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C.R.P.(MD)No.347 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.347 of 2022

and

C.M.P.(MD)No.1510 of 2022

1. Aravalli

2. Manickasundaram

3. Sivagami

4. Balamani

... Petitioners/

Respondents 3 to 6/

Defendants 2 to 5

Vs.

1. M.S.Periyasamy

2. Dhanaraja

3. Boopathi

... Respondents 1 to 3/

Petitioners/Third parties

4. Arulmigu Salaraja Swami,

Mettupatti,

Rep. by its Pannaikkarar,

Thangavel and

Periyanchi Poosariyar Thambikalan,

S/o.Chellaiah

... 4th Respondent/

1st Respondent / Plaintiff



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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 dated 06.08.2021 made in I.A.No.1 of 2019 in O.S.No.421 of 2003 on the file of the District Munsif, Thuraiyur and allow this civil revision petition.

For Petitioners : Mr.G.Sridharan

For R-2 & R-3 : Mr.H.Lakshmi Shankar

For R-4 : Mr.B.Vinoth Kumar

ORDER

One Thangavel and Thambikalan filed O.S.No.421 of 2003 on the file of the District Munsif Court, Thuraiyur in the name of Arulmigu Cholarajaswamy Temple, Mettupatti against five defendants. In the said suit, the respondents 1 to 3 herein filed I.A.No.1 of 2019 for getting themselves impleaded as defendants 6 to 8. The I.A. was allowed vide order dated 06.08.2021 by the Court below. Questioning the same, the defendants 2 to 5 filed this civil revision petition.



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2.The learned counsel appearing for the revision petitioners reiterated all the contentions set out in the memorandum of grounds of civil revision petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

3.The learned counsel appearing for the plaintiff submitted that the impleading petition has been filed only to prolong the proceedings.

4.The learned counsel appearing for the contesting respondents strongly submitted that the impugned order is well reasoned and that interference is not warranted.

5.I carefully considered the rival contentions and went through the materials on record.

6.O.S.No.421 of 2003 is a suit for permanent injunction to restrain the defendants from interfering with the plaintiff's possession and enjoyment of the suit property. The suit property is an agricultural land measuring 2 acres and 80 cents. The suit has been instituted in the name



of a temple through two plaintiffs namely, Thangavel and Thambikalan.

The contesting respondents herein who have got themselves impleaded in the suit question the entitlement of Thangavel and Thambikalan to represent the plaintiff temple. The learned counsel also insinuated in passing that there appears to be a kind of collusion between the plaintiffs on the one hand and the original defendants on the other and only to protect the interest of the temple, the impleading application came to be filed.

7.I am not impressed with the allegation that there is collusion between the plaintiffs on the one hand and the original defendants on the other. If that be so, the suit that was instituted in the year 2003 would not have been kept pending till date.

8.Be that as it may, the suit on hand is one for mere injunction. The only question that calls for consideration is who is possession of the suit property. The impleaded applicants submit that Thangavel and Thambikalan cannot represent the temple. If that be so, the remedy is to call upon the trial Court to determine who should conduct the suit.



Order I Rule 10 Civil Procedure Code permits substitution of any other person as plaintiff if the Court is satisfied that the suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff. The respondents 1 to 3 herein must have asked for determination of this point under Order I Rule 10(1) of Civil Procedure Code. They have not done so. They have not sought deletion of the names of Thangavel and Thambikalan and substitution by themselves. Instead of doing so, they only wanted to be impleaded as defendants. Interestingly, the revision petitioners who are resisting the suit have also claimed that their forefathers were the trustees of the temple and that the third defendant in the suit is in-charge of the administration and affairs of the temple and that the plaintiffs have no manner of right to file the present suit. When the defendants 2 to 5 have already taken such a plea questioning the entitlement of the plaintiffs, it would be embracing for them to conduct a horizontal battle against the co-defendants. That would be embracing also. That is why, the defendants have chosen to file this civil revision petition questioning the order passed by the Court below impleading the respondents 1 to 3. The impugned order permitting respondents 1 to 3 to



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come on record as defendants is not proper. The impugned order is set aside. This civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.09.2024

Index : yes/No
Internet: Yes/No
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To

1. The District Munsif,
Thuraiyur.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.R.SWAMINATHAN,J.

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