



C.R.P(MD)No.1540 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.03.2023
DELIVERED ON : 30.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1540 of 2014

R.Lakshmi (Died)

2.R.Velmurugan

... Petitioners

(Petitioner No.2 recorded as legal heirs of deceased sole petitioner as per the order of Court dated 29.10.2015 made in M.P(MD)No.1 of 2015 in C.R.P(MD)No.1540 of 2014)

Vs.

Nil

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned order and decree dated 31.01.2014 made in Trust O.P.No.1 of 2011 on the file of the District Judge's Court, Sivagangai.

For Petitioners : Mr.S.Srinivasa Raghavan

For Respondent : Nil



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ORDER

This Civil Revision Petition is filed as against the order passed by the learned District Judge, Sivagangai in Trust O.P.No.1 of 2011. The petitioner in the Trust O.P was one R.Lakshmi. It is seen in the pleadings of the said Trust O.P that R.Lakshmi, W/o.Ramalingam, who has preferred this Civil Revision Petition has succeeded to the office of the Trust, namely, Ramalingaswamy Mutt as the Trustee. During the pendency of this Civil Revision Petition, R.Lakshmi died in the year 2015 and the petitioner P2, one R.Velmurugan, son-in-law of Ramalingam (daughter's husband) was recorded as the legal heir of the deceased sole petitioner as per the order of this Court dated 29.10.2015 made in M.P(MD)No.1 of 2015 in C.R.P(MD)No.1540 of 2014. There is no respondent in both the Trust O.P.No.1 of 2011 as well as in C.R.P(MD)No.1540 of 2014.

2. The Trust O.P was filed by the first petitioner under Section 34 of the Indian Trusts Act, 1882 seeking the permission of the learned District Judge, Sivaganga to permit the petitioner, the trustee of Ramalingaswamy Trust, Thirupachetty North Village, Manamadurai Taluk, Sivagangai District



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to dispose of the 'A' and 'B' Scheduled property in the Trust O.P., consisting two items of properties in 'A' Schedule and one item of property in 'B' Schedule in favour of one Durai son of K.Duraisamy of Keel Melkudi Village, Manamadurai Taluk or any other competent person for a reasonable and justifiable price and to invest the same in financial institutions for the purpose of augmenting the income of the said trust.

3. The factual matrix of the Trust O.P is culled out as follows from the petition filed by the first petitioner herein, before the learned District Judge's Court, Sivagangai:

“The property more fully described by the petitioner belong to Ramalingaswamy Mutt, a Religious & Charitable Institution, Thirupachetty North Village, Manamadurai Taluk, Sivagangai District. One Paramasiva Thevar was the trustee of the said Trust and the same was settled in favour of Trust in 1962. The said Paramasiva Thevar was acting as the trustee of the said trust till his life time. The said Paramasiva Thevar left behind his son, namely, Ramalingam who succeeded to the office of Trust and was acting as the trustee. The said Paramasiva Thevar had executed a Will in the

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year 1985, in which he bequeathed the said property in favour of his son as the trustee of the said Trust and has also asserted in the said Will that after the life time of Ramalingam, his legal heirs would continue as the trustee of the said Trust and the property would remain vested with the said Trust. Accordingly, after the death of the said Ramalingam, on 17.12.1990, the petitioner herein, wife of the said Ramalingam had succeeded to the office of the said trust as the trustee. The property became vested with the petitioner and the petitioner has been administering the Trust and the Trust properties as mentioned in the schedule of Trust O.P. The Trust was originally formed by the author of the Trust with the main object of performing the Gurupooja of Chellappaswamy in the Tamil month of Margazhi, Ramalingaswamy in Tamil month of Panguni, Mayandiswamy in the Tamil month of Purattasi and Sutha Saithanyaswamy in the Tamil month of Karthigai every year. In addition to the Gurupoojai of the Madathipathi of the said Mutt, religious functions and festivals for the principal deities of the said Mutt and the temple of the Mutt are also to be performed regularly. In the trust property, there are three temples viz., “Arulmighu Siva Temple, Arulmighu Mahamayee Temple and Shrine of Mayandiswamy. Poojas and other regular festivals for the spiritual guru and deities of the said temple



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are to be regularly performed by the trustee. In view of the fact that the Trust properties are the only source of income for the administration and management of the Trust and the said Temples, the trustee of the said Trust has to depend only upon the income derived out of the said trust for the purposes of performing the daily rituals and poojas of the deities in the temple and also the annual Guru Pooja for the said Madathipathis. In view of the spiraling price rice and the price hike of the essential commodities and other eatables', it has become very difficult for the petitioner, the trustee of the said Trust, to make both ends to meet and the petitioner finds it extremely difficult to manage the affairs of the Trust with the limited income that can be derived from the Trust property. Moreover, the Trust property is a nanja land and due to poor rain fall, the water sources for the said nanja land have become dry and agricultural operations have almost become impossible. The income and the yield from the said property is not sufficient enough to meet out the expenses of the Trust. The trustee finds it very difficult to manage the affairs of the Trust and the institutions thereon and it has become incumbent on the part of the Trust to seek the assistance and help of the third parties and philanthropists to augment the income of the Trust properties. In such circumstances, the trustee is left with no other



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option than to dispose of the trust properties with the leave of this Court by carving out the temples and samathis in the said temple with sufficient vacant space for the occupation and to dispose of and alienate the remaining part of the trust properties. The current market value of the said property is Rs.835/- per cent and Rs.83,500/- per acre. One Durai, son of K.Duraisamy of Keel Melkudi Village, Manamadurai Taluk, Sivagangai had come forward to purchase the trust property after obtaining the leave of the Court at the rate of Rs.950/- per cent and for the total sale consideration Rs. 1,90,000/-. The agreement for sale between the said Durai and the petitioner herein has been entered into on 18.06.2011. A sum of Rs.20,000/- has been deposited in the Manamadurai branch of Central Bank of India by the said purchaser to and in favour of the petitioner herein and the said purchaser had agreed to complete the sale transaction only after the leave of this Court is obtained.”

4. In support of her case, two witnesses were examined on the side of the petitioner through whom 19 documents were marked. Since there was no respondent, no witnesses were examined on the side of the respondent.



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5. However, the learned District Judge, Sivagangai dismissed the said Trust O.P for the following reasons:

(i) The trust properties are not separate properties of the petitioner and the properties are dedicated to Ramalingaswamy Mutt. The Ramalingaswamy Mutt is a Religious and Charitable Institution. Section 34 of the Trusts Act will apply only to private trust and not public trust. Since the trust was managed by the petitioner and the duties of the trust is of public interest, it cannot be characterized as private trust. It is seen that the petitioner Mutt is doing public service and it is a public trust. Hence, when the trust is a public trust Section 34 will not apply.

(ii) The petitioner has neither stated the income of the Mutt nor produced any records regarding the expenditure incurred in managing the Trust. Without producing the same, the petitioner has stated that the income was not sufficient to manage the trust. When the petitioner is under the obligation to submit the details of the expenses incurred in managing the trust, the absence of the same will not aid the Court in presumption that the income was not sufficient to manage the trust.



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(iii) The petitioner wants to sell the property by way of private negotiation and she has not produced profit and loss account of the Mutt.

(iv) Though the petitioner had entered into an agreement with Durai son of Duraisamy, who is the intending purchaser, the petitioner did not disclose the correct particulars about the trust, it's income, it's value and the current guideline value.

6. For the reasons stated above, the learned District Judge, Sivagangai refused to grant permission to the petitioner to sell the petition scheduled properties. Aggrieved by the same, the petitioner is before this Court by filing C.R.P(MD)No.1540 of 2014 on the following grounds:

“(i) The trial Court failed to consider Exhibits P12 to P18 which would show that the petitioner trust is a private trust and the temples are private temples as declared by the highest Court of the land and that of the HR&CE Department respectively.

(ii) The trial Court erred in deciding that the petitioner trust is a public trust and Section 34 of the Indian Trusts Act would not apply.



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(iii) The operative portion of the trial Court order do not reflect the materials available on record.

(iv) The trial Court ought not to have found that the petitioner has failed to establish that the income of the trust was not sufficient to administer the trust.

(v) The trial Court ought not to have found that the agreement entered into between the petitioner trust and a third party was not proper.

(vi) The trial Court erred by observing that the permission sought for by the petitioner cannot be granted without giving any valid reasons.

(vii) The trial Court erred in observing that sufficient proof was not adduced to show that the trust property do not fetch any income and that the petitioner do not produce any record to show the income and expenses of trust.”



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7. Heard the learned Counsel for the petitioner and the learned Counsel drew my attention along the various grounds of the Civil Revision Petition and the contents of Exhibits P1 to P19 marked through P.W.1 and P.W.2 before the learned trial Court and vehemently argued that the learned trial Court ought not to have held Ramalingaswamy Mutt as a public trust.

8. The trust in question, namely Ramalingaswamy Madam was originally founded by the first petitioner's husband's ancestor, namely, Sreela Srichootukol Mayandi Swamy, who established the Siva Temple and Ramalingaswamy Mahamayee Amman Temple for the Madam, more than a century ago, exclusively for the worship / spiritual performance of their descendants alone even before 1938 itself. After him, the trusteeship of the said Madam was accepted by Suththa Chaithanya Swamy and Kuppamuthu Thevar. The said Madam is more fully situated in plaint 'A' Schedule property. The Sivaganga Estate in 1938 recognized that the Madam was in actual enjoyment of the property and therefore assigned the lands to Ramalinga Swamigal Madam represented by its trustee Suththa Chaithanya Swamigal, on payment of a rent of Rs.1 per acre and ever since those properties were in un-interrupted possession and enjoyment of the said



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Madam. There are temples, mantapam, Stanick's house, oorani, well and coconut trees in the said property. The Trustees of Ramalinga Swamigal Madam conducted several cases before various Courts in establishing that the Madam is a private trust. This was confirmed by the learned District Munsif at Manamadurai in O.S.Nos.184 of 1959 and 59 of 1963. The appeal preferred as against the said suits in Appeal Suit No.19 of 1961 and A.S.No. 136 of 1974 were dismissed in favour of Ramalinga Swamigal Madam by the Subordinate Judge's Court at Sivagangai, whose verdict was later confirmed by this Court in S.A.Nos.1149 of 1962 and 338 of 1963. In furtherance to the same, the Hon'ble Supreme Court confirmed the said verdict in Civil Appeal No.474 of 1971.

9. In the meanwhile, one of the two trustees of Ramalinga Swamigal Madam, namely, Kuppamuthu Thevar passed away and he was survived by his son Paramasiva Thevar, who was inducted as a trustee in the place of the deceased Kuppamuthu Thevar. While so, on 11.07.1962 vide settlement deed bearing document No.1541 of 1962 of Thirupuvanam Sub-Registry, (Exhibit P1) the trustee of Ramalinga Swamigal Madam, namely, Suththa Chaithanya Swamigal executed a settlement deed in favour of the other



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trustee namely, Paramasiva Thevar. The recitals of the said settlement deed would reveal that Paramasiva Thevar was the son of one Angalammai and Kuppamuthu Thevar. Angalammai was the sister of Suththa Chaithanya Swamigal. That apart, in addition to appointing Paramasiva Thevar as the trustee of the said Madam, it is also found that the said Paramasiva Thevar is competent to appoint his descendants as the trustee's after him for the administration and management of the said Madam. Thus the primordial intention of Suththa Chaithanya Swamigal is that only specified individuals, that is the family members of his sister Angalammai and their descendants have the right of administration and management of Ramalinga Swamigal Madam and all the other Temples, Samathees and the rituals appurtenant to the Madam. The operative portion of his settlement deed is extracted as follows:

“இந்த நிலைமையில் என்னுடைய தேக நிலையை உத்தேசித்து எனக்கு பிற்காலம் மேற்படி தர்ம கைங்கரியங்கள் இப்பொழுது நடந்து வருகிறபடி சரியாக நடந்து வரவேண்டுமென்று நினைத்து நல்லநோக்கத்துடன் எனக்கு பிற்காலம் மேல் கண்ட என்னுடைய சகோதரி மகனான மேற்படி பரமசிவத்தேவரே மேற்படி தர்மங்களுக்கும் கோவில்களுக்கும் மடத்துக்கும் டிரஸ்டியாக இருந்து மேற்படி கோவில் மடம் இவைகளுக்கு மேற்பட்ட சொத்துக்களை ஒப்புக்கொண்டு சுவாதீனம் செய்து கொண்டு இது வரை நடந்து வருகிறபடி



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சுவாமிகளுக்கு பூசை நெய்வேதியங்களும் குருபூஜை வகையறாக்களையும் மண்டகப்படி உற்சவங்களையும் மேற்படி தர்ம ஜவேசிலிருந்து கோவில்களுக்கு வேறு பூசாரியை நியமிக்க வேண்டியிருந்தால் பூசாரி வகையறா நியமித்தும் மேற்படி கோவில் மடம் மண்டகப்படி குருபூஜை வகையறா தர்மங்களை யாதொரு குறைவின்றி நடத்திட வேண்டியது மேற்படி பரமசிவத் தேவருக்குப்பின் வரவேண்டிய டிரஸ்டியை மேற்படியார் குடும்பத்திலிருந்து மேற்படி யாருக்கு நியமிக்க அதிகாரமுண்டு அப்படி நியமிக்காவிட்டாலும் அவர் குடும்பத்திலிருந்தே அவர் வாரிசுகளில் வயதில் மூத்தவர்களே மேற்படி தர்ம கைங்கரியங்களை நடத்தி வரவும் பரிபாலனம் செய்து வரவும் மேற்படி தர்மங்களுக்கும் கோவில்களுக்கும் மடத்துக்கும் டிரஸ்டியாக இருந்து சந்ததி பரம்பரையாக பார்த்துவர வேண்டியது மேற்படி சொத்து மேற்படி மடத்துக்கு பாத்தியமென்று ஏற்கனவே சமஸ்தானம் ரிக்கார்டுகளிலும் கோர்ட்டு ரிக்கார்டுகளிலும் தீர்ப்பும் ஆர்டரும் மேற்பட்டிருக்கிறது.”

10. Thus the entire petition scheduled properties are dedicated to the Madam through the trustees for the worship of the family Temples, maintenance of the samathees and the rituals connected there with. In short, the beneficiaries of the said Trust are a finite group of members who could be identified as the descendants of Kuppamuthu Thevar and Angalammai. The properties in the schedule of the deed of settlement is described as the properties from the income of which the administration and management of the Madam shall be carried out. The said deed of settlement would prove the

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nature of origin of the Trust of Ramalinga Swamigal Madam and the recitals of the document show that the control and the management of the Madam was retained with the founder and the descendants of Kupparamuthu Thevar and that the extensive properties were dedicated for the purpose of administration and maintenance of the said Madam and this will be an exclusive proof to show that the said Ramalinga Swamigal Madam was a private Trust.

11. Mutts may be public or private. An instance of a private Mutt is to be founded in the case of ***Sathappayyar Vs. Periyasami decided by this Court as reported in (1890) I.L.R 14 M.I.***, in which Mr.Justice Muthusami Iyer observed:-

“The contention regarding jurisdiction is that under Act XX of 1863 the District Court is the proper forum. This would be so if the institution is endowed and dedicated to any section of the public either as a place of worship, such as a temple, or religious establishment where religious instruction is to be had like a public mutt. For Act XX of 1863 only replaced Regulation VII of 1817 so far as religious institutions are concerned, which, as shown by its preamble and its provisions dealt with trusts, express or implied, created for public purposes. But the



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grant in the case before us discloses no intention to confer a benefit either upon the people in general or upon any class of sectarians; on the other hand the grantor desired only to perpetuate the spiritual family of his guru. I am of opinion that the Subordinate Judge is well-founded in holding that the trusts of the institution concerned in this litigation are in the nature of private trusts.”

12. In the above case, neither the general public nor any section of the people had an interest either in the erection and maintenance of the mutt, or in the performance of the prescribed religious duties, the motive for the grant being the grantor's conviction that the performance of such services in perpetuity by the class of persons named by him in the mutt and with the aid of funds provided by him was an act of religious charity which would ensure the prosperity of his family. The original grantor and his descendants were the only persons interested in seeing that the institution is kept up for their benefit in accordance with the intention of the grantor. Although a few paradesis and others were fed when Gurupuja was performed and a water-pandal was maintained in the mutt during the hot season, these were not contemplated as independent charities in which any class of the public was to have a direct and independent interest. Similarly, in the instant case,



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where the general public or any section of the people has no interest either in the erection, maintenance or administration of the Ramalingaswamigal Madam or where there is no intention to confer a benefit either upon the people in general or upon any class of sectarians, this Court does not hesitate to come to a conclusion that the grant is not a public but a private endowment.

13. In a similar case, in ***Deoki Nandan Vs. Murlidhar reported in AIR 1957 SC 133***, the Hon'ble Supreme Court in paragraph No.5 has observed as follows:

“5. It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is public or private, and then to examine, in the light of those principles, the facts found or established. The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment.”



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14. In ***Srinivasa Ramanuj Das Vs. Surajnarayan Dass and Others*** reported in ***AIR 1967 SC 256***, the Hon'ble Supreme Court in paragraph No.15 has observed as follows:

“15. The distinction between a public trust and a private trust is, broadly speaking, that in a public trust the beneficiaries of the trust are the people in general or some section of the people, while in the case of a private trust the beneficiaries are an ascertained body of persons. The beneficiaries of a math are the members of the fraternity to which the math belongs and the persons of the faith to which the spiritual head of the math belongs, and constitute therefore at least a section of the public. Maths, in general, consequently, are public maths. We say nothing as to whether there can be a private math or not. Mukherjea states at p. 390, in his 'Law of endowment', 1st Edition:

“By private math should be meant those institutions where the head or superior holds the property not on behalf of an indeterminate class of persons or a section of the public but for a determinate body of individuals, viz., the family or descendants of the grantor.””

15. In ***State of West Bengal and Others Vs. Sri Sri Lakshmi***



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Janardan Thakur and Others reported in (2006) 7 SCC 490, the Hon'ble

Supreme Court in paragraph No.15 has observed as follows:

“15. In order to ascertain whether a trust is a private, following factors are relevant:

- (1) If the beneficiaries are ascertained individuals;*
- (2) If the grantor has been made in favour of an individual and not in favour of a deity;*
- (3) The Temple is situated within the campus of the residence of the donor;*
- (4) If the revenue records or entries suggest the land being in possession of an individual and not in the deity.....”*

16. In ***The Idol of Sri Renganathaswamy Represented by its Executive Officer, Joint Commissioner Vs. P.K.Thoppulan Chettiar, Ramanuja Koodam Anandhana Trust, Represented by its Managing Trustee and Others reported in AIR 2020 SC 4369***, the Hon'ble Supreme Court in paragraph Nos.18 & 19 has observed as follows:

“18. Where the beneficiaries of a trust or charity are limited to a finite group of identifiable individuals, the trust or charity is of a private character. However, where the beneficiaries are either the public at large or an amorphous



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and fluctuating body of persons incapable of being specifically identifiable, the trust or charity is of a public character.....”

17. In addition to that, on 10.12.1981, the Deputy Commissioner, HR&CE Administration Department, Madurai - 2 in O.A.No.35 of 1980, in the matter of Arulmigu Ramalinga Swamigal Madam, North Thirupachetty, Sivaganga Taluk, Ramnad District in an application under Section 63(a) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) has passed an order in favour of Paramasiva Thevar. The operative portion of the said order is as follows:

“The Inspector of the Department who has enquired and submitted his report and his report was marked as Exhibit C1 wherein he has stated that the madam belongs to Paramasiva Thevar and public are not allowed to worship as of right and no characteristic of the temple and there is bench decision in S.A.No.1149 of 1962 and S.A.No.338 of 1963 at page 71 reads as follows:

“The decree and judgments of the Courts below upholding the title of the plaintiff in each of the suits cannot be said to be without jurisdiction”.

So in A.S.No.136 of 1974 Sub Court Judge of Sivaganga has



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stated at para 12 is as follows:

“Having regard to the proved facts and circumstances of the case I have no hesitation in holding that the suit properties belong to the plaintiff, that there exists no deity called Udayanachiamman for worship of the Harijans that there is clear evidence of the trespass by the defendants and that as such the plaintiff is entitled to a permanent injunction”.

On consideration of the Exhibits and the documents analyzing the evidence and as per the judgment of high Court of Judicature at Madras, it is hereby declared that the institution is not a religious institution as defined under Tamil Nadu Act 22 of 1959. The petition is allowed.”

18. Thus it has become clear that there cannot be any clog about the factum that the trust belonging to Ramalinga Swamy Mutt is a private trust and not a public one. The line of distinction between a public purpose and a purpose which is not public is very thin and technical. However, when the beneficiaries of a trust are limited to a finite group of identifiable individuals, the trust is of a private character. Here in this case, the beneficiaries are specific individuals, who are the ancestors and descendants of the first petitioner's husband Ramalingam. Thus the beneficiaries of this



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trust are persons who can be ascertained to form a finite group of identifiable individuals exclusively belonging to the class of people who are the descendants of Suththa Chaitanya Swamy. Moreover, the order passed in O.A.No.35 of 1980 dated 10.12.1981 would reveal that the petition scheduled properties are dedicated for the worship, management and maintenance of the family deities and temples, which is exclusively a private affair and not a public endowment. In addition to that the persons, who are intending to worship and manage the said trust can only be the members of the family of Paramasiva Thevar and there is no public participation in any form. Hence, the learned trial Court is not justified in deciding that the trust in question is not a private trust but a public trust.

19. Now, the relief sought for by the first petitioner (deceased) and the second petitioner seeking the permission of the trial Court to sell the petition scheduled properties belonging to the private Trust under Section 34 of the Indian Trusts Act, gain significance in view of this Court's decision that the Trust in question is a private Trust. All the reasons cited by the trial Court to hold the Trust as a public Trust is negated by this Court as not sustainable.



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20. The factum that Ramalinga Swamigal Madam's origin is lost in its antiquity even before 1938 and the prolonged efforts taken by the founder trustee Suththa Chaithanya Swamigal and another trustee Paramasiva Thevar by contesting several suits and appeals from the District Munsif Court to the Hon'ble Supreme Court of India as referred above has to be taken into consideration. Last but not the least, in addition to the judgment and decree passed in O.S.No.184 of 1959, O.S.No.59 of 1963, A.S.No.19 of 1961, A.S.No.136 of 1974, S.A.No.338 of 1993 and Civil Appeal No.474 of 1971 confirming that the said Ramalinga Swamigal Madam is a private Trust, in O.A.No.35 of 1980, the Deputy Commissioner, HR&CE Administration Department, Madurai – 2 passed an order on 10.12.1981, in a petition filed under Section 63(a) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act, 22 of 1959) categorically deciding that Arulmigu Ramalinga Swamigal Madam is not a religious institution as defined under Tamil Nadu Act 22 of 1959. Despite all these decisions upholding the factum that Arulmigu Ramalinga Swamigal Madam, North Thirupachetty, Sivagangai Taluk, Ramnad District is a private Trust, it is sorry state of affairs on the part of the trial Court to have decided that the Madam in

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question is a public Trust. But whether this itself would empower the petitioner in the Trust O.P. with a blanket right to sell the Trust properties as sought for in the petition?

21. The observations in ***In re Shirinbai MANU/MH/0157/1918*** have been reaffirmed by Mulla J. In ***P.D. De Souza Vs. K.R.Daphtary in MANU/MH/9967/1923*** and they are as follows:

“That the High Court of Bombay has this jurisdiction (to sanction a sale of the trust property by trustees where no power of sale is given by the trust deed) is beyond all doubt. This jurisdiction was recognised in In re Manilal 25 Bom. 353: (3 Bom. L.K.411) where Sir Lawrence Jenkins sanctioned the sale of a minor's interest in Hindu joint family property. It was also recognised in In re Shirinbai MANU/MH/0157/1918, where Marten J. sanctioned a sale by trustees of immovable property vested in them. But this jurisdiction is of an extremely delicate character and has to be exercised with the greatest caution. 'The principle' as observed by Romer L. J. In re New (1901) 2 Ch. D. 534 seems to be this – that the Court may, on an emergency, do something not authorised by the trust. It has no general power to interfere with or disregard the trust; but there are cases where the Court has gone beyond the express



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provisions of the trust Instrument – cases of emergency, cases not foreseen or provided for by the author of the trust, where the circumstances require that something should be done.”

5. It is thus clear that Courts have ample powers to give necessary directions in cases of this kind though extreme caution has to be observed in giving directions.”

22. In a similar case, in ***In Re: D.V.Gundappa and Others in MANU/KA/0004/1951***, the Hon’ble High Court of Mysore in paragraph Nos.4 & 5 has observed as follows:

“The principle laid down in this decision was followed in In re Shirinbai MANU/MH/0157/1918. It was a case in which, as in this case, the trustees applied for permission to sell some immovable properties and it was observed in it :

"That the present case, however, was one of emergency not foreseen or anticipated by the author of the trust, and the sale though not provided for by the trust instrument ought, in the interests of all the beneficiaries concerned, to be sanctioned by the Court in the exercise of its extra-ordinary jurisdiction; that the extraordinary jurisdiction of the Court to sanction a sale of immovable property in the absence of a power of sale in that behalf in



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the trust instrument is of an extremely delicate character and should be exercised with the greatest caution."

The observations in In re Shirinbai MANU/MH/0157/1918 have been reaffirmed by Mulla J. in P.D. De Souza v. K.R. Daphtary MANU/MH/0067/1923 and they are as follows :

"That the High Court of Bombay has this jurisdiction (to sanction a sale of the trust property by trustees where no power of sale is given by the trust deed) is beyond all doubt. This jurisdiction was recognised in In re Manilal 25 Bom. 353 : (3 Bom. L. K. 411) where Sir Lawrence Jenkins sanctioned the sale of a minor's interest in Hindu joint family property. It was also recognised in In re Shirinbai MANU/MH/0157/1918, where Marten J. sanctioned a sale by trustees of immovable property vested in them. But this jurisdiction is of an extremely delicate character and has to be exercised with the greatest caution. 'The principle' as observed by Romer L. J. In re New (1901) 2 Ch. D. 534 seems to be this--that the Court may, on an emergency, do something not authorised by the trust. It has no general power to interfere with or disregard the trust; but there are cases where the Court has gone beyond the express provisions of the trust Instrument--cases of emergency, cases not foreseen or provided for by the author of the trust, where the circumstances require that something should be done."

5. It is thus clear that Courts have ample powers to give necessary directions in cases of this kind though extreme caution has to be observed in giving directions....."



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23. In ***Nilima Ghosh and Others Vs. Prakriti Bhusan Mitter in MANU/WB/0007/1982***, the Hon'ble High Court of Calcutta in paragraph No.5 has observed as follows:

“5. Under the provisions of Section 34 of the Indian Trusts Act such a question relating to the management and administration of trust property should be referred to the principal civil court of original jurisdiction for its opinion. Section 34 may have conferred wider powers on the court to authorise sale of a trust property by the trustee even if the trustee is not expressly authorised to do so by the deed where such a sale becomes a necessity for preservation or development of the Estate but that makes it all the more incumbent for the parties to approach that court because that court is not only competent to give the opinion now fought for but also is only competent court to help the parties in solving their real problem viz., to effect sale of the trust property. Therefore, Section 34 not only covers the field but, in our opinion, provides the better forum for the relief the parties are really intending to have.....”

24. To understand the right of the petitioner, that is, Lakshmi wife of Ramalingam, the genealogy of Ramalinga Swamigal Madam is arrived as under:



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Ramalinga Swamigal Madam
Founded by
Srila Sree Choottukol Mayandiswamy
(Madathipathy)

Pampaiyyaswamy Sivarama
Sundara Thevar @
Suththa Chaithanya Swamigal
S/o.Thuraisamy Thevar
(Madathipathy- **Founder Trustee**)

Kuppamuthu Thevar
S/o.Ra.Chinnasamy Thevar (**Trustee**)

Paramasiva Thevar
S/o.Kuppamuthu Thevar & Angalammai (**Trustee**)

Irulayee (Died) Senthilathipathi Ramammal (Died) Ramalingam (Died) (**Trustee**)

Lakshmi Paramasivam Rajeswari Ramasamy Tamilselvi
Wife Eldest son Daughter Son (died) Daughter
(Died) W/o.Velmurugan
(**1st Petitioner**)

Velmurugan
(**2nd Petitioner**)



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25. During the lifetime of Paramasiva Thevar, he executed a registered Will bearing No.4 of 1985 of Thirupuvanam Sub-Registry on 16.05.1985 (Exhibit P2), exclusively with respect to the administration and management of Ramalinga Swamigal Madam in terms of the settlement deed bearing document No.1541 of 1962 of Thirupuvanam Sub-Registry (Exhibit P1), by which he appointed his son Ramalingam as the trustee of the said Madam. A complete reading of the said Will would reveal that Paramasiva Thevar reserved his son Ramalingam with the right of appointing additional trustees. However, the Will clearly envisages that incase of Ramalingam's reluctance to add any other persons as a trustee, the Will reserves the right of trusteeship of the Madam to Ramalingam and his legal heirs from time to time. For better clarity, the relevant portion of the Will is extracted as hereunder:

“என்னுடன் இருக்கும் என் மகன் மூத்தவனாகிய ராமலிங்கம் என்பவரை மேற்படி மடம் கோவில் தர்மங்கள் சிலைகள் யாவற்றுக்கும் என் ஆயுளுக்குப் பிறகு டிரஸ்ட்டியாக இருந்து மேற்படி மடத்திற்கு சம்பந்தப்பட்ட தபசில் கண்ட 1, 2 லக்கச் சொத்துக்களையும் எனக்கு பின் சுவாதீனம் அடைந்தும் அதில் வரும் வருமானங்களில் விவசாயம் செய்யும் செலவுகள் போக மீதம் இருப்பதையும் தென்னை வகையறாக்களையும் கோவிலுக்கு நித்திய பொங்கல் நெய்வேத்தியமும் தினந்தோறும் தீபம் தீபாராதனை



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முதலியதுகள் பூசகர் மூலம் படிதரம் கொடுத்து நடத்தியும் குருபூஜைகள் மண்டகப்படி கிடந்த தர்ம காரியங்களையும் வருஷா வருசம் தவறாமல் மேற்படி ராமலிங்கம் அவரும் அவர்களது வாரிசுகளும் என்றென்றைக்கும் புத்திர பௌத்திர பரம்பரையாக மேற்படி தர்மங்களை செய்து நடத்தியும் அதன் மரியாதைகளையும் பெற்றுவரவேண்டியது. என் ஆயுளுக்குப் பிறகு என் மகன் ராமலிங்கம் டிரஸ்ட்டியாக வரும் காலத்தில் மேற்படி மடத்திற்கு வேறு டிரஸ்ட்டி நியமிப்பதற்கு அவர் அபிப்பிராயப்பட்டால் அதை செய்வதற்கு அவருக்கு உரிமை உண்டு அப்படி இல்லையானால் அவரும் அவர் வாரிசுகளும் டிரஸ்ட்டியாக இருந்து தர்மங்களை செய்து வரவேண்டியது. மேற்படி மடம் கோவில் தர்மங்கள் இவைகள் யாவற்றும் எண்டோமெண்ட் ஆபிசுக்கு சம்பந்தம் இல்லை என்றும் அது நமக்கு சொந்த கோவில் என்றும் மடம் என்றும் இந்து அறநிலைய நீதிதுறை கோர்ட்டு ஓ.ஏ.எண்.35/80ன்படி 10.12.81ல் தீர்ப்பும் ஏற்பட்டிருக்கிறது.”

26. Thus it is clear that the intention of Paramasiva Thevar is to dedicate the administration and management of the Trust to one of his son Ramalingam and his descendants. The said Paramasiva Thevar died on 26.10.1986. The surviving trustee of Paramasiva Thevar was Ramalingam and he died on 17.12.1990. The said Ramalingam did not arrive at any mechanism for the administration and management of the Trust during his lifetime. Hence, the recitals of settlement deed (Exhibit P1) executed by Suththa Chaithanya Swamigal should be read in conjunction with the Will



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executed by Paramasiva Thevar (Exhibit P2) to arrive at a conclusion about the administration and management of the said Trust. By the strength of both the documents, wife of Ramalingam, one Lakshmi, the petitioner and her son Paramasivam accepted the trusteeship of Ramalinga Swamigal Madam on the death of Ramalingam. While so, on 07.10.2014, Lakshmi Ramalingam executed a registered Will bearing document No.19 of 2014 with respect to the administration and management of Ramalinga Swamigal Madam. The operative portion of the said Will is extracted as follows:

“மேற்சொல்லிய பரமசிவத்தேவர் எழுதி வைத்த உயில் சாசனத்தில் அவர் ஆயுளுக்குப் பின் என் கணவர் டிரஸ்டியாக இருந்து நிர்வகித்து வந்து அவருக்குப் பின் என் கணவரின் வாரிசுகளும் வாரிசுகளாகிய நான், என் இரண்டு குமாரர்கள் பரமசிவம், ராமசாமி மற்றும் குமாரத்திகள் தமிழ்ச்செல்வி, ராஜேஸ்வரி ஆகிய நால்வரில் மேற்படி இரண்டு குமாரத்திகளும் டிரஸ்டிகளாக இருக்க விரும்பவில்லை. என் மகன் ராமசாமி திருமணம் ஆகாமலேயே காலமாகி விட்டான். எஞ்சியுள்ள நானும் என் மூத்த குமாரன் பரமசிவமும் டிரஸ்டிகளாக இருந்து மேற்படி மடத்தையும் அதன் சொத்துகளையும் நிர்வகித்தும், தர்ம காரியங்கள் செய்தும் வருகிறோம்.

மேற்சொல்லிய மடமும் அதன் சொத்துக்களும் என் ஆயுளுக்குப் பின் நல்ல முறையில் நிர்வகித்து வரவேண்டியும், மேற்சொல்லிய தர்ம காரியங்கள் தொடர்ந்து நடத்தி வரவும் தகுந்த ஏற்பாடு செய்து வைக்க விரும்பி இந்த உயில் சாசனம்



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எழுதி வைத்திருக்கின்றேன். என் ஆயுளுக்குப் பின் மானாமதுரை தாலுக்கா கள்ளங்குடி கிராமத்தைச் சேர்ந்த என் ஊரில் என்னுடன் வசிக்கும் என் இளைய மகள் தமிழ்செல்வியின் கணவரும், சிவராமலிங்கம் அவர்களின் குமாரருமான வேல்முருகன் அவர்களை என் ஸ்தானத்தில் டிரஸ்டியாக நியமித்துள்ளேன்.

என் ஆயுளுக்குப் பிறகு மேற்படி வேல்முருகன் (அதாவது ஏற்கனவே டிரஸ்டிகளுடன் சேர்ந்து மேல்பார்த்த பரமசிவம் டிரஸ்டியாக இருக்க விரும்பாததால்) டிரஸ்டியாக இருந்து மேற்சொல்லிய ஸ்ரீராமலிங்கசுவாமி மடம் அதன் சொத்துக்கள் ஆகியவைகளை நிர்வகித்து வந்தும், தர்ம காரியங்களை செய்தும் வரவேண்டியது.”

27. In page No.9 of the said Will, she has clearly stated that in terms of the registered Will executed by Paramasiva Thevar (Exhibit P2) after the death of her husband Ramalingam, herself and her eldest son Paramasivam together accepted the trusteeship of Ramalinga Swamigal Madam and her daughters disclaimed the trusteeship by renouncing their interest under the Trust. While so, one of her son Ramaswamy also passed away and both herself and her surviving son Paramasivam continued to manage the affairs of the Trust. In furtherance to the same, the said Lakshmi disclosed her intention of appointing her youngest son-in-law one Velmurugan as the trustee in her place after her death. She further stated in the said Will that



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after her death, the co-trustee, that is her son Paramasivam is not willing to continue as the Trustee and hence, Velmurugan would take over the trusteeship as the sole trustee of Ramalinga Swamy Madam. For the said Will, her son Paramasivam and her daughter Rajeswari stood as witnesses.

28. The recitals of the Will would make it clear that during the lifetime of R.Lakshmi, her eldest son Paramasivam was also the co-trustee of Ramalinga Swamy Madam. While so, during her lifetime in the year 2011, she filed Trust O.P.No.1 of 2011 before the District Judge's Court at Sivagangai seeking the permission of the Court under Section 34 of the Indian Trusts Act, 1882 to sell the petition scheduled Trust properties as sought for in the petition.

29. Section 13 and 15 of the Indian Trusts Act, 1882 mandates that a trustee is bound to protect and take care of the title of the Trust properties as follows:

“13. Trustee to protect title to trust-property.—A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps



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as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

15. Care required from trustee.—*A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.”*

30. Moreover, Section 19 of the Indian Trusts Act, 1882 provides that a trustee is bound to keep clear and accurate accounts of the trust-property and at all reasonable times, with full and accurate information as to the amount and state of the trust-property.

31. Interestingly Section 46 of the Indian Trusts Act insists that a trustee who has accepted the trust cannot afterwards renounce it except with the permission of a Principal Civil Court of original jurisdiction. Sections 46 and 47 of the said Act is as extracted as follows:



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“46. *Trustee cannot renounce after acceptance.*—A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. *Trustee cannot delegate.*—A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.”

32. Thus, there is a bar in Section 47 of the Indian Trusts Act, 1882 for the trustee to delegate his office or even to delegate his duties either to co-trustee or to a stranger.

33. In view of the provisions of Sections 46 and 47 of the Indian Trusts Act, 1882, the covenants of the Will executed by R.Lakshmi bearing document No.19 of 2014 of Thirupuvanam Sub-Registry does not hold good. Having admitted that her eldest son had accepted the trusteeship of



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Ramalinga Swamigal Madam along with her, the said Paramasivam cannot do away with his trusteeship without the permission of the Principal Civil Court of original jurisdiction. That apart, as provided in Section 46 of the Indian Trusts Act, 1882, there is no material evidence to show that the said trustee Paramasivam executed any contract or resolved any resolution along with the surviving trustee, that is, his mother Lakshmi disclaiming his trusteeship during her lifetime.

34. Further in terms of the settlement deed executed by Suththa Chaitanya Swamigal only the elders amongst the legal heirs of the descendants of Paramasiva Thevar shall administer the Madam. The Will executed by Paramasiva Thevar envisages that, his eldest son Ramalingam and his descendants shall administer the Madam from time to time. If the said settlement deed and the Will of Paramasiva Thevar is read conjointly, this Court is able to arrive that, the acceptance of Trusteeship by R.Lakshmi and the eldest son of Ramalingam, namely, Paramasivam on the death of Ramalingam is in consonance to the intention of the founders of the Trust. But her intention of removing her eldest son Paramasivam from Trusteeship and appointing her son-in-law Velmurugan, the second petitioner herein is



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against the Will and the spirit of the founders of the Madam and none of these aspect of disclaimer of trusteeship by Paramasivam was established by Lakshmi as P.W.1., while deposing her evidence in Trust O.P. Rather insisting on her right to seek the permission of the Court to sell away the trust property, when there is a bar that a trustee cannot delegate his office or his duties either to co-trustee or to a stranger, the appointment of Velmurugan to take the office of trusteeship after the death of Mrs.Lakshmi, doing away with the trusteeship of the surviving trustee Paramasivam is not legally sustainable. In furtherance to that, Section 48 of the Indian Trusts Act, 1882 mandates as follows:

“48. Co-trustees cannot act singly.—When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.”

35. In ***Norendra Nath Kumar and Another Vs. Atul Chandra Bandopadhyaya and Others reported in AIR 1918 Cal 810***, the Hon’ble High Court of Calcutta in paragraph No.3 has observed as follows:

“3. Where the administration of the trust is vested in several trustees, they all form as it were, but one collective trustee, and they must exercise the powers of their office in their joint capacity. Their interest and authority being equal and



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undivided they cannot act separately, but all must join.....”

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36. In ***Duli Chand Vs. Mahabir Pershad Trilok Chand Charitable Trust in MANU/DE/0353/1983***, the Hon’ble High Court of Delhi in paragraph No.16 has observed as follows:

“16. It is well-known that a Trust is not a legal entity as such. In fact, a Trust may be defined as an obligation imposed on the ostensible owner of property to use the same for a particular object for the benefit of a named beneficiary or a charity. Thus all Trustees in law are owners of the property but they are obliged to use the same in a particular manner. If a number of trustees exist, they are joint owners of the property. It is not like a Corporation which has a legal existence of its own and Therefore can appoint an agent. A Trust is not in this sense a legal entity. It is the trustees who are the legal entities. Section 48 of the Indian Trusts Act, 1882, states:-

" WHEN there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides."

Section 47 reads:

"A trustee cannot delegate his office or any of his duties either to



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a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the declaration is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation."

There is, Therefore, a very grave doubt in our mind as to whether a single trustee can sue and whether he can sue in the name of the Trust. It is also very doubtful whether a resolution can be passed authorising only some of the trustees to file a suit. In the decision given by Deshpande J., Birdhi Chand Jain Charitable Trust v. Kanhaiyalal Shamlal 1972, R.L.R. 142, it was held that a resolution could be passed authorising one of the Trustees to file the suit. But, that resolution had not been proved. It was also observed :-

"But the trust is not a legal person and the description of the petitioners is, therefore, wrong. It could have been amended, if necessary. But that question does not now arise."

This judgment proceeded on the basis that all the trustees could authorise one of them to file the suit. It is possible for some of the trustees to authorise the others to file a suit, but this could only be done by the execution of a power of attorney. It cannot be done by a resolution. If 'A', 'B' and 'C' are owners of a property, they have to bring a joint suit for possession. They are all necessary parties to the suit. They cannot by resolution allow some of the other co-owners to file the suit. In such a suit, all the



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owners must be joined as parties as either plaintiffs or, as defendants. Usually, the co-owners who are not joined in the suit are joined as proforma defendants. But, it is not possible for some of the owners to file a suit without joining others. As trustees are owners of the property, the same principle applies. They all have to be joined as parties to the suit, but they can execute powers of attorney allowing themselves to be represented by some other co-trustees.”

37. When Section 48 provides that when there are more trustees than one, all must join in the execution of the trust and the Trust O.P. ought to have been filed together by R.Lakshmi and Paramasivam. Strangely, the said R.Lakshmi had filed the Trust O.P. in her individual capacity. The trustees altogether constitute one body in the eye of law and must act together. Hence, a petition filed in the execution of the administration of the Trust is not maintainable without impleading all its trustees unless otherwise authorised on their behalf by the rest. Nowhere in the short cause title or in the long cause title of the Trust O.P, her capacity as trustee of Ramalinga Swamigal Madam is reflected.

38. Be that as it may, Order XXXI, Rule 1 of the Civil Procedure



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Code, 1908 deals with the representation of beneficiaries in suit concerning property vested in trustees and hence, the trustee shall represent the persons interested in the Trust before the Court of law. In this case, R.Lakshmi ought to have filed the Trust O.P in the capacity of the trustee of Ramalinga Swamigal Madam along with her eldest son Paramasivan and the same should have been reflected in the short cause-title and long cause-title of the Trust O.P. Thus, the Trust O.P is bad for non-joinder of necessary parties in terms of Section 48 of the Indian Trusts Act, 1882 r/w Order XXXI, Rule 2 of the Code of Civil Procedure, 1908.

39. In ***Golesh Kumar Vs. Ganesh Dass Chawla Charitable Trust in MANU/DE/8558/2006***, the Hon'ble High Court of Delhi in paragraph Nos. 5 & 6 has observed as follows:

“5. The provisions of Order XXXI Rule 2 make it mandatory for a plaintiff to join all the trustees as parties to the suit. In this case there are several trustees of the trust and it has been proved on record and, in fact, was an admitted fact on the basis of Ex PW1/D1 that it is a registered trust and has number of trustees. There was no escape for the plaintiff but to join/implead all these trustees as defendants in the suit. We have



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no reason to differ with the view taken by the Calcutta High Court and Madras High Court in the cases of Norendra Nath and Anr. (supra) and Vedakannu Nadar and Ors.(supra).

6. The Courts have insisted upon due compliance to the provisions of Order XXXI Rule 2 of the Court. Even where suits are instituted by and on behalf of the trust, it was held that willing trustees should be joined as plaintiffs while all other unwilling trustees should be joined as defendants. Thus, the suit without inclusion of all the trustees members of the trust would not be maintainable where either a suit is instituted or is filed against the trust.”

40. In *Amar Nath Singh and Others Vs. Additional District Judge, Unnao and Others in MANU/UP/3465/2014*, the Hon’ble High Court of Allahabad in paragraph Nos.5 & 6 has observed as follows:

“5. Rule 2 of Order XXXI clearly states that where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them.

6. In the instant case, the suit for a decree of cancellation of the trust deed has been filed by Smt. Radha Devi, who is



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trustee No. 2 as per the trust deed, against Vijay Pratap Singh and Smt. Chandra Prabha, who are trustee Nos. 1 and 5 respectively. Thus, as per the provision of Rule 2 of Order XXXI of the C.P.C. in a suit against one or more of the trustees all the trustees of the trust are to be made parties. Admittedly, the suit has been filed by one trustee against two other trustees, thus, in view of the provision contained in Rule 2 of Order XXXI of the C.P.C., all the trustees, in my considered opinion, are to be made parties. I also hold that the provision contained under Order XXXI, Rule 1 of the C.P.C. does not have any application to the facts and circumstances of the case for the reason that suit in the instant case has not been filed where there is any dispute between the persons who are beneficially interested in the trust property and any third person. The suit has been filed for cancellation of trust deed against two of the eleven trustees. Thus, it is clear that in the instant case, provisions contained in Rule 2 of Order XXXI are clearly attracted”

41. Coming to the point of seeking the permission of the Civil Court of original jurisdiction to sell a trust property, the provision of Section 34 of the Indian Trusts Act, 1882 is extracted as follows:

“34. Right to apply to Court for opinion in management of trust-property.—Any trustee may, without instituting a suit,



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apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit. The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application. The costs of every application under this section shall be in the discretion of the Court to which it is made.”

42. Thus the Principal Civil Court of original jurisdiction cannot give a blanket permission to sell the trust properties out rightly without hearing all the beneficiaries that is the descendants of Paramasiva Thevar rather giving its opinion, advice or direction on the question of sale of the trust properties. When the Act clearly mandates that all the trustees should join in the execution of trust, though Ramalinga Swamigal Madam is a private Trust, the question of sale of the trust properties cannot be decided without



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impleading the necessary parties in the original trust O.P. Moreover, the said Lakshmi died on 14.01.2015 during the pendency of this Civil Revision Petition after which, her son-in-law R.Velmuguran was impleaded herein as the second petitioner. Here it is pertinent to observe that both the petitioners have impleaded themselves in the short cause title and long cause title of the Trust O.P, only in their individual capacity.

43. In ***K.R.Rajan Vs. Cherian K.Churian and Others in MANU/KE/4905/2019***, the Hon'ble High Court of Kerala, Ernakulam in paragraph No.7 has observed as follows:

“7. The legal status of a trust, is thus well discernible. Trust not being a legal person, and the Code of Civil Procedure not providing any enabling provision for the Trust to sue or for being sued in its name, there is no merit in the contention that the Trust is to be arrayed as an eo-nominee party. The arraying of the trust in its own name is otiose or redundant. It is the trustees who are to be impleaded to represent the trust.”

44. In view of the said judgment, both of them ought to have impleaded as the trustees representing Ramalingasamy Madam. When there



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is no express contract or resolution between Paramasivam and the deceased trustee R.Lakshmi renouncing his trusteeship, the husband of one of the daughters of Ramalingam, namely, Tamilselvi cannot become the sole trustee of Ramalinga Swamigal Madam. Moreover, the registered Will executed by R.Lakshmi did not reflect any resolution resolved between the trustees as on the date of execution of the said Will, on 07.10.2014, as to the appointment of Velmurugan as the sole trustee on the death of R.Lakshmi. The mere signature of Paramasivam and Rajeswari in the Will bearing No. 19 of 2014 of Thirupuvanam Sub-Registry cannot be taken as their consent to the covenants of the Will wherein it is clearly admitted that Paramasivam is acting as a trustee along with her during her lifetime. Hence, the admission of R.Lakshmi about the trusteeship of her son Paramasivam as the co-trustee of Ramalinga Swamigal Madam and her conflicting decision to appoint her son-in-law Velmurugan as the sole trustee is fatal to her case. After her death doing away with the trusteeship of her son Paramasivam is against the various provisions of the Indian Trusts Act, 1882.

45. In *Janaki Raman Pd. Mishra and Others Vs. Koshalyanandan Pd. Mishra and Others in MANU/BH/0080/1961* dated 19.07.1960, *the*
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Hon'ble High Court of Patna in paragraph No.16 has observed as follows:

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“16. In the present case, apart from the law, under the terms of the endowment itself, it had been admittedly provided that the right of shebaitship would devolve upon and be inherited by the heirs of each of the three-brothers. Thus, it was a hereditary office descending in the direct line from the father to the son and ensuring only for the life time of each holder of the office. None had any absolute right to it so as to be able to transfer it by relinquishment or otherwise to the exclusion of his heir in the direct line.”

46. In ***Palanivelayutham and Others Vs. Ramassamy and Others in MANU/TN/0358/1984*** dated 12.07.1984, this Court in paragraph No.10 has observed as follows:

*“10. A careful reading of Exhibit B-506 will clearly show that the founder of the trust had delineated the course of succession. Therefore once it has been so delineated, the office becomes hereditary. If that be so, the founder himself cannot go back upon the same and provide another course of succession, unless a right has been reserved to himself. In support of this submission, reliance is placed on the decision in **Janaki Raman P.O. v. Koshalyanandam PD MANU/BH/0080/1961 : AIR 1961 Pat 293.**”*



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47. Thus R.Lakshmi, the subsequent trustee / testator cannot revoke the line of succession already propounded by the founder / predecessor trustee by executing a Will bearing document No.19 of 2014, dehors the settlement deed bearing document No.1541 of 1962 and Will bearing document No.4 of 1985 of Thirupuvanam Sub-Registry executed by the founder and predecessor trustee respectively and such a Will has no legs to stand at all.

48. Moreover, when a trust files an application under Section 34 of the Indian Trusts Act it has to be specifically averred as to how the sale of property will benefit the trust and the averments should also contain the details with regard to the realisation of the objectives of the trust with the sale consideration.

49. In ***In Re: MIOT Hospitals Educational Trust in MANU/TN/7842/2022***, the Hon'ble High Court of Madras in paragraph No.11 has observed as follows:

“11. When a Trust files an application under Section 34



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of the Indian Trust Act, it has to be specifically averred how the sale of the property will benefit the Trust and the averments should also contain details with regard to the objectives of the Trust towards which sale proceeds will be applied. In the case on hand, the petitioner has not specifically averred how the sale of the Trust property would benefit the Trust. It is also not mentioned what is the market value of the property sought to be sold and whether the consideration mentioned in the agreement represents the correct market value and the same is beneficial to the Trust.”

50. Even in this case, the petitioner has not proposed any *modus operandi* as to the mechanism with which the intended sale consideration would be utilized towards the administration and management of the trust, except the promise that the same would be deposited in a nationalised bank. When this Court made a pertinent question to the petitioner's Counsel whether the trust has audited accounts for all the past financial years, the petitioner's Counsel fairly conceded that they do not have any audit balance sheet as to the income and expenditure of the Trust. However, he further submitted that when the income itself is not sufficient for the day to day affairs of the trust, the question of maintaining an audit balance sheet would



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not arise. However, he produced an un-audited statement of account in his additional typed set dated 02.03.2023 which revealed the expenditure details of the Madam during the year 2022. Another list of 12 members who had contributed towards those expenditure to a tune of Rs.1,15,000/- was also produced and it was submitted that all those persons were the descendants of Paramasiva Thevar. Another significant point for consideration is that the deceased first petitioner had filed the Trust O.P.No. 1 of 2011 seeking to sell the trust property to one D.Durai son of K.Duraiswamy of Kuppamuthu Group Village, citing an agreement of sale entered between the first petitioner and the said Durai on 18.06.2011 further submitting that a sum of Rs.20,000/- has been deposited by the proposed purchaser in the Manamadurai Branch of Central Bank of India. When this Court raised a question to the petitioner's Counsel that now by the efflux of time whether the said intended purchaser is still willing to purchase the trust properties, the learned Counsel for the petitioner suggested that the matter may be remitted back to the Court below to offer an opportunity to the petitioner in substantiating his request to sell the trust properties.

51. In addition to that, this Court is of the considered view that, apart from the petitioner's request under Section 34 of the Indian Trusts Act, to



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sell the trust property, there are many other significant issues pertaining to the trust which has to be settled by the learned trial Court. Section 34 of the Indian Trusts Act clearly confers the learned District Court with the power of giving its opinion, advice or direction on any present questions respecting the management or administration of the trust-property. This Court cannot unsettle the already settled terms of administration of the Ramalinga Swamigal Madam, as propounded by the settlement deed bearing No.1541 of 1962 and Will bearing No.4 of 1985 of Thirupuvanam Sub-Registry respectively.

52. In ***Ashok Kumar Kapur and Others Vs. Ashok Khanna and Others reported in MANU/SC/7217/2007***, the Hon'ble Supreme Court in paragraph No.11 has observed as follows:

11. The jurisdiction of the Court under Section 34 admittedly is confined to opinion, advice or direction. An application would be maintainable on any present questions. Such questions must arise "respecting the management or administration of the trust property". The questions should not be of any 'detail, difficulty or importance or otherwise not proper in the opinion of the Court for summary disposal'. Copy



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of the application must be served upon the persons interested in the application. If an opinion is rendered, or advice is given, or a direction is issued, the same shall be deemed, so far the trustee is concerned, in regard to his own responsibility to have discharged his duty as such trustee in the subject-matter of the application. It may be that such an application may be filed without instituting a suit but maintainability of such an application would mainly depend upon the nature and purport thereof. Merely an option has been conferred on a trustee to file either a suit or to move the Court for its opinion, advice or direction in terms of Section 34 of the Act. Such an option can be exercised only when recourse to both the remedies are available.”

53. In ***Maan Sarovar Paras Builders Private Limited Vs. Gopaldas Dwarakadas*** in ***MANU/TN/1298/2012***, this Court in paragraph No.17 has observed as follows:

*“17. While dealing with the power of the High Court under Section 34 of the Indian Trust Act, 1882 and its scope, the Supreme Court observing that the jurisdiction of the Court is advisory and is in the form of an opinion and there is no determination of right, title and interest, held in *Ashok Kumar Kapur v. Ashok Khanna*, *MANU/SC/7217/2007* : (2007) 5 SCC 189 as follows:*



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21. We may proceed on the basis that the jurisdiction of the court is not only confined to opinion or advice but also extends to issuance of direction, but such opinion rendered, or advice given or direction issued only to a trustee. Consequence of issuance of such a direction is also stated in para 3 of Section 34 in terms whereof a legal fiction is created by reason whereof the trustee would be deemed to have discharged his obligation in regard to his own responsibility in the subject-matter of the application. It does not envisage an adjudication. It does not ordinarily envisage determination of the right, title or interest of a member of the trust or a beneficiary in relation to the trust property, although such a question may have to be incidentally dealt with.”

54. In view of the above, this Court is inclined to set aside the impugned order of the learned Trial Court in Trust O.P.No.1 of 2011 and remand the matter back to the file of the Court below. Accordingly, the impugned order is set aside and the Trust O.P is remitted back to the file of the learned District Judge's Court at Sivagangai with the following directions:

“(i) The second petitioner may be directed to effect the necessary amendments in the short cause-title and long cause-title of the Trust O.P, reflecting that he is representing the Ramalinga Swamigal Madam.



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(ii) The second petitioner is directed to implead the surviving sole Trustee, that is the eldest son of Ramalingam and R.Lakshmi, namely, Paramasivam either as third petitioner or as the respondent as per his convenience.

(iii) The Trial Court is directed to substantiate and crystalise the issue of trusteeship and to settle the conflicts triggered by the Will bearing document No.19 of 2014 of Thirupuvanam Sub-Registry executed by R.Lakshmi.

(iv) The Trial Court is directed to identify the real trustee of the Ramalinga Swamigal Madam in terms of the settlement deed bearing No. 1541 of 1962 (Exhibit P1) and registered Will bearing No.4 of 1985 of Thirupuvanam Sub-Registry (Exhibit P2) respectively, based on the various provisions of the Indian Trusts Act, 1882 and thereafter adjudicate upon the willingness of the identified trustee to pursue with the sale of the trust properties, if required, in accordance with law, through public auction, in consonance with the existing market value.



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(v) In case if the Trial Court arrives at a conclusion to effect sale of trust property by public auction, is further directed to devise a mechanism to deposit the sale consideration in the name of the trust through its trustee in a nationalised Bank as a fixed deposit, which could be revived from time to time, facilitating the trustee to utilise the incurring interest every year towards the expenditure of the Trust.

(vi) The Trial Court is further directed to advise the trustee to manage and administer the Trust with proper audited statement of accounts in the following years and to devise a scheme for the Trust to be administered with, in consultation with the identified Trustee.”

55. In conclusion, the impugned order passed by the learned District Court, Sivagangai in Trust O.P.No.1 of 2011 dated 31.01.2014 is set aside and this Civil Revision Petition in C.R.P(MD)No.1540 of 2014 stands partly allowed. There shall be no order as to costs.

30.03.2023

NCC : Yes / No
Index : Yes / No

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Internet : Yes / No

BTR

To

- 1.The District Court,
Sivagangai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

L.VICTORIA GOWRI, J.



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BTR

Order made in
C.R.P(MD)No.1540 of 2014

30.03.2023