
(2015) 07 MAD CK 0002
In the Madras High Court
Case No : CMA.(MD)No.1363 of 2011

H.H. Srivan Sadagopa

APPELLANT

Vs

Commissioner, H.R.& C.E.

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 3 MadWN(Civil) 472

Hon'ble Judges : V.M. Velumani, J.

Bench : Single Bench

Advocate : Mr. T. Srinivasa Raghavan, Advocate, for the Appellant; Mr. G. Muthukannan, Government Advocate, for the Respondent No. 1; Mr. K. Govindarajan, Advocate, for the Respondent No. 2; Mr. V. Sitharanjandoss, Advocate, for the Respondent No. 8

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—Challenging the order of the learned Principal Subordinate Judge, Tiruchirappalli, passed in I.A.No.803 of 1997 in O.S.No.167 of 1970, dated 08.07.2011, the appellant/petitioner has filed the Civil Miscellaneous Appeal.

2. The appellant is the plaintiff in O.S.No.167 of 1970 and the petitioner in I.A.No.803 of 1997. The petitioner filed a petition in I.A.No.803 of 1997 to restore the suit in O.S.No.167 of 1970 to file and decide the same on merits. By order dated 08.07.2011, the said I.A. No.803 of 1997 was dismissed by the learned Principal Subordinate Judge, Tiruchirappalli. Against the said order, the present Civil Miscellaneous Appeal is filed.

3. The brief facts of the case is as follows:

(i) The appellant had filed a suit in O.S.No.167 of 1970 under Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, against the order of the first respondent, dated 11.11.1969, made in A.P.No.41 of 1966 confirming the order of the Deputy Commissioner, Thanjavur, in O.A.No.16 of

1961, dated 22.01.1966. The appellant had prayed for cancelling the orders of the respondents 1 and 2 and to declare that the established usage is to bring Sri Vedantha Desikar to the Adhyayana Mandapam of Lord Ranganatha, on Yugadhi, Deepavali, kanu etc., and on the Tirunakshatram day into the Sanctum Sanctorum of Sri Ranganathar.

(ii) Originally the said suit was filed only against the respondents 1 and 2. The other respondents got impleaded either in their capacity as Trustees or Objectors.

(iii) The objection was taken that the suit was not maintainable as notice as contemplated under Section 80 C.P.C. was not issued to the respondents 1 and 2. The learned Subordinate Judge upheld the said objection and dismissed the suit. The appellant filed first appeal before this Court. The said appeal was allowed and the judgment of the learned Subordinate Judge was set aside and the suit was remanded to the trial Court. The second respondent filed L.P.A. before this Court. The Division Bench of this Court allowed the L.P.A. by setting aside the judgment in the first appeal and restored the judgment of the learned Subordinate Judge, dismissing the suit. The appellant filed Civil Appeal in C.A.No.3670 of 1991 (arising out of S.L.P.No.1553 of 1990). The Honourable Apex Court allowed the appeal by setting aside the judgment of the Division Bench of this Court, restored the operative portion of the judgment in the first Appeal.(without pronouncement on merits) and directed the learned Judge to dispose of the suit, based on the findings of other issues.

(iv) After remand, the trial of the suit was delayed, as number of interlocutory applications were filed and disposed of. The 44th Madathipathi, who originally filed the suit, died. The cause title was amended showing 45th Madathipathi as plaintiff. Pending Civil Miscellaneous Appeal, 45th Madathipathi died. The present 46th Madathipathi was substituted, by order dated 02.07.2015, made in M.P. (MD)No.1 of 2015. The power of attorney of the plaintiff died and the power of attorney then appointed was substituted in the place of erstwhile power of attorney.

(v) Number of defendants died pending suit. The eighth respondent filed I.A.No.445 of 1995 stating that the appellant may be granted time to implead the necessary parties and in default to dismiss the suit. The appellant did not file any counter affidavit. By order dated 05.07.1995, the said application was allowed. The appellant did not take any steps to implead the legal heirs of the deceased defendants. While so, the appellant filed I.A.No.706 of 1995 to substitute the existing trustees in the place of erstwhile trustees. The eighth respondent resisted the same on the ground that the appellant did not implead the necessary parties, as per order dated 05.07.1995. The learned Subordinate Judge, by order dated 19.10.1995, dismissed the petition in I.A.No.706 of 1995.

4. The suit in O.S.No.167 of 1970 was posted in special list for trial on 02.01.1997. Neither the appellant nor his power of attorney appeared before the Court to give evidence. The learned Subordinate Judge dismissed the suit on that

day. The appellant filed a petition in I.A.No.803 of 1997 to restore the suit to file. The first respondent and the eighth respondent filed separate counter affidavit, opposing the said I.A.No.803 of 1997. The learned Subordinate Judge considered the said petition on merits and by order dated 08.07.2011, dismissed the same. Against the said order, the present Civil Miscellaneous Appeal is filed by the appellant.

5. The learned Counsel for the appellant contended that

(i) The suit is filed only against the Commissioner, Hindu Religious and Charitable Endowment, the Executive Officer of the temple and the then trustees of the temple. The respondents 1 and 2 alone are necessary parties.

(ii) Number of other persons were added as defendants and the delay was caused for adding them and amending the plaint.

(iii) Many interlocutory applications were filed on preliminary issues and the same were taken by the Honourable Apex Court as well as this Court, which caused delay in the suit for disposal.

(iv) The suit is against the respondents 1 and 2 and the other parties have no legal right. The non-inclusion of new trustees or legal heirs of the deceased, will not affect the hearings of the suit on merits. The defendants 8 to 25 are only objectors and therefore, their legal heirs are not necessary parties.

(v) The suit was originally listed on 08.01.1997, in the special list and subsequently it was listed on 02.01.1997 for trial. On the opening day, after holidays, the reason given by the appellant for his absence is presumable and should have been accepted by the learned Subordinate Judge. The learned Subordinate Judge did not give any opportunity to the appellant to hear the suit on merits only on the ground that the suit was pending for a long time.

6. Mr. G.Muthukannan, learned Government Advocate appearing for the first respondent and Mr. K.Govindarajan, learned Counsel appearing for the second respondent and Mr. V.Sitharanjandass, learned Counsel appearing for the eighth respondent contended that the suit was not dismissed for default as contended by the learned Counsel for the appellant. The learned Judge took note of the fact that the appellant did not comply with the order dated 05.07.1995, made in I.A.No.445 of 1995, whereby the appellant was directed to implead the necessary parties, failing which, the suit will be dismissed. The appellant did not comply with the earlier order dated 05.07.1995, made in I.A.No.445 of 1995 and the appellant did not implead the necessary parties, the suit was abated. The appellant has not given sufficient and valid reasons for his absence on the day, when the suit was taken up for final hearing. The learned Counsel for the respondents also submitted that only Thenkalai proceeding is followed and granting the prayer in the suit would create problem and the administration would be affected. On merits also, the appellant is not having any case and that is why, they did not appear on the date fixed for commencement of the trial. The

learned Counsel for the respondents further contended that the learned Subordinate Judge considered the materials properly and has given reason for dismissal of I.A.No.803 of 1997.

7. I have heard the learned Counsel appearing for the appellant and the learned Government Advocate for the first respondent and the learned Counsel appearing for the respondents 2 and 8. I have also perused the materials available on record carefully.

8. The point for consideration is as to whether the learned Subordinate Judge was right in dismissing I.A.No.803 of 1997.

9. The appellant filed O.S.No.167 of 1970 to cancel the order of the first respondent, confirming the order of the second respondent. According to the appellant, the respondents 1 and 2 only are necessary parties and all others got impleaded as then trustees or objectors. The learned Judge is not correct in holding that the appellant did not implead the parties as per the order of the Court, dated 05.07.1995. The learned Judge failed to see that the appellant had given valid reasons for his non-appearance and the reasons given for rejection of I.A. by the learned Judge, are not valid.

10. The said contentions of the learned Counsel for the appellant are untenable and unacceptable. The appellant is claiming certain religious rights for a long time. He had initiated proceedings before the second respondent in the year 1961. The suit is of the year 1970. The appellant was not vigilant enough to proceed with the trial of the suit. The learned Counsel for the appellant was aware of the date of hearing of the suit. According to the appellant, a messenger was sent to the appellant's residence to inform him about the suit, being posted in the special list and at that time, he was in Kancheepuram and hence, he could not be contacted. The appellant had not given any particulars as to when a messenger was sent to his residence and whether any effort was made to contact him at Kancheepuram. The appellant was not vigilant enough to prosecute the suit. The further contention of the learned Counsel for the appellant that the appellant need not implead the legal representatives of the deceased defendants and a memo has been filed to that effect, is untenable. From the materials on record, it is seen that the eighth respondent filed I.A.No.445 of 1995, for a direction to the appellant to implead the necessary parties, failing which, the suit in O.S.No.167 of 1970 will be dismissed. The appellant did not contest the said application. By order dated 05.07.1995, the said application was allowed. The appellant did not challenge the said order and the same has become final. In view of the same, a memo filed by the appellant, is not maintainable.

11. From the above facts, I am not inclined to accept the contentions of the learned Counsel for the appellant. The learned Subordinate Judge has considered all the materials in proper perspective and has given valid reasons for dismissing the petition in I.A.No.803 of 1997. There is no reason to interfere with the

impugned order of the learned Subordinate Judge, passed in I.A.No.803 of 1997, in O.S.No.167 of 1970, dated 08.07.2011.

12. In the result, this Civil Miscellaneous Appeal fails and the same is dismissed. There shall be no order as to costs.