

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
NAGERCOIL**

Present: **Thiru. R.Sundara Kamesh Marthandan, M.L.,**
Principal District Munsif, (FAC) Nagercoil.

Wednesday, on this the 23rd day of August 2023

I.A. No.11 of 2022

in

O.S. No. 137 of 2019

1. Arunkumar

2. Narayanan

... Petitioners/Plaintiffs

-Vs-

Arulmighu Devi Sri Mutharamman Temple,

Pulavarvilai, Nagercoil,

Kanyakumari District, Rep. by its

Managing Committee through

1. President Selvarajan

2. Secretary Perumal (died)

3. Treasurer Gopalakrishnan

4. Pro. Addl. Subramonian

5. Pro. Addl. M.R.Nagarajan

... Respondents/Defendants

This Petition came up before me on 19.06.2023 for final hearing in the presence of Mr. T.Chenthil Moorthy, Advocate for the Petitioners/Plaintiffs and Mr. K.Anandh, Advocate for the Respondents/Defendants 1 & 3 and upon hearing the Petitioners' and Respondents' Counsel and upon perusing the case records and having stood over for consideration till this day, this Court hereby

delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Order XXII Rule 4 and Section 151 CPC, seeking an Order to implead the successor of the 2nd defendant Secretary as the proposed Additional 5th defendant, in the party array in O.S. 137 of 2019.

2. The Petitioner had pleaded that the 1st Plaintiff had filed the suit in O.S. No.137 of 2019, against the defendants in connection with the temple and that the 2nd defendant Perumal died on 19.01.2021. The Petitioner had filed a memo before this Court, for instructing the defendants to inform the successor of Secretary namely the deceased 2nd defendant Perumal. The Defendants filed memo dated 23.02.2022, stating that one M.R. Nagarajan has been deputed as Secretary of the temple, as per the election of the 1st defendant president Selvarajan.

3. Further the Petitioner had pleaded that the 1st defendant had not convened the General Body and not selected the new secretary, through the General Body. As such the Petitioner could not file impleading Petition within the stipulated time and the Petitioner got knowledge about the new secretary only on 23.02.2022, by the memo filed by the defendants. Further, the temple member namely, S. Subramanian had already filed I.A. No.9 of 2021, seeking to implead him as additional proposed to 4th defendant and the said I.A. is pending. Hence, the Petitioner had filed the above Petition seeking to implead the present

secretary as the 5th defendant in the above suit.

4. The Respondents 1 & 3 have filed counter stating that the above Petition is not maintainable. The Petitioner had filed the above suit by mentioning the name of one T. Narayanan as the 2nd Plaintiff. The said Narayanan himself had filed affidavit on 16.03.2022, seeking to struck off the name of Narayanan and to implead the name of one Rajagopal as additional 3rd Plaintiff. However, in the above I.A., cause title, the Petitioner had mentioned the name of one Subramonian as proposed additional 4th respondent and served copy of the above Petition on his counsel.

5. Further only upon impleading a party, the said party could be heard and not before that. Only if any person has got any right to relief in respect of or arising out of the same act or transaction or series of facts or transaction, whether jointly or severally they may be joined as defendants. Admittedly, as per Order I Rule 8 CPC even one person may sue or defend on behalf of all in same interest. As such the very same I.A . cause title itself is not appropriate and the above application filed under Order XXII Rule 4 speaks which deals with procedure in case of death of one of the defendants has not applicable to the above Petition. As because the proposed 5th defendant is not the legal representative of the deceased 2nd defendant

6. Further the other defendants through their counsel informed the Court, the fact of death of 2nd defendant on 03.02.2021, itself by filing memo. However the said fact was suppressed in order to circumvent the said fact, the Petitioner

filed memo dated 22.03.2022, and filed the above Petition. Hence the petition under Order XXII Rule 4 CPC is inappropriate. Further the other Defendants informed this Court about the death of 2nd Defendant on 03.02.2021 by filing memo. However in order to circumvent, the Petitioner had stated as if the Defendant filed a memo on 22.03.2022. The Defendants file memo to clarify that as per the convention, immediately upon the death of the secretary, the joint secretary will act as secretary till the new incumbent takes charge. As such the Petitioner is not entitled for the Petition relief.

7. The point for consideration is whether the above Petition has to be allowed or not?

8. As contented by the Respondents' Counsel it could be seen that the above petition under Order XXII Rule 4 it is not proper. Since the said Perumal has been made in party array, as the secretary of the 1st Respondent Temple. In such circumstances, upon the demise of the said Perumal, the procedure envisaged under Order XXII Rule 4 CPC will not be applicable. Since the said Perumal had not been made as party, in his personal capacity. He had been made in party in his official capacity as secretary, of the 1st Respondent temple. In such case, the succeeding secretary could be permitted to be substituted in the place of the original secretary, during the time of the institution of the suit.

9. Further though the Respondents objected to the filing of the above petition under Order XXII Rule 4 CPC, the Respondents have not denied about the death of Perumal and about the fact of M.R.Nagendran succeeding to the

office of the secretary of the 1st Respondent temple. Such being the case this Court is of the considered view that it need not dwell upon the technicality and wrong quoting of provision of law, while deciding the above petition. As because the death of Perumal is admitted by the Respondents and the succession to office by M.R.Nagarajan is also admitted by the Respondents. Since the 1st Respondent is the temple, it has to be necessarily represented by its secretary and other office bearers. Hence allowing the above petition, is necessary for further progress in the suit and will be in the best interest, of the 1st Defendant to defend the suit.

10. Further while taking out this application, the Petitioner had claimed that one Subramonian had filed an application to get himself impleaded as 4th Defendant in the above suit and as such, the proposed Defendant M.R.Nagarajan has to be impleaded as 5th Defendant. As contented by the Respondents Counsel the said Subramonian had filed I.A.No. 9 of 2021 and the said I.A. is still pending on the file of this Court. In such circumstances as on date there is no 4th Defendant. The Petitioner could not anticipate that the said I.A. would be allowed and thereafter the above I.A. will be taken up for consideration. Since the said I.A. is pending and the said Subramonian had not been made as 4th Defendant in the suit, while allowing the above petition this Court is of the considered view that the secretary M.R.Nagarajan be arrayed as 4th Defendant in the above suit.

In the result, the above I.A. allowed and the said M.R.Nagarajan shall be

arrayed as 4th Defendant in the above suit. No cost.

Dictated to the Steno typist, and typed by her, directly in Computer corrected and pronounced by me in Open Court this, the 23rd day of August, 2023.

Principal District Munsif, (FAC)
Nagercoil.

Petitioners side witnesses and documents :- Nil

Respondents side witnesses and Documents :- Nil

Principal District Munsif, (FAC)
Nagercoil.

Fair/ Draft Order
I.A.No.11 of 2022
in
O.S.No.137 of 2019
Date: 23.08.2023.
PDM, Nagercoil.