

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

CORAM :

THE HONOURABLE Mr.JUSTICE K.K.SASIDHARAN

C.R.P. (PD) . No.3451 of 2015
&
M.P.Nos.1 and 2 of 2015

1. M/s. Kanapathy Charitable Trust
Rep. by its Trustee M.K.Natarajan
having office at S.F.No.428, Sathy Road
Ganapathy, Coimbatore-641 006.
 2. M.K. Natarajan
 3. P. Arumugam
 4. M. Vasudevan
 5. Central Bank of India
Cross Cut Road
Gandhipuram
Coimbatore.
 6. Karur Vysya Bank
Ganapathy Branch
Vignesh Towers
1391-A, Sathy Road
Ganapathy
Coimbatore-641 006.
 7. Repco Bank
8/26, Indian Red Cross Building
Huzur Road
Gopalapuram
Coimbatore-641 006,
- ...Petitioners/Defendants 1 to 4
Defendants 5 to 7

-Vs-

1. K.V. Karthilk

2. V. Sakthivel

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to strike down O.S.No.1167 of 2015 on the file of Subordinate Judge, Coimbatore as not maintainable.

For Petitioners : Mr. S. Parthasarathy
Senior Counsel
for M/s. Ananda Gomathy

For Respondents : Mr.V. Raghavachari

ORDER

The order passed by the learned Subordinate Judge, Coimbatore to register the plaint filed by the respondents as a Civil Suit under Section 92 of the Code of Civil Procedure without granting leave made the petitioners to file this Civil Revision Petition invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

The facts:

2. The respondents earlier filed a suit in O.S.No.1407 of 2015 before the learned Subordinate Judge, Coimbatore. The suit was filed under Section 92 of the Code of Civil Procedure. Since leave was not granted, the petitioners moved an application to reject the plaint. While the said application was pending, the respondents filed the present suit again invoking Section 92 of the Civil Procedure Code. The learned Subordinate Judge, Coimbatore entertained the suit without passing specific orders granting leave. The interlocutory application filed by the respondents to injunct the petitioners from removing them or implementing the decision taken on 27 July 2015 was also entertained by the learned Subordinate Judge. Feeling aggrieved by the decision taken by the learned Subordinate Judge, Coimbatore in numbering the suit before granting leave and entertaining the interlocutory application appears to be the reason for filing this Civil Revision Petition.

Submissions:

3. The learned Senior counsel for the petitioners contended that by registering the suit before granting leave under Section 92 of the Code of Civil Procedure, the learned trial Judge committed a jurisdictional error. According to the learned Senior Counsel, leave under Section 92 is a condition precedent for institution of the suit against a public trust. Since the trust in question is a public trust, the Court should have considered the application for leave at the first instance before entertaining the interlocutory application. The learned Senior Counsel therefore wanted this Court to strike off the plaint in O.S.No.1167 of 2015.

4. The learned counsel for the respondents while supporting the impugned order submitted that the respondents have already filed an application seeking leave. The Court is yet to consider the said application. According to the learned counsel, in case leave is granted, it would relate back to the original date and as such it cannot be said that the learned trial Judge erred in numbering the suit.

Analysis:

5. The documents available on record shows that the respondents earlier filed a suit in O.S.No.1407 of 2014 before the learned Subordinate Judge, Coimbatore. Since leave was not granted before taking the suit on file, the petitioners moved an application to reject the plaint. Subsequently the respondents filed another suit in O.S.No.166 of 2015 along with interlocutory applications to grant leave and to issue an order of interim injunction. The trial Court appears to have issued notice in those applications. It was only during the currency of the other two suits and interlocutory applications, the respondents filed yet another suit under Section 92 of the Code of Civil Procedure.

6. The core question is whether the learned trial Judge was correct in entertaining the suit without granting leave under Section 92 of the Code of Civil Procedure.

7. The Civil Suit filed under Section 92 of the Civil Procedure Code is a suit of a special nature and it pre-supposes the existence of a public trust of a religious or charitable character. The very definition of Section 92 of Civil Procedure Code clearly indicates that leave of the Court is a mandatory requirement for institution of a suit against a public trust.

8. The plaintiff in a suit under Section 92 must plead and prove that there exist a public trust of a religious and charitable character and that there was a breach of such trust or that the direction of the Court is deemed necessary for better administration of the trust. The Court must consider the application for leave before taking further action in the matter.

9. The Supreme Court in *R.M. Narayana Chettiar v. N. Lakshmanan Chettiar*¹ made it clear that leave of the Court is a precondition for institution of a suit under Section 92 of the Code of Civil Procedure.

The Supreme Court said:

"17. A plain reading of Section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under Section 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under Section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave under Section 92

¹ (1991) 1 SCC 48

can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law."

10. The documents available on record does not contain any indication that the trial court granted leave before registering the suit. The question of revocation of the leave would arise only in case leave was granted before instituting the suit. In the subject case the trial court appears to have registered the suit at the first instance and thereafter numbered the application for grant of leave.

11. In the subject case, there is one more reason which should be borne in mind while considering the order passed by the learned trial Judge. The respondents have filed a suit earlier and it was registered without granting leave. The application filed under Section 92 is stated to be pending. The subsequent suit filed in O.S.No.166 of 2015 was accompanied with an interlocutory application to grant leave. The learned trial Judge without reference to the earlier suits filed under section 92 of the Code of Civil Procedure entertained the third suit without there being a formal order granting leave. I am therefore of the view that the matter requires fresh consideration by the learned trial Judge.

Disposition:

12. In the result, the order passed by the learned Subordinate Judge registering the suit is set aside. The learned Judge is directed to consider the application for leave at the first instance with notice to the petitioners and pass appropriate orders on merits and as per law.

13. In the upshot, I allow the civil revision petition. Consequently the connected MPs are closed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Tr/

To

The Subordinate Judge,
Coimbatore.

1 CC to Mr.V. Raghavachari, Advocate SR.No. 59321

1 CC to M/s. Ananda Gomathy, Advocate SR.No. 59209

C.R.P. (PD) No. No.3451 of 2015

KK (CO)

PSI (06.11.2015)

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