

IN THE COURT OF THE MUNSIF, KOCHI

Present :- Sri.Krishnankutty K.V, LL.B., LL.M, Additional Munsiff

Wednesday, the 25th day of May, 2016/4th Jaiyshta, 1938

I.A.No.2558/2015 in O.S.No.444/2014

Petitioners/Defendants No.1 and 3:-

1. B.S.Ramesh, aged 59 years, S/o. Late Boban Shet, House No.X/201, North Janardhana Temple Street, Amaravathy, Kochi - 682 001.
2. Mr.Venu (Gold Smith), aged 38 years, S/o.Late Ramakrishnan, Gopalakrishna Temple South Theruvu, Amaravathy, Kochi – 682 001.

By Advs. Jayasankar, C.V.Manuvilsan & Manu Govind.

Respondents/Plaintiff/Defendants No.2 and 4 to 8:-

1. Sree Gopalakrishna Temple Trust, Represented by its Managing Trustee G.Vishwanath Shet residing at Amaravathy, Fort Kochi Village Mattancherry Firka, Cochin Taluk, Cochin – 682 001, Ernakulam District.
2. R.Raghu, S/o.Ramachandran (Goldsmith), Late, Goplakrishna Temple South Theruvu, Amaravathy, Kochi – 682 001.
3. M.Prabhakaran, S/o.Late Manjunath, SS Krishnan Street, Amaravathy, Kochi – 682 001.
4. Prakesh, S/o.Umanath, Father Gomez Road, Amaravathy, Kochi – 682 001.

5. L.Hari, S/o.Late Lakshmanan, Gopalakrishna Temple Street, Krishnan Street, Amaravathy, Kochi – 682 001.
6. B.S.Rajeev, S/o.Baban(Narayanan) Late, House No.X/201, North Janardhana Temple Street, Amaravathy, Kochi - 682 001.
7. Kannan, S/o.Late Sitharaman, Goplakrishna Temple Street, Krishnan Street, Amaravathy, Kochi – 682 001.

R1 - By Advs.Priya P.A. & S.Sundar.

R2, 3 & 7 - By Advs. Jayasankar, C.V.Manuvilsan & Manu Govind.

R4 to 6 – No Vakalath

This petition filed under Order 1 Rules 10(2) of the Code of Civil Procedure to strike out the Petitioner/Defendants No.(1) B.S.Ramesh, S/o. Late Boban Shet, House No.X/201, North Janardhana Temple Street, Amaravathy, Kochi - 682 001 and Defendant No.2 M.Prabhakaran, S/o.Late Manjunath, SS Krishnan Street, Amaravathy, Kochi – 682 001, from the party array of the defendants.

This petition come up for hearing before me on 18.05.2016 and the court on 25.05.2016 passed the following:-

ORDER

This is a petition to strike out the petitioners 1 & 4 in the suit from party array.

2. Plaintiffs' case in brief is as follows:- The defendants were

functioning as the committee members of the temple trust. The general body meeting of the Konanastha Sonar Community, Kerala, held on 5.7.2015 and 12.7.2015 has elected a new committee for the Sree Goapakrishna Deveaswom, Amaravathy, Kochi. The new committee elected by the general body. It is submitted that petitioner and 3rd defendant are not included in the new committee as office bearers. In the light of the above, he and the defendant No.3 are not necessary party or proper parties to the proceedings and out presence is not at all necessary for the final adjudication of the questions and issues involved in the above suit. In view of the current circumstances, our presence in the suit is nothing but misjoinder of unnecessary members in the party array for effective adjudication of the matter in issue. Hence the petition.

3. The respondent filed counter stating that he filed the suit against the defendants 1 to 8, who are trespassers in the said temple and as a managing trustee of the said temple, this respondent filed the above suit for evicting them through court of law on the ground of trespassing. Defendants 1 to 8 who have engaged in criminal activities such as stealing, looting and misappropriation of funds are being tried separately through a Judicial Magistrate at Mattancherry which is pending enquiry in CC.No.1623/2014. He submitted that this temple,

which has no care taker has managed in his absence by the defendants illegally and claiming as if the said temple belongs to Konkanastha Sonar Community is a fabricated, foisted story, which has no relevance and there are no records to speak of such community existing earlier and the defendant is attempting to take shelter under the said community only to escape from the clutches of law. He submitted that the formation of committee, election conducted and appointment of bearers is not the question before this court, which the defendants are illegally creating among themselves only to escape from the clutches of law or else the defendants have to face legal consequences both civil and criminal nature. Hence to dismiss the petition.

4. Heard both sides.

5. Exts.A1 to A11, B1 to B16 were marked.

6. From the above, the following points arise for consideration:

1. Whether the petitioner is entitled to get their name strike out from the party array as prayed for?

2. What shall be the proper order?

7. Point No.1 & 2:-. The main contention of the petitioner is that the 1st defendant has got new committee members on the basis of election held on 5.7.15 and 12.7.15. The petitioners are not included in the present committee hence it is requested to strike out the

petitioners from the party array since they are not necessary parties. The respondents contended that the defendants suit included in the petitioners are trespassers in the 1st defendant Sree Gopalaswamy temple and the suit was also filed for evicting them. They have engaged in the criminal activities of stealing, looting and misappropriation of funds and criminal case was also filed in the Magistrate Court as CC No.1623/12. Hence in order to escape from the clutches of law the petition is filed. The alleged election has nothing to do with the present suit. The present suit is filed for declaration and eviction. The plaintiff contends that the defendants are trespassers and persons engaged illegal activities. Hence eviction is also sought in the suit. The respondent is claiming right over the plaint schedule property by Exts.B2 to B4 trust deed. Exts.B5 to B12 documents are the complaints filed before various authorities against the petitioners herein and others. Ext.B12 is a private complaint filed against the defendants before Judicial 1st Class Magistrate Court. Ext.B9 is FIR registered against the petitioners herein and others. Ext.B14 is the copy of notice issued against the petitioners. The pleadings and above document filed by the plaintiff in the case shows that plaintiff filed the suit on the basis of above allegation raised against the petitioners herein. Hence the presence of petitioners are

necessary for determining real question in controversy in the suit. Otherwise it will affect the effective disposal of the suit. Hence they are necessary parties to the suit. Hence the contention of the respondent is having merit. Hence the petitioners are not entitled to get relief prayed in the petition and the petition is dismissed in the interest of justice.

Dictated to the Confdl.Asst, transcribed and typed by her corrected and pronounced by me in open court on this the 25th day of May 2016.

Krishnankutty K.V.
Additional Munsiff

APPENDIX

Petitioner's Exhibits:-

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| A1. | 01.09.2016 | Copy of order in RC Rev.247/06 RCA 18/05 in RCP 80/86 from the Hon'ble High Court of Kerala. |
| A2. | 20.04.1999 | Copy of the order in CC 79/96 on the file of JFCM-I, Kochi. |
| A3. | 05.07.2001 | Copy of order in Crl.Appeal 172/99 of District Court, Ernakulam. |
| A4. | 07.06.2001 | Copy of order Crl. Rev. Petition 1296/01. |
| A5. | | Copy of plaint in O.S. 486/06. |
| A6. | 15.12.2006 | Copy of order in I.A.2928/06 in O.S.486/06. |

- A7. 04.07.2007 Copy of order in CMA 5/07 on the file of Sub Court, Kochi.
- A8. 14.07.2008 Copy of common order in IAs 56/59 of 2008 in O.S. 486/06.
- A9. 25.02.2009 Copy of order in CMA 2/09.
- A10. 13.02.2013 Copy of Judgment by Hon'ble High Court of Kerala in W.P.(c) No.2769/13.
- A11. 01.02.2013 Copy of affidavit filed before the Hon'ble High Court of Kerala in W.P.(c) No.2769/13 by P.Vidyakaran Shet.

Respondent's Exhibits:-

- B1. 30.05.2006 Trust Deed Doc. No.2703/06.
- B2. Gift Deed No.208/1947.
- B3. Gift Deed No.209/1947.
- B4. Gift Deed No.210/1947.
- B5. 28.05.2012 Complaint to police Commissioner, Kochi.
- B6. 19.07.2012 Police complaint against the defendants to Fort Kochi Police Station.
- B7. 26.07.2012 Letter from plaintiff to Station House officer, Fort Kochi Police Station.
- B8. 02.07.2012 Letter from plaintiff to IG of Police, Ernakulam.
- B9. 09.07.2012 FIR against defendants.
- B10. 23.06.2012 Letter from plaintiff to Police Commissioner.

- B11. 24.07.2012 Complaint from plaintiff to Deputy Commissioner of Police.
- B12. 07.10.2013 Private complaint to Judicial 1st Class Magistrate, Kochi.
- B13. 28.01.2014 Advance hearing petition.
- B14. 26.05.2014 Legal to the defendant 1 to 8.
- B15. Returned cover as unclaimed.
- B16. 07.06.2014 Reply from 1st defendant.

Witness for both sides:- Nil

Additional Munsiff

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compd by: