalosani



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20.Rajasekar Kasipathy

21.Subhasini

22.Badri

23.Umamaheswari

.. Respondents

**Prayer:** This Miscellaneous Petition is filed under Order I Rule 10 and Section 151 of CPC, praying to pass an order permitting the petitioner to implead himself as Appellant in the above Appeal in A.S.No.178 of 2022.

For Petitioner : Mr.R.Vijayan

For RR2 & 3 : Mr.N.Manoharan

For R1 & R4 to R23 : No appearance

### **ORDER**

The petitioner filed third party application to implead himself as proposed appellant.

2.The 2<sup>nd</sup> respondent herein along with respondent 3 & 4 and one late Kannapa Gounder filed suit in O.S.No.202 of 2012 before the Principal District Court, Erode, praying to set a scheme for the 11<sup>th</sup> defendant Trust and



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to vest possession with the proposed trustees and to remove the person claiming to be the present trustees and to direct the newly appointed trustees and to submit the accounts and to declare the expenditure required for maintaining and carrying on the charity as contemplated under the deed of the trust and to maintenance of the land.

3.The plaint proceeds on the basis that one Thiru Balasubramana Chettiar created a Trust deed dated 18.02.1955 for the purpose of providing drinking water to the wayferers and the general public who used to go over to Kadambur hills and other hill stations. There was 5Anganam tiled house for doing the above said public charity. The Trust Deed indicates the name of Tvl.BalasamyChettiar, RamanathaChettiar and BalavenkatramaChettiar to continue the public charity for ever from the income of the properties. The recitals of the Trust Deed reads that the public charity should be performed so long as the trustees mentioned therein were alive. While so, Tr.RamanathaChettiar died in the year 1982.

4.It is alleged that one MuniyaPandaram who was a worker in the trust



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properties had fraudulently sold away the suit schedule to the defendants 7 and 8, who had created a situation by forcing the defendants 1 to 6 herein to file O.S.No.12 of 1986 and O.S.No.201 of 1987 on the file of the Learned Sub Court, Gobichettipalayam and they got decrees in their favour. Later, the legal heirs of the original trustees, defendants 7 and 8 herein and MuniyaPandaram filed A.S.No.138 of 1989 and got dismissed. They filed S.A.Nos.1017 and 1019 of 1990 before this Court and they were also dismissed on 03.10.2001.

5. There is a Trust O.P.No.29 of 2012 before the District Court, Erode. In the above said suits, the present suit in O.S.No.202 of 2012 is filed and P.W.1 & P.W.2 earmarked and examined A1 & A3 were marked and passed judgment and decree dated 04.01.2018. The Court passed a scheme of decree morefully described in the decree therein. Aggrieved against the said decree and judgment, the present A.S.No.173 of 2022 is filed by one Natarajan and others.

6. Pending AS, the present application is filed by one K.Raja, the third party to the proceedings before the Trial Court, filed the application to



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implead himself as appellant in A.S.No.178 of 2022.

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7.Counter of the contesting respondent namely plaintiff before the Trial Court filed. They resisted the claim inter alia stated that the very same petitioner herein had filed I.A.No.515 of 2013 which was dismissed by the Trial Court and hence, this application is barred by resjudicata and prayed for dismissal of the application.

8.Heard the learned counsel for the petitioner and the learned counsel for the respondents 2 & 3.

9.From the typed set of papers, I find that the appeal is filed against the decree and judgment granted in O.S.No.202 of 2012 which was filed by Karuppanna Gounder, K.Subramaniam, K.B.Rammohan and N.Srinivasan. It is for framing a scheme for 11<sup>th</sup> defendant Trust. After contesting of suit, scheme was framed based upon Ex.A1 – Trust deed said to have been executed by Balasubramania Chettiar dated 18.02.1955. On 05.02.2015, the persons were appointed as a life trustee and the trustees obtained necessary



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orders and also have been formulated by the learned District Judge.

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10.I find that from the records of the lower Court and found in the typed set of papers, by an order dated 14.12.2016 in I.A.No.515 of 2015, K.Raja and 19 others have filed application under Order I Rule 10(2) of CPC and 151 to implead themselves as a party defendants in the suit in O.S.No.202 of 2012.

11.After elaborate discussion, the learned District Judge has dismissed the application filed by the Raja and 19 others, wherein he made reference to the orders passed by this Court in S.A.No.1017 & 1019 of 1990 order dated 03.10.2001, the High Court of Madras has held that the property under litigation is a trust property and the said Munia Pandaram is a tenant under the Trust and he cannot claim title by adverse possession and *inter alia* held that the earlier Trust OP.No.27 of 2012 and another Trust O.P.No.29 of 2012 filed by Manickam is dismissed by the District Court, Erode, holding that since the trusts are public trusts and in the Trust suit has to be filed. Accordingly, the present application.



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12.The said application has been duly dismissed by the learned Principal District Judge, Erode, on 14.12.2016 and hence, I find that the very same petitioner has no *locus standi* to counter interference with the litigation.

13.The point that was urged before the Trial Court is that the intention of the Managing Trustee, the Trust was created to provide drinking water for the welfare of the hill area and not for the entire people in Kembanaickenpalayam and hence, it is the case of the petitioner that it is not created for the entire people of Kembanaickenpalayam. This is a schemed area. The principle of cypruss will come into appear and since the earlier I.A.No.515 of 2015 is dismissed on 14.12.2016 and the earlier petition is also filed by the petitioner for the same relief which was duly rejected and having failed to agitate and challenge the order, the same was already dismissed and even on merits, he has no grievance to be heard in the appeal.

14.Accordingly, this Civil Miscellaneous Petition is dismissed.



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Index : Yes / No  
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**RMT.TEEKAA RAMAN, J.**

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