

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-06-2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.484 of 2011

G .Jayaparakash ..Appellant/1st Defendant

Vs.

1. L. Balakrishnan
2. R. Kalyanasamy
3. The Head Master
M.N.M. High School
Jakkarpalayam Village
Pollachi Taluk
Coimbatore District
4. The District Educational Officer
District Educational Office
Pollachi Town
Coimbatore District
5. The District Collector
District Collector's Office
Coimbatore ..Respondents/Defendants 2 to 4

Appeal Suit filed under Section 96 read with Order 41 Rule 1 and 2 CPC against the judgment and decree dated 30-06-2011 made in O.S.No.168 of 2009 on the file of the Court of the Additional District Judge/Fast Track Judge No.1, Coimbatore.

For Appellant : Mr. S. Thangavel

For Respondents : R1- Died
Mr. V. Selvaraj for R2
Mr. V. Ravi for R3
Mr. N. Ravichandran, AGP for RR4 and 5

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J)

Challenge in this appeal suit is to the judgment and decree dated 30-06-2011 passed in O.S.No.168 of 2009 by the Additional District Judge/ Fast Track Judge No.1, Coimbatore.

2. The respondents 1 and 2 herein as plaintiffs have instituted O.S.No.168 of 2009 on the file of the Trial Court under Section 92 of the Code of Civil Procedure, 1908 praying to appoint a new Trustee in respect of the School, mentioned in the plaint wherein the present appellant has been shown as first defendant.

3. The material averments made in the plaint are that the School, mentioned in the plaint is situate in survey No.183/1A Sirukalandhai Village and the same has been managed from the year 1958 by one Society viz., Jakkarpalayam Araneri Kazhagam. The father of the first defendant by name Govindaraj Naidu has managed the School till his demise on 03-11-2008, as a Secretary. During his tenure, he committed so many errors by way of selling Trust properties to various persons and thereby, he has given only mismanagement and further, the said Araneri Kazhagam has also been dissolved. Under the said circumstances, the present suit has been instituted for the relief sought in the plaint.

4. In the written statement filed by the first defendant it is averred that all the averments made in the plaint are false. It is false to say that the father of the first defendant has mismanaged the School, mentioned in the plaint and further, the present suit, instituted so as to appoint new Trustees in respect of the School, mentioned supra is not maintainable under Section 92 of the Code of Civil Procedure, 1908. Under the said circumstances, the members of Araneri Kazhagam are necessary parties and since they have not been impleaded the suit is bad for non-joinder of necessary parties and altogether, the present suit deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the Trial Court has framed necessary issues and after perpending both the oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present appeal suit has been preferred by the first defendant, as appellant.

6. The learned counsel appearing for the first defendant has raised the following points so as to set aside the judgment

and decree passed in O.S.No.168 of 2009 :

(1) Since the School mentioned in the plaint has been managed by Araneri Kazhagam and the same has not been impleaded, the present suit is bad for non-joinder of necessary parties.

(2) Even though in the plaint it has been predominantly averred to the effect that the father of the first defendant has mismanaged the School in question, no sufficient evidence has been let in on the side of the plaintiff for the purpose of proving the said aspect and the Trial Court has failed to look into the same.

7. In order to repel the contentions put forth on the side of the appellant/first defendant, the learned counsel appearing for the second respondent has also equally contended that for the purpose of proving the mismanagement of the father of the appellant/first defendant, various documents have been filed. Further, relevant document has been filed for the purpose of showing that Araneri Kazhagam has already been dissolved and the Trial Court after considering the overwhelming evidence adduced on the side of the plaintiffs, has rightly decreed the suit as prayed for and therefore, the judgment and decree passed by the Trial Court do not warrant interference.

8. On the basis of the divergent submissions made on either side, the Court has to look into as to whether the Trial Court has properly passed its judgment and decree in O.S.No.168 of 2009.

9. In fact, this Court has perused the entire averments made in the plaint, wherein it is specifically averred to the effect that the father of the first defendant by name Govindaraju Naidu has sold various properties of the Trust without getting proper permission and thereby, mismanaged the School mentioned in the plaint.

10. In the written statement filed on the side of the first defendant, the main averments made in the plaint are specifically denied. Since the plaint averments are specifically denied on the side of the first defendant, the entire burden lies upon the plaintiff to prove the alleged mismanagement.

11. For the purpose of proving the said aspect on the side of the plaintiff, Exs-A7 to A9 have been marked. Exs-A7 to A9 are nothing but the copies of sale deeds alleged to have been executed by Govindaraju Naidu who is none other than the father of the first defendant.

12. The main contention put forth on the side of the plaintiffs is that the said Govindaraju Naidu has acted as a Secretary of the school, mentioned in the plaint and without getting proper permission, he sold the Trust properties to various persons. Since on the side of the plaintiffs a specific allegation has been made against the said Govindaraju Naidu and since Exs-A7 to A9 have been marked on their side, the Court can easily come to the conclusion that the father of the first defendant viz., Govindaraju Naidu has sold the Trust properties, even without getting permission. Under such circumstances, the Court can very well come to a conclusion that he has done only mismanagement in the School, mentioned in the plaint.

13. The second contention put forth on the side of the plaintiffs is that the Araneri Kazhagam which managed the School has already been dissolved. For the purpose of proving the said aspect, Ex-A21 has been marked. Ex-A21 is nothing but a letter dated 19-02-2009 given by the District Registrar wherein it has been clearly mentioned that the said Araneri Kazhagam has already been dissolved on 29-12-1983, even before the institution of the suit.

14. The first and foremost point urged on the side of the appellant/first defendant is that the said Araneri Kazhagam has not been impleaded as one of the defendants and therefore, the suit is bad for non-joinder of necessary parties. Considering the fact that the said Araneri Kazhagam has already been dissolved, even prior to the institution of the suit, the question of impleading the same does not arise and therefore, the first point urged on the side of the appellant/first defendant is sans merit.

15. The second contention put forth on the side of the appellant/first defendant is that the alleged mismanagement of the School mentioned in the plaint has not been proved. It has already been pointed out that by way of Exs-A7 to A9, sale deeds executed by Govindaraju Naidu, the plaintiffs have clinchingly proved that the father of the first defendant has sold the properties of the Trust without getting proper permission and further on the side of the plaintiff, replete evidence is available to show the mismanagement. Therefore, the second contention also goes out without merits.

16. The trial Court, after considering the rival evidence available on record has rightly decreed the suit. In view of the discussions made earlier, this Court has not found any force in the contentions put forth on the side of the appellant/first

defendant and altogether, the present appeal suit deserves to be dismissed.

17. In fine, this appeal suit is dismissed, without costs. The judgment and decree passed in O.S.No.168 of 2009, by the trial Court, are confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

glp

To

1. The Additional District Judge/
Fast Track Judge No.1,
Coimbatore.

- 1 cc to M/s.V.Ravi, Advocate, Sr.36287
- 1 cc to Mr.V.Selvaraj, Advocate, sr.36576
- 1 cc to Mr.S.Thangavel, Advocate, sr.36369
- 1 cc to The Government Pleader, sr.36507

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