



C.R.P.No.5325 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.5325 of 2024
and C.M.P.No.29605 of 2024

Neithavoyal Chettiar Thanneer Pandal
Dharmam Charity, Neithavoyal
Rep. By its Sole Trustee,
T.Mohanasundaram Chettiar,
Neithavoyal Village.

.. Petitioner

vs

1.Jayaraman

2.The Executive Officer / Thakkar,
Aarulmighu Karikrishna Perumal Thirukoil,
Thiruayarpadi, Ponneri - 601 204.

.. Respondent

Petition filed under Article 227 of the Constitution of India
against the fair and decretal order dated 28.06.2024 passed in
I.A.No.1 of 2024 in O.S.No.154 of 2016 on the file of the Additional
Sub Court, Ponneri.

For Petitioner : Mr.A.Vinayagaperumal

For Respondent : Mr.N.R.R. Arun Natarajan,
Special Government Pleader
for R2



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ORDER

This civil revision petition challenges the order passed by the learned Additional Subordinate Judge at Ponneri in I.A.No.1 of 2024 in O.S.No.154 of 2016 dated 28.06.2024.

2. O.S.No.154 of 2016 is a suit for the following reliefs:

'a) To declare the plaintiff's title over the suit property and consequential relief of possession after removal of obstruction if any;

b) Directing the defendant to pay the damages of Rs.20/- per day for the use and occupation of suit property from the date of plaint till the date of possession'

3. The claim of the plaintiff is that he is the sole Trustee of the Neithavoyal Chettiar Thanneer Pandal Dharmam Charity and that the Charity is the owner of the suit property. Pleading that the defendant/first respondent herein had encroached upon the Charity's property, he presented the suit for the aforesaid reliefs.



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4. For the purpose of disposal of this revision, it is not necessary to delve deep into the facts relating to the suit.

5. Pending the suit, the Executive Officer of the Arulmighu Karikrishna Perumal Thirukoil, Thiruayarpadi, filed an application to implead himself as a party defendant to the suit. He pleaded that he had been appointed as Thakkar/Fit person of the Charity and hence he should be impleaded as a defendant to the suit.

6. This was opposed by the plaintiff pleading that the suit has been listed for trial on 16.02.2021 and that he had filed his proof affidavit and marked Exs.A1 to A10 and the suit had been adjourned for cross-examination from 2021 onwards. He pointed out that he had filed several suits against the encroachers of the Trust property and that they had been decreed and delivery had been taken by him on behalf of Charity. He further alleged that the Assistant Commissioner had passed an order appointing a Fit Person, without proper enquiry or verification of the records. He stated that the suit is pending for nearly seven years and the implead application had been presented with a malafide intention to drag on the proceedings.



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7. The learned Trial Judge considered the affidavit and counter and allowed the application to implead the second respondent herein as a defendant to the suit. Aggrieved by the same, the present civil revision petition.

8. When the matter came up for admission, I requested Mr.A.Vinayagaperumal to serve the entire set of papers on Mr.N.R.R.Arun Natarajan, learned Special Government Pleader representing H.R. & C.E. Department in the High Court. Papers have been served. I heard Mr.A.Vinayagaperumal and Mr.N.R.R.Arun Natrajan.

9. Mr.Vinayagaperumal submits that the order appointing Executive Officer of Arulmighu Karikrishna Perumal Thirukoil, as a Fit Person for the plaintiff Trust was never served on his client and, therefore, the Court ought not to have recognised the same. He adds that earlier an order of appointment of a Fit Person had been passed and that had been challenged before this Court in W.P.No.21533 of 2017. The said writ petition was allowed on 06.09.2022. He points out, thereafter the civil revision petitioner was called for enquiry before the Assistant Commissioner and the



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Assistant Commissioner adjourned the enquiry without passing an order. All of a sudden, the second respondent herein filed a petition before the learned Subordinate Judge pleading that he has been appointed by the Assistant Commissioner on 21.03.2023 as "Fit Person" of the Trust. He states that till date, a copy of that order had not been served on the civil revision petitioner.

10. Per contra, Mr.Arun Natarajan states that the Assistant Commissioner, after conducting an enquiry, had appointed the Executive Officer of the aforesaid temple as a Fit Person to take over the affairs of the Charity. He states that it is on the strength of the order passed by the Assistant Commissioner, the present application came to be filed. He denies the statement of Mr.A.Vinayagaperumal that the order had not been served on the civil revision petitioner. On the contrary, he states even when the implead application was filed, a copy of the order was served on the learned counsel appearing for the plaintiff. Hence, he states that the revision does not require any consideration and it may be dismissed.

11. I have carefully considered the submissions of both sides. I have gone through the records.



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12. It is the case of the second respondent herein that he has been appointed as a Thakar/Fit person for the plaintiff/ Neithavoyal Chettiar Thanneer Pandal Dharmam Charity. If that be the situation, then, the Executive Officer should be seeking for substitution of the Trustee, who presented the suit, with himself. He cannot claim a right to be impleaded as party defendant to the suit. This is because, there is no relief that is sought for as against the Executive Officer. The plaintiff is the *dominus litis* and the plaintiff pleads that the defendant/first respondent herein has encroached upon the property belonging to the Charity.

13. The legal effect of an appointment of Thakkar to a Trust is that he replaces/substitutes the existing trustee. In other words, the Thakkar becomes the trustee for all practical purposes. Hence, he cannot file an application to implead himself as a party defendant to the suit. The appropriate remedy, if at all, would have been to file an application to substitute himself in the place of the civil revision petitioner Mr.T.Mohanasundaram Chettiar. That not having been done, I am unable to sustain the order passed by the learned Additional Subordinate Judge.



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14. Whether the order appointing the second respondent as a

Fit Person has been served or not has not been disclosed during the course of discussion in the impugned order. It is left open to the second respondent to file a fresh application to substitute himself in the place of Mr.T.Mohanasundaram Chettiar, who claims himself to be the sole trustee. I am sure if such an application is filed, the pleading of Mr.Vinayagaperumal that the order copy was not served on the civil revision petitioner and, therefore, cannot be given effect to will be considered by the learned Subordinate Judge.

15. In the light of the above discussion, the order passed by the learned Subordinate Judge at Ponneri impleading the Executive Officer as a party to the suit is set aside. Liberty is granted to the second respondent to file an appropriate application together with a copy of the order showing him as a Fit Person to the plaintiff/Trust and seek for substitution. The said application may be filed within a period of **four weeks** from the date of receipt of a copy of this order. Before the Court takes a call on the substitution application, the learned Trial Judge shall hear the plea of Mr.T.Mohanasundaram Chettiar, who claims to be the sole trustee.



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V. LAKSHMINARAYANAN,J.

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16. The Civil Revision Petition is allowed with the aforesaid liberty. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2025

Index:Yes/No
Neutral Citation:Yes/No
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To

The Additional Subordinate Court,
Ponneri.

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