

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 07.06.2018
DELIVERED ON : 10.07.2018
CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAM

C.R.P.(PD)(MD) No.818 of 2018
and
CMP(MD)No.3630 of 2018

Successor to the 292nd Guru Maha Sannidhanam
Sri La Sri Paramahansa Sri Nithyananda Sri
Thirugnanasambanda Desiga Paramachariya Swamigal
@ Sri Nithyananda Swami,
Nithyananda Dhyanapeetam,
Adi Annamalai,
Thiruvannamalai.

.. Petitioner/Petitioner/Proposed
Defendant

vs

1. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
No.119, Uthamar Gandhi Salai,
Chennai - 600 034. ...1stRespondent/1stRespondent/Plaintiff
2. Sri La Sri Arunagirinatha
Sri Gnanasambanda Desiga Paramachariya
Swamigal, Adheenakartha,
Trustee of Thirugnanasambanda Swamigal Math,
70, South Avani Moola Veedhi,
Madurai Town, Taluk,
Madurai District - 625 001. ..2ndRespondent/2ndRespondent/
Defendant

Prayer: Revision filed under Article 227 of Constitution of India,
against the order dated 20.3.2017 passed in I.A.No.247 of 2013 in
O.S.No.1000 of 2012 on the file of the Principal Sub Judge, Madurai
and direct the Subordinate court to implead the Petitioner as a
necessary and proper party in O.S.No.1000 of 2012 and
consequently in I.A.966 of 2012 in O.S.No.1000 of 2012 for
proper adjudication of all the issues involved in O.S.No.1000 of
2012.

For Petitioner : Mr.M.Aravind Subramaniam

For Respondents : Mr.Aayiram K.Selva Kumar
Addl. Govt. Pleader (for
R1)

Mr.G.Jayachandran (for R2)

ORDER

This Civil Revision Petition is directed against the order dated 20.03.2017 passed in I.A.No.247 of 2013 in O.S.No.1000 of 2012 on the file of the learned Principal Sub-Judge, Madurai, dismissing the petition filed by the petitioner under Order 1, Rule 10(4) of the Code of Civil Procedure, 1908.

2. The suit being O.S.No.1000 of 2012 has been filed by the first respondent, inter alia, seeking the following reliefs:

(a) Remove the defendant from the office of the Trustee of the Sri Thirugnana Sambanda Swamigal Math alias Madurai Aadheenam, Madurai and consequently remove him from the Hereditary Trusteeship of the Temples referred to in Para 18 of the plaint, which the defendant is holding by virtue of his office as Trustee of Sri Thirugnana Sambanda Swamigal Math alias Madurai Aadheenam, Madurai.

(b) To declare the deed of Trust (i.e) "Madurai Aadheenam Trust" executed by the defendant vide Document No.237/2012 dated 23.4.2012 Joint Sub Registrar-I, Madurai South and the affidavit appointing Sri Nithyananda as 293rd Aadheenakarhar of Madurai Aadheenam Math is null and void, and non-est in law.

(c) Mandatory injunction directing the defendant to hand over the Math and its properties to the plaintiff as contemplated under Section 60 of the Act so as to make arrangements for the administration of the Math and the endowments or of the specific endowments, as the case may be till another Trustee succeeds to the office as the case may be.

(d) Permanent injunction restraining the defendant or any one claiming through or nominated by him etc., to interfere with the Thirugnana Sambanda Swamigal Math and its properties.

(e) Directing the defendant to pay the costs of the suit.

3. Along with the suit, the first respondent filed I.A.No.966 of 2012 seeking ad-interim stay, staying the operation of the deed of declaration of the Trust Document No.237 of 2012, dated 23.04.2012 called Madurai Aadheenam Trust and the affidavit executed by the defendant dated 27.04.2012 till the disposal of the suit.

4. By an order dated 26.02.2013, the Principal Sub Judge, Madurai had granted stay of operation of the deed of trust dated 23.04.2012 and the affidavit dated 27.04.2012 till the disposal of the suit.

5. Pending suit, the petitioner filed I.A.No.247 of 2013 seeking to implead him as defendant in the suit alleging that the second respondent, after verifying the facts and being fully satisfied that the petitioner was very efficient and spiritually evolved person and also due to his old age, had appointed the petitioner as his successor, the 293rd pontiff of Madurai Aadheenam on 27.04.2012. Prior to the official coronation, the second respondent had solemnized the petitioner with Visheda Deeksha, Manthra Kaashayam, Nirvana Deeksha and Acharaya Abishekam. Pursuant to the appointment, the petitioner has started performing all the religious and spiritual duties attached under the guidance of the first respondent and had also started Annadhanam.

6. Questioning the appointment of the petitioner as 293rd pontiff of Madurai Aadheenam, several writ petitions were filed. By an order dated 10.05.2012, the Hon'ble Division Bench of this Court dismissed the writ petition being filed in W.P.(MD)No.6670 of 2012. It is alleged that the suit in O.S.No.1000 of 2012 is hit by non-joinder of the petitioner as party defendant. In the trust deed, it has been stated that the petitioner and the second respondent were the life trustees and therefore, the first respondent ought to have impleaded the petitioner as party defendant in the suit. According to the petitioner, he is not only a necessary party, but also interested party.

7. Resisting the petition, the first respondent filed counter stating that the second respondent filed O.S.No.1038 of 2012 against the petitioner for declaration that the deed of declaration of trust executed on 12.04.2012 as invalid, ineffective, null and void. It is stated that the petitioner has filed O.S.No.85 of 2013 against the second respondent for declaration and injunction. The petitioner has no locus standi to represent the suit Math when the second respondent was very much available. It is stated that the petitioner is neither necessary nor proper party to the suit. It is also stated that the petitioner has no defined, subsisting, direct and substantive interest in the suit and prayed for dismissal of the petition.

8. The second respondent filed counter stating that Madurai Aadheenam was a well known Tamil Saivite Religious Mutt, whereas the petitioner was not a Savite and not even a sanyasin in real spiritual sense. The petitioner was known as "self styled vedati" with controversial antecedents and he was a preacher of Vedanta philosophy, yoga, mediation on a commercial basis violating the existing customs and usage of Madurai Aadheenam. It is stated that since the petitioner was involved in several criminal cases for sexual abuse, he was removed from Madurai Aadheenam for a good and valuable cause as he was not fit and qualified person.

9. It is stated that since the petitioner has not followed the rituals procedure of the Math, he was removed on 19.10.2012 through paper publication and also through a registered letter intimating personally. The second respondent was the competent person to answer the allegations of the first respondent and the petitioner is no way connected with the administration of the Math. It is stated that the petitioner was having only commercial interest of taking over the Math in order to achieve his personal gain. The petitioner is not having any defined, subsisting, direct and substantive interest in the litigation which interest is either legal or equitable and cognizable in law. Therefore, the petitioner is not a necessary party to the suit and prayed for dismissal of the petition.

10. Before the trial Court, both the petitioner and the respondents have produced Exs.F1 to F6 and Ex.R1 and R2 respectively. No oral evidence was adduced on both sides.

11. Upon consideration of the rival submissions and upon perusing the documents, the trial Court dismissed I.A.No.247 of 2013. Aggrieved by the same, the petitioner has filed this Civil Revision Petition.

12. I heard Mr.M.Aravind Subramaniam, learned counsel appearing for the petitioner, Mr.Aayiram K.Selva Kumar, learned Additional Government Pleader appearing for the first respondent and Mr.G.Jayachandran, learned counsel appearing for the second respondent and also perused the materials available on record.

13. The learned counsel for the petitioner submitted that the order of the trial Court is contrary to law, facts, evidence and against the settled principle of natural justice and the trial Court ought to have considered that the petitioner is a necessary party to the suit. He submitted that the trial Court failed to note that there are common issues involved in the suits filed between the parties and any decision in the suit, would affect the rights of the petitioner in O.S.No.85 of 2013 and O.S.No.530 of 2016 in which similar issues have been raised and also may operate *res judicata* in the said suits.

14. The learned counsel further submitted that the trial Court failed to note that the second respondent has filed the suit being O.S.No.1038 of 2012 seeking to declare the trust deed dated 12.04.2012 and the affidavit dated 27.04.2012 as null and void and in the said suit HR & CE have been made as a party. Since the said suit is still pending, any observation made by the trial Court regarding the issue was bound to affect the petitioner. The learned counsel would submit that the trial Court failed to consider the well settled principle of law that *res inter alios acta alteri nocere non debet* i.e., things done between others ought not to injure an outsider (non-party to them). In fact, the interim order granted in I.A.No.966 of 2012 affects the rights of the petitioner and hence

he cannot be declared as outsider and has necessarily to be impleaded as defendant in the present suit. He further argued that the appointment of the Petitioner as Junior Pontiff is based on rituals performed and not the affidavit or the Trust Deed.

15. The learned counsel next argued that the trial Court erred in following the provisions of the C.P.C. and the principles enshrined therein. He argued that the trial Court has erroneously examined the locus standi of the petitioner on the date of adjudication of I.A.No.966 of 2012 in O.S.No.1000 of 2012 without considering the petitioner's locus standi on the date of institution of the suit and consequences thereupon affecting his appointment as a junior pontiff of the Math. Finally, he submitted that the impugned order is unsustainable under law and if it allowed to stand at point, then would occasion miscarriage of justice and abuse process of law.

16. The learned counsel for the petitioner further submitted that as per the conclusions of the Hon'ble Apex Court in 1974 AIR 199 Sri Mahalinga Thambiran Swamigal vs His Holiness Sri La Sri Kasivasi followed by this Hon'ble Court in AIR 1983 Mad 72 Ambalavana Pandara Sannathi vs State of Tamil Nadu and Anr in Para 8 that "...it was held by the Supreme Court that the Head of the Mutt is entitled to appoint a Junior Pandarasannadhi, that this Junior has a recognised status, that he is entitled to succeed to the headship if he survives the appointed, that for good cause shown he can be removed and that it is not open even to the head of that Mutt to dismiss him arbitrarily". He further mentioned that as per the scheme framed by the HRCE in Page 15. Section 4 which says "ஒவ்வொரு ஆராதிரி ஒவ்வொருவருக்கும் மட்டும் மட்டும் மட்டும் மட்டும் மட்டும் மட்டும் மட்டும் மட்டும்" ("In each Pontiff's lifetime, it is not the custom to perform Acharya Abhisheka (to appoint the Junior Pontiff) to more the one person") Acharya Abhisheka can be performed by a Pontiff only once and only to one person and hence no one else can be appointed subsequent to the Petitioner as the Junior Pontiff. The learned counsel for the petitioner relied upon the Allahabad High Court Judgement 2000 (40) ALR 625 Shri Hathia Ram Math and Anr vs Bhawani Nandan Yati which says in Para 5 "... On the other hand, it was held that once appointed a person can be removed for good reasons provided it is in the usage and custom governing the endowment". In the present case while applying this judgement it is clear that there is no custom and usage of removal of Junior Pontiff in the Madurai Adheenam as per the scheme framed by the HR & CE for the Thirugnana Sambhanda Swamigal Adheenam commonly referred to as the Madurai Adheenam.

17. Per contra, the learned Additional Government Pleader appearing for the first respondent submitted that the petitioner had approached the Court without clean hands and he cannot be added as defendant in the suit since he is a third person as far as the suit is concerned. Further, the petitioner is no way connected to the Madurai Aatheenam. He submitted that in his counter before the

trial Court, the second respondent stated that since the petitioner has not followed the rituals procedure of the Math and lot of criminal cases pending against the petitioner, he was removed from the Math on 19.10.2012. This was resisted by the counsel for the petitioner who stated that all the allegations made against the Petitioner were based on media reports and were purely speculative that he has not been convicted of any charge by any Court.

18. He further submitted that the second respondent alone is holding the post of trustee of the suit Math and he is competent and responsible person to answer and the petitioner who is no way connected with the administration of the Math is neither a necessary, nor proper party to the suit. He argued that the alleged interest which the petitioner shall have in the suit to enable him to be impleaded should be a direct interest and not a commercial interest. Admittedly, the petitioner has no direct interest in the suit on hand.

19. The learned counsel for the second respondent reiterated the counter filed in I.A.No.247 of 2013. He submitted that there is no necessity arises to implead the petitioner in the suit, which is pending from 2012 and the petitioner was not having any defined, subsisting, direct and substantive interest in the litigation in question. He argued that the trial Court was right in dismissing the petition and there is no need to interfere with the same.

20. The point that arises for consideration is whether the trial Court was right in dismissing the petition filed by the petitioner seeking to implead him as party defendant in the suit being O.S.No.1000 of 2012.

21. Before adverting the factual matrix of the case, it is relevant to mention the origin of Madurai Aadheenam. The Madurai Aadheenam is a world renowned Monastery spreading the cause of Saivism. As per the events chronicled in various literatures, Madurai Aadheenam had its origin even prior to the 8th Century A.D. and has been in existence even during the Sangam Literature period. It came into prominence during the period of Great Nayanmar Thirugnanasambandar. The literary records reveal that a great debate between the scholars of Jainism and Saivism in the Madurai Aadheenam. Saint Thirugnanasambandar succeeded in the debate as against the Jain scholars and it is only from this point of time, Madurai Aadheenam began to gain greater prominence in social, religious as well as in the field of Literature. The Madurai Aadheenam has been a guiding light for spreading of saivite philosophy for several centuries together.

22. The Madurai Aadheenam is headed by a Guru Maha Sanneethanam, who is the Chief Administrator of Mahant in general parlance. He is the Administrator as well as the Financial Controller of the entire Aadheenam. The second respondent herein is the 292nd Aadheenakartha of the Madurai Aadheenam.

23. The case of the petitioner is that after verifying the facts and being fully satisfied that the petitioner was very efficient and spiritually evolved person, the second respondent nominated and appointed the petitioner as his successor, the 293rd pontiff of Madurai Aadheenam on 27.04.2012. Pursuant to the nomination and appointment, the petitioner started performing all religious and spiritual duties attached under the guidance of the first respondent. While things stood thus, the first respondent had filed the suit being O.S.No.1000 of 2012 for declaration and permanent injunction averring several allegations against the petitioner without impleading the petitioner as defendant in the said suit. Therefore, the petitioner is a necessary party to the suit.

24. On a reading of the plaint averments in O.S.No.1000 of 2012, it is seen that on 12.04.2012, the second respondent and the petitioner have executed a deed of declaration of trust called as "Madurai Aadheenam Trust" to administer, manage, control supervise and run the affairs of Sri Thirugnana Sambanda Swamigal Math and after creation of Madurai Aadheenam Trust, the second respondent executed an affidavit on 27.04.2012 declaring, nominating and appointing the petitioner as 293rd Guru Maha Sannidhanam of Madurai Aadheenam.

25. It is necessary to extract paragraphs 8 and 9 of the plaint averments in O.S.No.1000 of 2012, which read as under:

"8. The Defendant herein along with Sri Nithyananda Swamy on 12.04.2012 has created a deed of declaration of Trust called "Madurai Aadheenam Trust" registered as Document No.237 of 2012 dated 23.04.2012 at the Office of the Joint Sub Registrar, Madurai South, Madurai, wherein the Defendant and Sri Nithyananda Swami as Trustee of "Madurai Aadheenam Trust" will administer, manage, control, supervise and run the affairs of Sri Thirugnana Sambanda Swamigal Math, when Section 6(13) of the Act provides for a person alone to officiate as Trustee, the Defendant functioning as 292rd Trustee of the suit Math, by executing a deed of declaration along with the Sri Nithyananda Swamy has not only acted against the interest of the institution, but also violated the provisions of the Act. The certified copy of registered document of deed of Trust is filed herewith as Document. It is relevant to point out that under Section 59(1)(c) of the Act reads as "breach by him of any trust created in respect of any of the properties of the religious institution". It is submitted that when the Madurai Aadheenam Math, an independent Religious Institution is in existence and functioning with a Trustee as provided under Section 6 (18) of the Act, and also governed by a scheme approved

by the High Court in A.S.No.336 of 1951, it is not known why a parallel Trust to administer the above said Math was created by the Defendant. The plaintiff states that the object of this "Madurai Aadheenam Trust" is to take away the properties of the Math under one guise or other and the Madathipathi has bartered away by creating Madurai Aadheenam Trust, by Document No.237/2012 dated 23.4.2012 without the knowledge of the plaintiff. The plaintiff further states that the beneficiary of the said Trust is an alien who has been appointed as a Life Time Trustee. By the creation of a private trust, the Defendant has tried to take away entire religious institution trust and its properties, endowments, which cannot be allowed in law. Therefore, the "Madurai Aadheenam Trust" as created by Deed of Trust Document No.237/2012, dated 23.04.2012 is against the provisions of the Act and warrants removal of the Defendant from the Math for committing breach of trust as specified under Section 59(1)(e) of the Act, besides declared as null and void.

9. After creation of the so called "Madurai Aadheenam Trust", the Defendant herein executed an affidavit before the Notary Public at Karnataka on 27.04.2012 declaring, nominating and appointing Paramahansa Nithyananda also known as Sri Nithyananda Swami as 293rd Guru Maha Sannidhanam of Madurai Aadheenam called as Sri Thiugnana Sambanda Swamigal Math. From the above statement it is clear that Sri Nithyananda who was nominated as successor to the present Trustee is not a disciple of the Math. It is submitted that the Defendant has admitted that he has not followed the procedures and provisions of the Act and the scheme of succession as mentioned by their predecessors in the property register as to the selection of Sri Nithyananda Swami as the 293rd Guru Maha Sannidhanam of the Math and serious objections have been received from the public at large."

26. It is to be noted that the second respondent, who is the original defendant in O.S.No.1000 of 2012, has filed written statement, wherein it has been stated as under:

"3. The defendant submits and states that the suit as framed is not maintainable in law and on facts of the case. The framing of the suit is vitiated by non-joinder of necessary parties and mis-joinder of causes of action. Besides, it is not in conformity with the relevant mandatory provisions of law governing the subject matter of the lis and therefore, liable to be dismissed in limine. The defendant also submits that the institution in which the defendant is acting as a

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Madathipathi should have been a necessary and proper party to the proceeding. The plaintiff has no competence to sue in respect of the affairs of the institution or the Mutt."

27. In his written statement, the second respondent stated that the deed of trust created on 27.04.2012 was in no way connected with the Madurai Aadheenam and the same cannot be construed as if the second respondent acted against the provisions of the Act. In order to cancel the newly created deed, the second defendant has filed the suit for declaration and the same is pending.

28. On a perusal of the typed set of papers, I find that the second respondent filed O.S.No.1038 of 2012 on the file of the Subordinate Judge, Madurai seeking the following reliefs:

- (1) declaring the Deed of Declaration of Trust executed on 12.4.2012 and registered on 23.04.2012 by the plaintiff and the 2nd defendant under Document No.237/2012, in the 1st defendant's office as invalid, ineffective, null and void and also unenforceable in the eye of law and as such it is cancelled.
- (2) declaring the Notarized declaration affidavit dated 27.4.2012 under certificate No.1W-A93448783901437K solemnized by the plaintiff in favour of the 2nd defendant at Bangalore, Karnataka State, confirming his successorship as 293rd Pontiff as invalid, ineffective and null and void and also unenforceable, and as such it is cancelled.
- (3) restraining the 2nd defendant, his disciples, his men and agents or anyone claiming through him from and in any way interfering into the plaintiff's administration and management of suit properties, i.e., the Madurai Aadheenam and its properties i.e., both movables and immovables by an order of permanent injunction as a consequential relief.
- (4) directing the 1st defendant to cancel the entry of Registration of the Deed of Declaration of Trust dated 12.4.2012 and registered on 23.4.2012 by the plaintiff and the 2nd defendant from the register of Trust deed maintained in his office.
- (5) directing the contesting defendants to pay the costs of this suit."

29. In O.S.No.1038 of 2012, the plaintiff therein impleaded the petitioner herein as second defendant and the said suit, according to both sides, is pending.

30. It appears that the petitioner herein has instituted a civil suit being O.S.No.85 of 2013 on the file of the Subordinate Judge, Madurai to declare that the advertisement given by the first defendant therein (i.e., the second respondent herein) in the name of Public Notice dated 19.10.2012 and published in Dinamalar Tamil Daily on 22.10.2012 and the letter of the first defendant dated 20.12.2012 as null and void. In the said suit, the petitioner herein, has also sought permanent injunction restraining the defendants therein, their men, agents, servants, heirs, successors, representatives or anybody claiming from interfering in the discharge of the religious and spiritual functions of the plaintiff as 293rd Pontiff of Madurai Aadheenam Mutt.

31. In O.S.No.85 of 2013, the first respondent herein filed I.A.No.370 of 2013 seeking to implead them as third defendant and the same is pending for consideration. Thus, from the above narrated facts, it is seen that the reliefs sought for in all the three suits, supra, are inter-connected with each other.

32. In the case on hand, admittedly, the first respondent-HR & CE had prayed to remove the second respondent from the office of the Trustee of Madurai Aadheenam and also to declare the deed of trust executed between the second respondent and the proposed defendant (petitioner herein) as null and void. When such being the prayer sought in O.S.No.1000 of 2012, the proposed defendant i.e., the petitioner herein has to be heard and without hearing him, if any decision is taken, the same would affect the rights, if any, claimed by him in the other suits. Therefore, this Court finds that the petitioner is necessary party to the suit being O.S.No.1000 of 2012.

33. As stated supra, in his written statement the second respondent stated that the suit is vitiated by non-joinder of necessary parties. Thus, according to the second respondent, the beneficiary of the trust deed, is necessary party to the suit.

34. In *Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar*, reported in AIR 1963 SC 786, the Hon'ble Supreme Court held:

"7. it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled, it is enough if we state the principle. A necessary party is one without whom no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in this proceeding."

35. In *Udit Narain Singh Malpaharia, supra*, the Hon'ble Supreme Court explained the distinction between necessary party, proper party and proforma party and held that if a person who is

likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice.

36. In *J.S. Yadav v. State of U.P. and another*, reported in (2011) 6 SCC 570, the Hon'ble Supreme Court held:

"31. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the petitioner-plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail."

37. Order 1, Rule 10 of C.P.C. provides as under:
"Rule 10. Suit in name of wrong plaintiff -

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended- Where a defendant is added, the plaint shall, unless the Court

otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

38. The law on the subject is well settled that a necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

39. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed.

40. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.

41. In *Mumbai International Airport (P) Limited v. Regency Convention Centre and Hotels (P) Ltd.*, reported in (2010) 7 SCC 417, the Hon'ble Supreme Court considered the scope of Order 1, Rule 10 (2) of C.P.C. and held as under:

"13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper or necessary parties."

42. Thus, the petitioner being a party to the trust deed as well as the affidavit which were in question in the suits pending between the parties, this Court is of the view that the petitioner has to be heard and without hearing the petitioner, if any decision is taken, the same would affect the rights of the petitioner claimed by him in the suit filed by him. Therefore, this Court finds that the petitioner is necessary party to the suit being O.S.No.1000 of 2012 and he is entitled to be impleaded as defendant in the suit.

43. On a reading of the order of the trial Court, I find that it had failed to consider the common issues involved in all three suits between the parties. The trial Court had also failed to consider that any decision in O.S.No.1000 of 2012 without the petitioner, would affect the rights of the petitioner claimed by him in O.S.No.85 of 2013.

44. From the perusal of the records available in the typed set of papers and the scheme document enclosed herein it is clear that the customary practice enumerated therein does not have a clause for the removal of the Junior Pontiff as it says "എങ്ങനെ മാറ്റം" *എങ്ങനെ മാറ്റം* ("In each Pontiff's lifetime, it is not the custom to perform Acharya Abhishekam (to appoint the Junior Pontiff) to more than one person") Acharya Abhishekam can be performed by a Pontiff only once and only to one person and hence no one else can be appointed subsequent to the Petitioner as the Junior Pontiff. Hence this court is of the opinion that the Petitioner's appointment as the Junior Pontiff is irrevocable and hence he is the Junior Pontiff of the Mutt.

45. The learned Additional Government Pleader has not submitted any evidence regarding the allegations of criminal cases against the Petitioner. Hence it is clear that these allegations are speculative and not substantive.

46. In fact, the first respondent-HR & CE had filed petition to implead them as party defendant in O.S.No.85 of 2013 and the same was allowed by the trial Court, which clearly indicate that in all the cases, common issues and/or facts were involved. Further, the petitioner being the junior Pontiff and the successor to the second respondent whose removal is being challenged, would definitely be a necessary party for the adjudication of his rights in the present suit.

47. The discretion of the impleadment has to be exercised according to the reason and fair play. In the case on hand, the petitioner has established the reason for his impleadment in the present suit. If the petitioner is impleaded in the suit, no prejudice would be caused to the respondents in any manner. On the other hand, if the petitioner has not been impleaded, he would be put to irreparable loss and hardship. Therefore, this Court is of the view that the trial Court erred in dismissing the petition filed by the petitioner. For proper adjudication of the suit, the petitioner has to be impleaded as second defendant in the suit.

48. In the result, the Civil Revision Petition is allowed and the order dated 20.03.2017 passed in I.A.No.247 of 2013 in

O.S.No.1000 of 2012 on the file of the learned Principal Sub Judge, Madurai is set aside. The petitioner herein is ordered to be impleaded as second defendant in O.S.No.1000 of 2012. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

[Signature] 11.7.2018
Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Madurai.
 2. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
No.119, Uthamar Gandhi Salai,
Chennai - 600 034.
 3. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
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C.R.P.(MD)(PD)No.818 of 2018

and

CMP(MD)No.3630 of 2018

10.07.2018

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MADRAS HIGH COURT
MADRAS BENCH

S. L. No. 71924

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