

**BEFORE THE COMMISSIONER, H.R. & C.E.ADMN.DEPARTMENT,
CHENNAI-34.**

Tuesday the 4th day of April, Two thousand and Seventeen.

Present: Dr.M.Veera Shanmugha Moni,
Commissioner.

I.A.1/2017 in A.P.4/2017 D2

Nattanmai A.Saminatha Mudaliar

... Petitioner

Between

1.T.M.A.Iniyan

...Respondent/
Appellant

2. The Joint Commissioner
HR&CE Department, Salem.

3. T.K.Arunachala Mudaliar (died)

4. T.V.Palanisamy (died)

5. G.Rajagopal (died)

6. K.S.Ellappa Mudaliar

7. S.Ramalingam

....Respondents/Respondents

8. T.K.Annamalai and 5 others

In the matter of Arulmigu Kannanur Mariamman Temple,
Tharamangalam, Omalur Taluk, Salem District.

Petition filed to implead the petitioner in the Appeal Petition filed under Section 69(1) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 4.4.2016 of the Joint Commissioner, Salem in dismissing O.A. filed under Section 64(1) of the Act.

Order in I.A.1/2017 in A.P.4/2017 D2 dated: 04.04.2017

The above petition came up for final hearing before me on 21.02.2017, in the presence of the Thiru.B.Vijayakumar Counsel for the petitioner, and Thiru.M.Rukmangathan, Counsel for the respondent/appellant. Upon hearing their arguments and having perused the connected records and the matter having stood over for consideration till this day, the following order is passed.

ORDER

The above I.A. was filed to implead him as one of the respondent in the said appeal petition.

2. The petitioner contended that there are two sections of Sengunthar community known as 'Chinna Katchi' and Peria Katchi'. His fathers are the Nattanmaikarar of 'Chinna Katchi'. The Nattanmaikarar is the

head of the community. The respondent/appellant and his forefathers are the Nattanmaikarar of 'Periya Katchi'. His grand father and their group filed a civil suit against the appellant's grand father and their groups for the relief of Declaration and permanent Injunction before the District Munsif of Sankari at Salem in O.S.No.780/1958 in respect of the management of the Arulmigu Kannanur Mariamman temple and other institutions , the suit was decreed on 22.07.1959. Being aggrieved of the decree and judgement, the appellant's grand father and their group filed an appeal before the Hon'ble Additional District Judge of Salem under A.S.No.288/1959. The Hon'ble Additional District Judge dismissed the appeal on 08.04.1960 and confirmed the decree in O.S.No.780/1958. Being aggrieved of the decree and judgement, the appellant's grand father and their group filed an second appeal before the Hon'ble High Court of Madras under S.A.No.877/1960. The Hon'ble High Court of Madras dismissed the second appeal on 22.11.1962 and confirmed the decree in O.S.No.780/1958. His grand father's group were entitled to management the said institutions every alternative years. In the every alternative year, his grand father's group conducted the Adi festival, Navarathiri festival, Karthigai Rohini festival, Chithirai festival and were managing the temple and conducting festivals for more than 100 years. Ancestrally, the petitioner great great grand father by name Arunachala Mudaliar S/o.Muthaiya Mudaliar was a Nattanmaikarar and managing the Temple. After demise of the said Arunachala Mudaliar, his son by name K.A.Vaiyapuri Mudaliar had been taken the head ie, Nattanmaikar and managing and conduct festival in the Temple. The said K.A.Vaiyapuri Mudaliar died durind the year 1920. At the time of death, sons of the said K.A.Vaiyapuri Mudaliar were minors. In the mean time his brother by name K.A.Lingappa Mudaliar took in charge of Nattanmaikar and managing the Temple. After attaining the major, my grand father by name K.V.Saminatha Mudaliar took the charge of Nattanmaikar and managing and conducting festival in the temple. The said K.V.Saminatha Mudaliar died in the year 1966. After demise of the said K.V.Saminatha Mudaliar, his elder son K.S.Ellappa Mudaliar took

the charge of Nattanmaikar and managing and conducting festival in the institution in every alternative years. The said K.S.Ellappa Mudaliar had no issues. The petitioner is the only son of his only brother. After demise of the K.S.Ellappa Mudaliar, he has taken the charge of Nattanmaikar. The management of the temple is a hereditary one. His father's brother and the grand father of the appellant filed a civil suit in O.S.No.750/81 before the District Munsif of Mettur. The case was transferred to the District Munsif of salem under O.S.No.19/1984. After full trail, the case was dismissed by the Hon'ble District Munsif Court on 28.04.1984. As against the decree and judgement in O.S.No.19/1984, the appeal was filed before the Hon'ble District Judge of Salem in A.S.No.93/1984. Which was allowed on 13.12.1985. As against the A.S.,No.93/1984, Assistant Commissioner , HR&CE and said R.Marimuthu filed an second appeal under S.A.No.42/1986 and S.A.No.43/1986 before Hon'ble High Court of Madras. The Hon'ble High Court of Madras Hon'ble Mr.Justice Srinivasan delivered the famous Judgement which was reported in AIR 1987 mad 187,(1988) IMLJ 3: (1988) 1 MLJ 8: 100LW 240 (The Assistant Commissioner, ... Vs Nattanmai K.S.Ellappa Mudaliar .. on 30 Janurary, 1987). The second appeal was allowed. As against the decree of second appeal, the civil Appeal No.1820/1987 filed before the Hon'ble Supreme Court of India. The both Civil appeal was dismissed on 16.09.1993 and confirmed the Hon'ble High Court Judgment. After judgement of Supreme court, his father's brother's group and the appellant's father's group jointly filed an application before the Joint Commissioner under 64(1) of the Tamil Nadu HR&CE Act for appointment of non-hereditary trustee under O.A.No.11/1994. The said application was dismissed for default on 07.03.2001. The petition to restore the O.A.11/1994 was dismissed by the Joint Commissioner on 15.09.2006. Before the Commissioner , A.P.No.5/2007 filed and the same was allowed on 15.06.2010. Before filing of this appeal, the 5th respondent by name K.S.Ellappa Mudaliar died on 19.06.2016. He was selected next Nattanmaikarar of the Chinnakatchi group The said deceased K.S.Ellappa Mudaliar executed a registered will dated 10.01.2008 inrespect of

his right to sue and right to contest case on behalf of him to the petitioner. The appellant failed to implead him in the above Appeal. All the above facts are well known to the appellant. As per reported judgment of our Hon'ble High Court of Madras reported in 2015(2) CTC 531, that he is entitled to impleaded in the case as Legal representative under Order 22 Rule 5 of C.P.C for the 5th respondent. Appellant is trying to got some unlawful order without presence of him. The O.A.11/1994 original respondents (1.S.M.D.Annamalai, 2.P.Kuppusamy , 3. R.Marimuthu, 4. T.K.Lakshmanan) are not added in the above condone delay petition and appeal. He is necessary party in the above petition and appeal to explain all the facts suppressed by the appellant. It is therefore just and necessary that this Hon'ble Commissioner, HR&CE Department, Chennai may be pleased to pass an order to implead him as respondent No.9 to the above proceedings and thus render justice.

3. I heard Thiru.B.Vijayakumar Counsel for the petitioner and Thiru.M.Rukmangathan, Counsel for the appellant and perused the relevant records. The respondent/appellant not chosen to file any counter.

4. The case of the petitioner is that his forefathers were the Nattanmaikarar of 'Chinna Katchi'. The appellant's forefathers are Nattanmaikarar of 'Peria Katchi'. Both the groups had filed O.A.No.11/1994 to settle a scheme of administration. The petitioner's uncle K.S.Ellappa Mudaliar who was Nattanmaikarar of ' Chinna Katchi' was one of the petitioner in the said O.A.No.11/1994. After death, the petitioner herein has filed this petition to implead him in the place of deceased K.S.Ellappa Mudaliar. Further, the said K.S.Ellappa Mudaliar had also executed a registered will dated 10.01.2008 in respect of his right to sue and right to contest the case on behalf of him to the petitioner. Further, the petitioner has been selected as Nattanmaikarar of ' Chinna Katchi' group. As the said K.S.Ellappa Mudaliar had no issues, being his brother's son, the petitioner is entitled to represent him as per the will dated 10.01.2008.

5. Further, as per section 64(1) of the Act, before a scheme is settled for proper administration, the authority shall consult the trustees and the persons

having interest. As stated in the affidavit, the forefathers of the petitioner had contested several litigations against the forefathers of the appellant. Therefore the presence of the petitioner may help this forum to decide the case on its own merits. Further, the documents if any filed by the petitioner will be useful to settle the dispute. No prejudice will be caused to the appellant by impleading the petitioner herein and the appellant will also get opportunity to disprove the documents and arguments putforth by the petitioner.

Therefore, for the foregoing reasons, I am convinced that the petitioner is a necessary party to the present appeal. Accordingly, the petition to implead the petitioner in the appeal petition is hereby allowed and he is impleaded as 9th respondent in the appeal petition. The appellant is directed to file amended petition and the main appeal is posted for hearing on 18.04.2017 at 2.30 pm.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

/t.c.f.b.o./

Superintendent

To

1. The Impleading Petitioner Respondent 6, 7 through M/s. B.Vijayakumar, Advocate, No.214, New Additional Law Chambers, High Court Buildings, Chennai -104.
2. The respondent/Appellant through Thiru.M.Rukmangathan, Advocate, No.67/20, Canal Bank Road, R.A.Puram, Chennai 28.

Copy to

3. The Joint Commissioner, H.R. & C.E. Admn.Dept., Salem
4. The Assistant Commissioner, HR & CE Admn.Dept., Salem.
5. The Inspector, HR&CE Admn. Department, Omalur.
- 6.Extra