



A.S.(MD)No.76 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.76 of 2019

Idol Sri Balasubramaniaswamy,
Sri Balasubramaniaswamy Devasthanam,
Vennaiimalai, Karur,
Rep. by its Executive Officer.

... Appellant / Respondent /
Plaintiff

Vs.

1.Arukani Ammal & Marappa Gounder Trust,
Rep. by its Managing Trustee,
No.9D/3, Ramakrishnapuram, Karur.

2.The Correspondent,
Cheran Vidhyalaya Matriculation School,
Vennaiimalai, Kathapara Post, Karur.

3.The Correspondent,
Cheran Vidhyalaya Higher Secondary School,
Vennaiimalai, Kathapara Post, Karur.

... Respondents /
Petitioners / Defendants

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to
set aside the judgment and decree dated 10.01.2018 made in I.A.No.397



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of 2017 in O.S No.101 of 2016 on the file of the Principal District Court,
Karur.

For Appellant : Mr.S.Madhavan

For Respondents : Mr.P.Valliappan, Senior Counsel,
For Mr.S.Gokulraj.

JUDGMENT

(By G.R.SWAMINATHAN, J.)

The appellant herein filed O.S No.101 of 2016 on the file of the Principal District Court, Karur for declaration and recovery of possession of the suit property. The defendants filed I.A No.397 of 2017 for rejection of plaint under Order VII Rule 11 of Civil Procedure Code. Vide order dated 10.01.2018, the IA was allowed and the plaint came to be rejected. Since such an order amounts to a decree, this appeal has been filed by the plaintiff under Section 96 of the Civil Procedure Code.

2.The point for determination is whether the suit is liable to be dismissed on the ground that the Executive Officer on his own has instituted the suit in question without authorisation from the hereditary trustee ?.



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3.The learned counsel for the appellant submitted that the court below erred in rejecting the plaint under Order 7 Rule 11 of the Civil Procedure Code, 1908. He submitted that as per the scheme decree, the Executive officer is the competent person to sue and be sued in the name of the temple. It is his specific contention that maintainability of the suit for lack of competency of the Executive Officer to file the suit does not come within the purview of Order 7 Rule 11, CPC. Since a triable issue has arisen for consideration, it should have been decided only in the main suit as it requires elaborate appreciation of oral as well as documentary evidence. He prayed for setting aside the decree of the court below and allowing this appeal. In support of his contentions, he placed reliance on the following cases:

***a)Executive Officer, Arulmighu Subramaniasamy
Thirukoil vs P. Subramanian (CDJ 2018 MHC 4435)***

***b)A.N Kumar vs Arulmighu Arunachaleshwar
Devasthanam Thiruvananthapuram represented by Executive
Officer (CDJ 2011 MHC 1412)***

***c)The Idol of Sri Kalyana Venkataramanaswamy,
Thanthonimalai rep by Executive Officer/ The Assistant***



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Commissioner vs M. Palanivel (CDJ 2023 MHC 4792)

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d)The Idol of Sri Ranganathaswamy rep by Joint Commissioner/Executive Officer, Srirangam vs J.Sriram made in A.S(MD) No. 140 of 2015 vide order dated 13.04.2023

e)Arulmighu Soundararaja Perumal Thadicombu Chitra Pournami Mandakapadi, Dindigul vs Arulmighu Soundararaja Perumal Thirukoil rep by Executive Officer.S.A.(MD)No.665 of 2023 vide order dated 22.12.2023

f) Durgai Lakshmi Kalyana Mandapam Rep by K.Jeevanandam vs Idols of Arulmighu Siddhi Ganesar Nataraja Perumal Durgaiamman group Temples, Rep by its Executive Officer A.S.No.397 of 2010 dated 14.12.2022

4.Per contra, the learned Senior Counsel appearing for the respondents submitted that the court below rightly rejected the plaint and that the order does not warrant interference. He drew our attention to the decision of the Hon'ble Division Bench reported in ***2003-1-L.W. 386 (Sri Arthanareeswarar of Tiruchengode, Rep. by its present Executive***



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Officer, Sri Sabapathy Vs. T.M.Muthuswamy Padayachi) and contended

that when there is a hereditary trustee by name Chokkalingam, he alone is competent to file the suit and that the Executive officer was not competent to initiate legal proceedings. He placed reliance on a catena of subsequent decisions which are as follows:

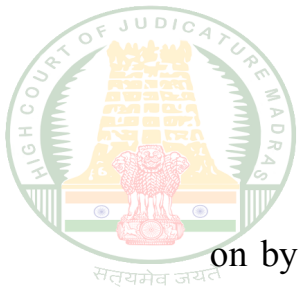
1. ***Kuppusamy vs. A/M Prasanna Vinayagar Thirukoil***
MANU/TN/3786/2017
2. ***Executive Officer, A/M Subramaniaswamy Thirukoil***
v P. Subramaniam 2018 (3) MWN (Civil) 45
3. ***B.S Manian vs A/M Yoganarasimhaswami Tirukoil***
2019 SCC OnLine Mad 36241
4. ***S. Radhabhai vs Bharani Abhisheka Kattalai rep by***
Deputy Commissioner/Executive Officer 2021 SCC
OnLine Mad 16615
5. ***Padmavathi vs The Idol of Sri Renganathaswami,***
Srirangam, rep.by its Joint Commissioner made in
AS(MD)No. 143 of 2014 vide order dated 02.08.2024



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5.We carefully considered the rival contentions and went through the evidence on record.

6.It is not in dispute that the suit temple is under the management of a hereditary trustee. In fact, in Paragraph No.3 of the plaint itself, there is reference to this aspect. As rightly submitted by the learned senior counsel for the respondents, the issue as to the competency of the executive officer to initiate legal proceedings is no longer *res integra*. The Hon'ble Division Bench in the decision reported in **2003-1-L.W. 386 (Sri Arthanareeswarar of Tiruchengode, Rep. by its present Executive Officer, Sri Sabapathy Vs. T.M.Muthuswamy Padayachi)** held that it is only the board of trustees in existence at that time who would be competent to initiate legal proceedings and that the executive officer is not the authority competent to initiate legal proceedings. The aforesaid decision has been holding the field and has been relied on in a plethora of judgements of this court. The Hon'ble Division Bench in ***Padmavathi vs The Idol of Sri Renganathaswami, Srirangam, rep.by its Joint Commissioner made in AS(MD)No. 143 of 2014 vide order dated 02.08.2024*** declined to follow ***Sri Kalyana Venkataramanaswamy*** relied



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on by the learned counsel for the appellant. Instead, it chose to follow the ratio in *Sri Arthanareeswarar case*.

7.The decision relied on by the learned counsel for the appellant in *Thomas Educational & Charitable Trust vs A/M Ekambaranathar Thirukoil rep by its Executive Director* reported in *2011 (2) MWN (Civil) 801* is clearly distinguishable on facts. In the said case, the board of trustees had passed a resolution ratifying the action of the Executive Officer.

8.Therefore, the act of the Executive Officer in filing the instant suit without getting authorisation from the hereditary trustee rendered the suit as not maintainable. At the same time, we are not oblivious of the fact that hereditary trustees could also act adverse to the interest of the temple. In such circumstances, even a devotee as a person interested can maintain a suit. If a devotee can maintain a suit, certainly, an Executive Officer can maintain a suit to protect the interest and property of the temple. But in such case, he must implead the hereditary trustee/trustees. He must allege that they are not authorising the filing of the suit. The



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Executive Officer has not come out with such a case so far. In our view, though authorisation from the board of trustees is necessary for instituting the suit, if a suit is filed without such authorisation, it is only a curable irregularity. This irregularity can be cured at any stage. As and when the defendants challenge the maintainability of the suit, the Executive Officer can produce such an authorisation and that would save the suit from being dismissed. We have to adopt a practical approach in such cases. We have thus endeavoured to reconcile the apparently conflicting views.

9. In this view of the matter, interference with the impugned decree is not warranted and the appeal suit is dismissed. No costs.

(G.R.S. J.) & (M.J.R. J.)
07.03.2025

NCC : Yes/No
Index : Yes / No
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To:

The Principal District Court, Karur.



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