



C.R.P.(MD)No.1236 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.02.2024

PRONOUNCED ON: 05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1236 of 2019

and

C.M.P.(MD)No.6877 of 2019

1.M.Sundararajan

2.R.Subramaniam

: Revision Petitioners/Petitioners/
Third Parties

Vs.

1.M.Chinnasamy

2.T.N.Sivasubramanian

3.A.R.Malayappasamy

4.S.Senguttuvan

5.S.Karunakaran

6.P.Ramasamy

7.S.M.Palaniyappan

8.M.Mani

: Respondents/Respondents 1 to 8/
Plaintiffs

9.Malayamman Charitable Trust,
represented by its Managing Trustee,
T.N.Sivadevan.

10.T.N.Sivadevan

11.Vasantha

: Respondents/Respondents 9 to 11/
Defendants



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PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.38 of 2019, in O.S.No.51 of 2019, dated 25.06.2019, on the file of the Additional District Court / Fast Track Mahila Court, Karur.

For Petitioners : Mr.Karthick Ramkumar

For Respondents : Ms.D.Geetha
for R.1 to R.8
: No Appearance
for R.9 to R.11

ORDER

The Civil Revision Petition is directed against the fair and decreetal order passed in I.A.No.38 of 2019 in O.S.No.51 of 2019, dated 25.06.2019, on the file of the Additional District Court / Fast Track Mahila Court, Karur dismissing the petition filed under Order 1 Rule 10(2) C.P.C.

2. The revision petitioners are the third parties to the suit. The respondents 1 to 8 as plaintiffs for themselves and on behalf of Porul Thantha Kulam devotees of Malayamman temple, have filed a suit in



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O.S.No.26 of 2015 against the respondents 9 to 11 seeking the relief for framing a scheme for management of Sri Malayamman Charitable Trust, for the removal of the defendants 2 and 3 from the hereditary trusteeship of Sri Malayamman Charitable Trust and to appoint a new trustee as per the terms of scheme decree to be framed by the Court, for permanent injunction restraining the defendants 1 and 2 and their men from collecting any funds or expending any money or disposing of the assets on behalf of the first defendant – Trust and for directing the defendants 2 and 3 to produce the accounts relating to Sri.Malayamman Charitable Trust. The defendants have filed a written statement and are contesting the suit. When the trial was in a part heard stage, the revision petitioners who are third parties to the suit have filed an application under Order 1 Rule 10(2) C.P.C., seeking orders to implead them as defendants 4 and 5 in the above suit. The defendants as well as the plaintiffs have filed counter statements raising objections. The learned trial Judge, after enquiry, has passed the impugned order dated 25.06.2019 dismissing the impleadment petition. Aggrieved by the order of dismissal, the third parties have filed the present revision.



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3. As already pointed out, the first defendant is a charitable trust and that the defendants 2 and 3 are the permanent members of the first defendant trust. The plaintiffs, by alleging mismanagement of the income derived from the trust properties and misappropriation by the defendants 2 and 3, have laid the above suit, seeking a decree for framing a scheme for the first defendant Trust and for the removal of the defendants 2 and 3 from the hereditary trusteeship of the first defendant trust and for other reliefs.

4. The case of the revision petitioners / third parties in the affidavit filed in support of the impleadment petition is that they are also belonging to Porul Thanthakulam community, that though the above suit has been filed in the year 2015, the plaintiffs have not conveyed anything about the case to their community people, when festivals were arranged by them, that the second plaintiff is the brother of the second defendant and hence, they are having a doubt whether the plaintiffs are conducting the case properly, that the plaintiffs are actually a group of people of the said Porul Thanthakulam, who are not competent to represent the community people of Porul Thanthakulam, that the plaintiffs 1 to 8 are not the real representatives, that since the temple as well as the trust are



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belonging to their Porul Thanthaklam, the revision petitioners are necessary and proper parties to the suit, as the suit result will impact their right directly or indirectly, that their presence is very much necessary for the determination of the real matter in dispute in the main suit, that the petitioners would be put to much loss and hardship, if the impleadment petition is not allowed and that no prejudice would be caused to the respondents if the petition is allowed.

5. The defence of the defendants raised in their counter statement is that though the petitioners are belonging to Porul Thantha kulam, the first defendant Trust had no connectivity with the community people and it has been established by the defendants for the purpose of serving the devotees of Sri Malayamman temple, that the above suit has been filed with false allegations against the defendants only to meet out the personal score of the plaintiffs, that the impleading petition has been filed only at the instance of the plaintiffs, that there is absolutely no need to implead the petitioners as parties to the suit, that the petitioners had not assigned any satisfactory reason for impleading themselves in the suit, that the second defendant is maintaining proper and regular accounts in respect of the first defendant trust and satisfactorily



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discharging his function as a trustee of the first defendant trust and as such, there is no question of seeking any accounts of the first defendant trust, that there was a civil dispute between the second defendant and the second plaintiff with regard to their family properties and only in order to dictate the respondent to the tunes of the second plaintiff, the second plaintiff has filed the present suit without any legal basis, that there is no bonafide on the part of the petitioners and that therefore, the petition is liable to be dismissed with costs.

6. The defence of the plaintiffs raised in the counter statement is that the plaintiffs 1 to 5 have filed the suit on behalf of the entire community people of Porul Thantha Kulam, that the allegations of the petitioners that the plaintiffs are a group of Porul Thantha Kulam and are not competent to represent the entire people of Porul Thantha Kulam are false and incorrect, that anybody can come forward with the petition to implead him as necessary party in the above suit, but each and every person cannot be impleaded without proof, that they are belonging to Kongu Vellala Gounder and they are belonging to Porul Thantha Kulam, that P.W.1 was already examined partly and as such, the above petition is not maintainable, that the above petition has been filed only at the



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instigation of the defendants and that the above petition has no merits and the same is liable to be dismissed.

7. The learned Counsel for the revision petitioners would submit that since the suit has been filed by the plaintiffs with regard to the affairs and the activities of Sri Malayamman Temple, the petitioners are having right to participate in the trial proceedings as they are necessary and proper parties to the suit, that the trial Court has failed to consider that there was a genuine doubt arose in the minds of the revision petitioners with regard to the suit proceedings in view of the relationship between the second plaintiff and the second defendant who are blood brothers, that the petition filed to permit them to institute a suit in representative capacity was closed without passing any orders on merits and as such, the plaintiffs 1 to 8 had not been recognised as representatives of the Porul Thantha Kulam community, that the permission to institute suits as per Section 92 C.P.C., had been granted, but the trial Court has failed to appreciate the difference between the provisions of Section 92 C.P.C., and the provisions of Order 1 Rule 8 C.P.C., and erroneously recorded a finding that the plaintiffs have been permitted to sue in a representative capacity, that the revision petitioners were not aware of the suit



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proceedings and once it had been ascertained, they immediately filed the present application for impleadment and as such, there is no delay on the part of the revision petitioners.

8. The learned Counsel for the plaintiffs have produced a copy of the petition and orders passed in I.A.No.133 of 2015. It is evident from the records that the plaintiffs along with the plaint have also filed an application under Order 1 Rule 8 C.P.C., seeking permission to institute the suit for themselves and on behalf of the Porul Thantha Kulam devotees of Sri Malayamman temple and the said petition was taken on file in I.A.No.133 of 2015 and the learned Principal District Judge has passed an order for the issuance of notice to the respondents and also notice by beat of Tom Tom in the suit village and publication in one issue of Tamil Daily Dinamalar and in pursuance of the directions of the trial Court, Tom Tom was effected and paper publication was made and that since the respondents have entered into appearance, the petition was posted for filing of the counter and after filing of the counter, was pending for enquiry and at last on 07.10.2017, the learned District Judge, by recording that permission had already been granted to initiate the suit, closed the petition.



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9. As rightly contended by the learned Counsel for the plaintiffs, the trial Court has not simply closed the petition filed under Order 1 Rule 8 C.P.C., but on the other hand, after the compliance of the directions issued and also taking note of the fact that the initial permission had already been granted, has proceeded to close the petition. The learned trial Judge, in the impugned order, has specifically observed that the petition was called in open Court and no objector was present raising any objection. Admittedly, the suit and the petition under Order 1 Rule 8 C.P.C., came to be filed on 24.04.2015 and notice by Tom Tom in the suit village and the paper publication was ordered on 30.04.2015 and admittedly, the present revision petitioners have not entered into appearance for raising their objections, consequent to the notice by beat of Tom Tom and paper publication.

10. As rightly contended by the learned Counsel for the plaintiffs and as rightly observed by the learned trial Judge, the written statement of the defendants came to be filed on 14.09.2015 and the trial was commenced on 10.09.2018 and that P.W.1 – plaintiff was cross-examined in part on 05.12.2018. It is not in dispute that the suit which was



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pending before the Principal District Court was transferred to the Additional District / Fast Track Mahila Court and when the same was posted for P.W.1's further cross-examination, the above impleadment petition came to be filed. As rightly contended by the learned Counsel for the plaintiffs, the proposed parties have not offered any reason or explanation for not approaching the trial Court for their impleadment at the initial stage and for entering into appearance, when the trial was in part heard stage and that too after the lapse of four years since the filing of the suit.

11. More importantly, the reason canvassed by the proposed parties for their impleadment is that the second plaintiff and the second defendant are blood brothers and as such, they had a genuine doubt with regard to the conduct of the suit proceedings, that the plaintiffs have not conveyed about the filing of the suit and the pendency of the same to their community people during the festival times and that the plaintiffs are not the real representatives of their community. Except the above vague and bald allegations, the proposed parties have not canvassed any other valid or strong reason or ground to get themselves impleaded in the suit.



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12. As rightly pointed out by the plaintiffs' side that anybody can come forward with a petition to implead him as necessary party in a representative suit, but at the same time, each and every person cannot be impleaded. Assuming for arguments sake, that if the Court permits the revision petitioners to get themselves impleaded, the plaintiffs have to take necessary steps for consequential amendments and the newly impleaded parties have to file their written statement and if the suit is taken for trial again, two other persons would come and seek their impleadment and if that is continued, then there will be no end to the litigation.

13. It is pertinent to note that the plaintiffs have taken a stand that the above impleading petition came to be filed at the instigation of the defendants whereas the defendants have taken a stand that the proposed parties have filed the present petition only at the instigation of the plaintiffs. But the fact remains that the above petition came to be filed when the trial of the suit was in part heard stage and after the lapse of 4 years from the date of the suit. As rightly contended by the learned Counsel for the plaintiffs, except alleging that their presence is very



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much necessary for the determination of real matter in dispute, they have not elaborated anything further.

14. Considering the entire facts and circumstances and the stage at which the above petition came to be filed, this Court has no hesitation to hold that the proposed parties cannot be considered as necessary or proper parties and that therefore, the impugned order dismissing the petition filed under Order 1 Rule 10(2) C.P.C., cannot be found fault with. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

15. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

05.04.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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- To
1. The Additional District Court / Fast Track Mahila Court,
Karur.
 2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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