Reserved on : 30.11.2016

Pronounced on : 15.12.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S. No.482 of 2000

1.S.Swarnamukhi (deceased)
2.S.M.Govindarajulu
3.S.Prasath
4.S.Harinath .. Plaintiffs

Versus

1.L.S.Gupta
2.Y.Sujatha
3.K.Girija
4.S.Rangaraj
5.P.Andal (deceased)
6.J.Chitra (deceased)
7.P.V.Seshadri @ P.Venkatesashadri
8.P.Niranjan @ P.Narasimhalu
9.R.Janardhanam
10.J.Amarnath
11.P.D.Venkatesan
12.C.R.Sarasija
13.V.Mohan .. Defendants

(9 & 10 are legal heirs of the deceased 6th defendant)
(11 to 13 are legal heirs of the deceased 5th defendant)

Prayer: Civil Suit is filed under Order VIII Rule 1 of the Code of Civil Procedure, 1908 and Order VI of Original Side Rules against the judgment and decree against the defendants directing partition by metes and bounds the properties more particularly described in the schedule hereunder and allot 1/6th share in the plaintiffs, direct the defendants and in particular defendants 7 and 8 to render a true and correct account in relation to all the properties left behind by the deceased Chenchubai Ammal which are still to be partitioned and direct partition by metes and bounds thereof and allot 1/6th share thereof the plaintiffs, direct the defendants and in particular defendants 7 and 8 to render a true and correct account of all the realization from the properties left behind by the deceased Chenchubai Ammal including the properties more particularly described in the schedule hereunder and direct the 7th and 8th defendants to pay over 1/6th of the net realization to the plaintiffs, for the appointment of a receiver, for the appointment of a Commissioner, directing the defendants to pay the plaintiffs her 1/6th share of future mesne profits at such rate as may be deemed by this Court to the plaintiffs until the properties are divided by metes and bounds and possession of her share and with alternative relief of framing scheme in respect of item 1 of the suit property and directing the defendants to pay cost of this suit to the plaintiffs

For Plaintiffs : Ms.O.Padma Prakash

For Defendants 7 and 8 : Mr.P.Subha Reddy
Other defendants set exparte

J U D G M E N T

The suit is filed for a decree and judgment against the defendants directing partition by metes and bounds more particularly described in the schedule mentioned properties and allotting 1/6th

share in the suit property.

2. The brief facts of the case of the plaintiffs are as follows:

The properties more particularly described in the Schedule is owned by one Kawali Lakshmi Narasimhalu Chetty. He did not have any issue and he adopted one Kawali Narasimhulu Chetty, who was in possession and enjoyment of all the properties left behind by the aforesaid Kawali Lakshmi Narasimhulu Chetty. The said Kawali Narasimhulu Chetty had two wives namely Venkata Subbamma and Dhanalakshmamma. The said Venkata Subbamma and Dhanalakshmamma, who are the first wife and second wife of Kawali Narasimhulu Chetty, had each one daughter namely Poornavalli Thayaramma and Chenchubai Ammal respectively. The said Poornavalli Thayaramma married one P.Venkatakrishna Chetty and they have no issues. The said Chenchubai Ammal married one P.A.A.Aiyannah Chetty and they have four daughters and two sons namely Sai Sundari, P.Andal, Swarnamukhi, J.Chitra, P.V.Seshadri and P.V.Niranjan.

2.1.After the death of said Kawali Lakshmi Narasimhulu Chetty, the suit property was inherited by the adopted son namely Kawali Narasimhulu Chetty, who died in the year 1926. After his demise, the same has been inherited by his second wife namely Dhanalakshmamma, who died on 25.10.1939. Thereafter, the same was inherited by her daughter Chenchubai Ammal, who died on 24.03.1975, leaving behind her husband, four daughters and two sons. The present suit has been filed by Swarnamukhi, one of the daughters of the said deceased and after her demise, her husband and sons are continuing the suit. Defendants 1 to 4 are the legal heirs of said Sai Sundari and defendants 5, 6, 7 & 8 are daughters and sons of Chenchubai Ammal. Since defendants 5 and 6 are died, D9 to D13 are brought on record as legal heirs of the said defendants.

2.2. According to the plaintiffs, a partial partition was effected in pursuance of a Deed of Partition and Family Arrangement dated 31.05.1978 registered as Document No.201 of 1978 under which certain properties were allotted to the first plaintiff. Item No.1 of the schedule mentioned property had been continuously under lease. They came to know that defendants 7 and 8 filed a suit in O.S. No.6380 of 1998 on the file of the City Civil Court, Madras against the tenants for a declaration and the Item No.1 of the schedule mentioned property was a private property of the mother of the first plaintiff.

2.3.According to the first plaintiff, as one of the heirs of her mother/the deceased Chenchubai Ammal, she is entitled to $1/6^{th}$ share in the property more particularly described as Item No.1 in the schedule mentioned property. Properties described as Item Nos.2 and 3 in the schedule mentioned property had not been partitioned.

2.4. It is further case of the plaintiffs, defendants 7 and 8 herein are in management of the entire estate and they are also bound to render a true and current account in respect of income from all the properties left behind by the deceased Chenchubai Ammal including the properties more particularly described in the schedule. Since the defendants and the plaintiffs are the legal representatives of the deceased Chenchubai Ammal and the properties in question are in the hands of some of the heirs and there is no true rendition of accounts, the suit has been filed by the first plaintiff for partition by metes and bounds more particularly described in the schedule mentioned properties and to allot $1/6^{th}$ share in the suit property. After her death, her legal heirs namely husband and sons are continuing the suit as plaintiffs 2 to 3. If the court comes to the conclusion that the property mentioned in item No.1, is impressed with private charity, proper scheme has to be framed for the management of suit charity and also for rendition of accounts by defendants 7 and 8 in respect of all the properties.

3. The case of the defendants, in nutshell, is as follows:

One Kawali Lakshmi Narasimhalu Chetty, is the author of the Will and he executed the same on 18.03.1887 and registered as Document No.7 of 1887. The first plaintiff has instituted a suit as early in the year 1995 and she did not prosecute the matter over a period of more than ½ a decade and now she is no more. According to the defendants, only at the instigation of the second plaintiff herein, who is none other the husband of the first plaintiff, the proceedings have been initiated, otherwise the deceased first plaintiff do not have any self interest to file against her own brothers and sisters.

3.1.According to the defendants, after the death of first plaintiff in the year 1999, initiation has been made seriously by plaintiffs 2, 3 and 4. The intention of the second plaintiff is only to harass and cause inconvenience and disturb the peaceful living among the children of Chenchubai Ammal. According to the defendants, they have even initiated legal proceedings against the tenants commencing from the year 1988 and the tenants themselves encouraged the second plaintiff to institute legal proceedings against these defendants in order to take advantage of the default committed by them in payment of rents. Now the tenants have also issued notice dated 29.01.2014 claiming as if these defendants have to pay money to the tenants.

3.2.According to the defendants, the allegation made by the second plaintiff that defendants 7 and 8 are not taking care of the management and administration of the property is false. Though there is no income from the Charities, defendants 7 and 8 have been maintaining and fulfilling the objects of the Trust by their own funds. Item No.2 of the property has been purchased by Kawali Lakshmi Narasimhalu Chetty, the grand father of the plaintiffs and defendants and Item No.3 of the property has been sold during the life time of Dhanalakshmammal, W/o.Kavali Narasimhalu Chetty and this fact has been mislead by the plaintiffs.

3.3.According to the defendants, the plaint schedule property is maintained and taken care of only by defendants 7 and 8. Item No.2 is meant for accommodating pilgrims at Srirangam. This property has been excluded from the estate of Kawali Narasimhalu Chetty. Item

No.3 of the property has been sold by Dhanalakshmammal during her life time and this property has not been mentioned in the agreement between two sisters in the year 1940 with the object of maintaining the properties.

3.4.According to the defendants, the first plaintiff being one of the daughters of Chenchubai Ammal, do not have any right, title or interest over the suit schedule property, which is a Public Trust Property and it can be maintained only by defendants 7 and 8 as charitable trust property. The fact that the suit properties are excluded in the Partition Deed in the year 1978 itself is sufficient enough to prove that the plaintiffs cannot maintain the present suit as the legal heir of Mrs.Chenchubai Ammal and hence the same has to be summarily dismissed as not maintainable. Hence, the defendant prays for dismissal of the suit.

4. On the above pleadings, originally, this Court, on 23.01.2015, has framed the following issues:

(i) Whether the property described as Item 1 in the suit schedule is impressed with the character of a private charity?

(ii) Whether a scheme should be framed for proper administration of the property described as Item 1 in the suit schedule?

(iii) Whether the plaintiffs are entitled to 1/6th share in the suit schedule properties?

(iv) Whether the defendants 7 and 8 are bound to render a true and correct account in respect of income from all the properties left behind by Mrs.Chenchubai Ammal including the properties described in the suit schedule?

(v) Whether the defendants are liable to pay the plaintiffs their 1/6th share of the mesne profits from the suit properties?

(vi) To what reliefs are the plaintiffs entitled?

(vii) Whether the suit schedule properties form part of the Trust properties or are they private property which can be partitioned?

5. On the side of the plaintiffs, P.W.1 was examined and Exs.P1 to P10 were marked. On the side of the defendants, D.W.1 was examined and Exs.D1 to D8 were marked. The details of the same are hereunder:

Exhibits produced on the side of the plaintiffs:

S. Nos.	*Exhibits*	*Date*	*Description of documents*
1.	P-1	27.07.1903	The certified copy of the sale deed in Doc. No.1818 of 1903
2.	P-2	07.12.1990	The certified copy of the judgment in O.S. No.6380 of 1988 before the II Assistant City Civil Court, Chennai
3.	P-3	15.03.1995	The office copy of the legal notice with acknowledgment card
4	P-4	-	The certified copy of the petition in RCOP. No.942 of 2004
5	P-5	-	The certified copy of the counter filed by Ajith Kumar and Dilip Kumar in RCOP. No.942 of 2004
6	P-6	-	The certified copy of counter filed by 3rd respondent in RCOP. No.942 of 2004
7	P-7	-	The judgment in RCOP proceedings , respondents 1 and 2 filed a petition in M.P. No.240 of 2015 that the RCOP filed by the Charity is not maintainable and the same was allowed
8	P-8	-	The decree copy in RCOP proceedings, respondents 1 and 2 filed a petition in M.P. No.240 of

S. Nos.	*Exhibits*	*Date*	*Description of documents*
			2015 that the RCOP filed by the Charity is not maintainable and the same was allowed
9	P-9	-	The order copy for the petition in RCOP. No.942 of 2004 was dismissed
10	P-10	-	The decretal order copy for the petition in RCOP. No.942 of 2004 was dismissed

Exhibits produced on the side of the defendant:

S. Nos.	*Exhibits*	*Date*	*Description of documents*
1.	D-1	09.02.1940	The original agreement entered between Pettugola Poornavalli Thayaramma and P.Chenchu Baiammal
2.	D-2	14.02.1940	The certified copy of the deed between Pettugola Poornavalli Thayaramma and P.Chenchu Baiammal registered as Doc. No.155/1940 at SRO, Sowcarpet
3.	D-3	31.05.1978	The certified copy of the partition deed executed between P.A.A.Aiyannah Chetty and 6 others registered as Doc. No.201/1978 at SRO, Sowcarpet
4.	D-4 series	-	The original debit vouchers and cash bills
5.	D-5	29.01.2014	The original letter sent by the tenants of the Item 1 of suit property to the defendants 7 & 8
6.	D-6	18.03.1887	The certified copy of the Original Will in Telugu language and defendants have already filed the translated version in English before

S. Nos.	*Exhibits*	*Date*	*Description of documents*
			the Court along with written statement
7.	D-7	26.04.1927	The certified copy of the probate order passed by this Court
8.	D-8	31.12.2003	The certified copy of the order of this Court passed in CRP. No.3345 of 1996

Witnesses examined on the side of the plaintiff:

P.W.1. - S.M.Govindarajulu

Witnesses examined on the side of the defendant

D.W.1 – P.V.Seshadri

6.Heard Ms.O.Padma Prakash, learned counsel appearing for the plaintiffs and Mr.P.Subha Reddy, learned counsel appearing for the defendants and perused the records.

7.It is the contention of the learned counsel for the plaintiffs that after the death of Chenchubai Ammal/mother of first plaintiff and defendants 5 to 8, the properties were devolved upon her legal heirs and under Ex.D.3/Partition Deed dated 31.05.1978, with regard to Item No.1 of the suit properties, there was an impression that it was meant for Private Charitable Trust and it was understood that income remaining after performance of the charities would be shared among the parties to the suit. Learned counsel would further submit that after the death of Aiyanna Chetty/husband of Chenchubai Ammal, defendants 7 & 8 were enjoying the suit property excluding other legal heirs. Learned counsel would further submit that they have filed a suit in O.S. No.6380/1988 seeking a declaration that the tenants had no right to renovate the building. The same was filed by them under the name and style of Kawali Lakshmi Narasimhulu Chetty. The above suit was dismissed by a judgment and decree dated 07.12.1990 as evident from Ex.P.2./judgment in O.S. No.6380 of 1988. In the above judgment, it was held that the plaintiffs failed to prove that it is a Charitable Trust.

7.1.Learned counsel further submitted that there was no appeal filed against the aforesaid judgment. Subsequently, defendants 7 and 8 have filed R.C.O.P. No.942 of 2004 before the X Judge, Small Causes Court, Chennai against the tenants and the same was also dismissed and the C.R.P. filed against the dismissal order, was also dismissed vide order dated 31.12.2003, confirming various grounds holding that the plaintiffs therein have not established the nature of the properties and therefore, he submitted that from the above judgment, it is clear that the suit properties are not Trust Properties.

7.2.Learned counsel for the plaintiffs would further submit that the tenants had not paying the rents, as could be seen from Ex.P.5./counter of R1 and R2 in R.C.O.P. No.942 of 2004. Admittedly, Item No.1 is a commercial property and no income whatsoever has been shared to other legal heirs and the plaintiffs, who are entitled to get share in the said property. Item Nos.2 & 3 are also the property of the said Chenchubai Ammal and therefore, the said legal heirs are entitled to get share in the said property. Learned counsel would further submit that the document relied upon by the defendants, particularly, the receipts to prove that they are Charity Services cannot be given any importance, as the same has been obtained at a later stage. That apart the receipts also relating to some other charity other than the one mentioned in the so called documents relied upon by the defendants. Hence, the learned counsel prays for decreeing the suit for partition as prayed for or in the alternative, frame proper scheme to administer the trust.

8.Learned counsel appearing for defendants submitted that there is no dispute with regard to the relationship of parties. According to the learned counsel, Item Nos.1 & 2 of the suit property are only meant for public charities and Item No.3 of the suit property, which was originally meant for its charity, is now not at all available and there is no scrap of paper whatsoever filed by the plaintiffs to prove the existence of the above property situated in Andhra Pradesh. Therefore, he would submit that the plaintiffs had no share whatsoever in the suit properties as the same are trust properties. Ex.D6 & D7 Will and Probate dated 18.03.1887 and 03.09.1926 respectively established the fact that the suit properties are nothing but the trust properties. The Charity Agreement dated 14.02.1940 entered into between the two daughters namely Poornavalli Thayaramma and Chenchu Bai Ammal, also proved that the property meant only to the public charities and the partition effected in the family in the year 1978 itself would show that the suit properties are earmarked for the public charities. Hence, he submitted that absolutely there is no basis whatsoever for claiming any share in the suit properties.

8.1.He would further submit that, in fact, there are earlier proceedings initiated against the tenants, from which, it may be seen that defendants 7 & 8 have taken all steps to protect the trust properties. The second plaintiff has colluded with the tenants from the beginning and therefore, the tenants taking advantage of the dispute between the family members, have taken a defence in various proceedings one way or other to non suit the defendants 7 and 8. Hence, it is submitted that earlier proceedings will not prove the title or nature of the properties and that the plaintiffs are not parties to the above proceedings. Therefore, merely an order passed in favour of the tenants, cannot be a reason to hold that the suit properties are separate properties of Chenchubai Ammal.

8.2.It is his further contention that the other legal heirs have no grievance whatsoever against the said defendants 7 and 8 in managing the property. Only the plaintiffs have filed this suit and that they have also filed another suit in C.S. No.746 of 2005 in respect of other properties and even they have also filed a similar suit in the year 1991. Learned counsel for the defendants would further submit that all these facts clearly establish that the suit has been filed only for grabbing the property and not for any other purpose and defendants 7 & 8 alone performing the charities as set out in the document. Hence, he prayed for dismissal of the suit.

Issues 1 to 7

9.In the light of the above submissions made, now this Court has to answer the issues. It is not disputed by either side that the suit properties are originally belonged to Kawali Lakshmi Narasimhulu Chetty and he had two wives and through his first wife, he had one daughter namely Poornavalli Thayaramma, who died issueless and through his second wife, he had another daughter namely Chenchubai Ammal, who had four daughters and two sons. Therefore, the properties are inherited by Chenchubai Ammal, who died on 24.03.1975, leaving behind her husband and four daughters and two sons. Now it is also not disputed that all the daughters are died. Therefore, legal heirs have also been impleaded. The main contention of the plaintiffs is that the 1^{st} item of property has been impressed with the character of private trust and therefore, the same was not included in the partition, took place in the family, whereas the 2^{nd} and 3^{rd} items of properties were purchased by Kavali Lakshmi Narasimhulu Chetty and they had not been included in the partition took place in the year 1978. Only after the suit filed by D7 & D8 against the tenants for declaration that they have no authority to carry out the repairs or demolition and the same was dismissed, the plaintiffs came to know that the properties are private properties. Therefore, it is the contention of the plaintiffs that they have $1/6^{th}$ share in the suit properties.

9.1.It is the contention of the defendants 7 and 8 that Item Nos.1 and 2 are meant for charities and they are maintaining the charity and Item No.3 is not available as the same has been sold long back.

9.2.In the light of the pleadings, documents and evidence adduced on the side of both sides, Ex.P.1/sale deed dated 27.07.1903 shows that Kavali Lakshmi Narasimhalu Chetty has purchased Item No.2 of the property. It is not disputed by either side that Poornavalli Thayaramma and Chenchubai Ammal are sisters. Poornavalli Thayaramma, born though the first wife and Chenchubai Ammal, born through the second wife, being the sisters, had entered into a Partition Agreement on 14.02.1940. On a perusal of the same reveals that they have inherited the property from their father Kawali Narasimhalu Chetty in the above partition. It is seen that the suit properties are not at all included and not partitioned. It is to be noted that prior to Ex.D2/Partition between the two daughters of Kawali Narasimhalu Chetty, they entered into an agreement on 09.02.1940 for partition of the property under Ex.D1, though the agreement for partition dated 09.02.1940 is not a registered one. But the fact remains that they have subsequently partitioned the properties on 14.02.1940 as seen under Ex.D.2.

9.3.The terms 11 and 12 which has been set out in Ex.D1/Original Agreement entered into between the parties, clearly show that Item No.1 of the suit properties have been allotted to meet out the expenses of Vasantha Utsavam at Thiruneermalai. The 2nd item of suit properties have been earmarked for the benefit of Vaishnavite and Brahmin Pilgrims. It is seen that Ex.D6/Will dated 18.03.1887 was originally executed by Kawali Lakshmi Narasimhalu Chetty. The recitals of the Will clearly indicate that the income from the 1st item of suit properties should be used for the daily expenses of Thadi Aaradhanai and 8 swamies or brahmins should be fed therewith daily and for the monthly expenses of Thirunakshatram and also annual utsavam for Tirumoorthi Alwar. Similarly, the recitals in the above Will of the year 1887, clearly indicate that the property itself has been purchased only for the purpose of charity and the legal heirs have no right whatsoever to alienate or gift etc. Ex.D7/Will dated 03.09.1926 has been probated by this Court in Original Petition No.80/1927. When carefully read the

1st item of properties, it is seen that the same was meant only for the purpose of charity. From the above documents and the agreement between the two daughters of Kawali Narasimhalu Chetty, marked as Ex.D1 clearly prove that the properties are only meant for charitable purpose.

9.4.In this regard, P.W.1 in his cross examination, has admitted that he has gone through the Will and Agreement entered into between the daughters Poornavalli Thayarammal and Chenchubai Ammal. Further he was also aware of the partition took place in the family in the year 1978 in respect of other properties, from which, it is evident that there is no mention with regard to the 3rd item of the suit property. According to the evidence of P.W.1, he has visited the 3rd item of the suit property in the year 1981 or 1982. Further his evidence also indicates that he has contact with the tenants in the 1st item of property for the past 20 – 25 years and the same would also show that he came to know about the character of the property only after the suit, filed by the defendants 7 and 8 against the tenants. He also admitted in the cross examination that 2nd item of property is meant for Pilgrims and there is no income derived from the said property. Further it is also admitted that he has also participated in the utsavam conducted on behalf of the charities.

9.5.All these evidence, coupled with the documents, discussed above clearly prove that these properties are not individual properties and the same have been left for the charities. Ex.P.3/Legal Notice issued by the plaintiffs dated 15.03.1995 clearly established the fact that they are aware of the sale of the 3rd Item of the property long back. It is alleged in the above legal notice that the above properties were sold. No evidence whatsoever has been addressed by the plaintiffs that the 3rd item is still available for any service, whereas Ex.D.1/Agreement of the year 1940 clearly shows that the property should be handed over to the Trustees of the Temple. Even P.W.1 in his evidence admitted the fact that in the year 1981 when he visited the property at Andhra Pradesh, he saw only the Pilgrims in the Temple. Therefore, it can be concluded that the above property is not available for partition. Similarly, Item No.1 of the suit property is attached with charity relating to the feeding of the swamigal and utsavam etc. These are all in the public nature. Therefore, the trust are only meant for doing charities for public in general not for any private individual. Therefore, merely because the suit properties were not included in the partition deed/Ex.D2, it cannot be concluded that the above partition is only a partial one. The only presumption arise is that the above suit properties were not included in Ex.D2/partition deed entered between the parties, since the above properties were already earmarked for public charities.

9.6.It is the contention of the plaintiffs that in view of the earlier proceedings, the property can be treated only as a private property. It is to be noted that the earlier proceedings relied upon by the plaintiffs, are not between the parties to the suit. In fact, defendants 7 & 8 filed a suit for declaration against the tenants that they are not entitled to make any alteration or demolition or re-construction in the building. While perusing Ex.P.2/certified copy of the judgment, it is seen that the suit has been filed in the name of the Trust against the tenants. Learned 2nd Assistant Judge vide his judgment dated 07.12.1990, has held that since the plaintiffs have not filed a Trust Deed, the contention of the plaintiffs that they are the Trustees cannot be accepted. It is noted that there is no issue with regard to the rights of the parties. The issue in the above suit is not a directly and substantially issue between the same parties. Merely because some suits filed by defendants 7 and 8 against the tenants were dismissed on the ground that Trust Deed was not produced, it cannot be construed that the properties are individual properties.

9.7.It is seen that Ex.P.4 is a copy of the petition in R.C.O.P. No.942 of 2004, filed against the tenants, Ex.P.6 is a counter filed by one of the tenants and Ex.P.7 is a petition filed by the tenants to dismiss the said R.C.O.P., which has been allowed on the ground that the the petition filed by the respondents therein as Trustees of the said Charity, is not maintainable. Of course, a petition filed under Section 4 was also dismissed by the Rent Controller against which a Civil Revision Petition has also been filed. In the above C.R.P., this Court while dismissing the same, has held that since the Civil Court has held that they are not Trustees, the petition filed in the capacity of the charities is not maintainable.

9.8.As discussed above, there was no issue, which was directly or substantially in issue between the same properties in the above proceedings. Thus, the said orders were not binding on defendants 7 & 8. Similarly, those proceedings had no stretch of imagination, would amount to decide the rights of the parties in this lis. Therefore, the contention of the learned counsel for the plaintiffs that the nature of the property has already been decided in the earlier proceedings, cannot be accepted. As already discussed above, the nature of the properties set out in the documents are charity, which is public in nature. Even though all the legal heirs are entitled to participate in the trust affairs, they have to file a separate suit for framing the scheme after obtaining the necessary sanction under Section 92 of Civil Procedure Code. On a careful perusal of the entire pleading of plaint, it is seen that though the entire allegations pertain to character of properties, no particular was given as to nature of income from the properties, except claiming rendition of accounts.

10.Therefore, this Court is of the view that the present suit is not maintainable either for partition or for framing the suit or rendition of accounts. It is to be noted that as already discussed, taking advantage of the dispute between the family members and the affairs of the Trust, the tenants have taken various pleas and squat on the properties and even not paying the rent regularly. Therefore, this Court is of the view that for proper administration of the Trust and recovery of the property from the tenants, proper scheme would be necessary. Though it is stated in the plaint that leave was obtained in the year 1995 in Application No.5230 of 1995, dated 9.10.1995, in the amended plaint, it is mentioned as if leave was obtained on 9.10.1997.

On a perusal of the case records, it could be seen that no application obtaining leave under Section 92 of Civil Procedure Code is available in the case bundle. Whereas, the endorsement made by the Registry on 12.5.1997, while returning the plaint shows that no leave under Section 92 of Civil Procedure Code was obtained at the relevant time. When the above queries were complied by the plaintiffs while re-presenting the plaint, a specific endorsement was made by the plaintiffs to the effect that Section 92 had been mistakenly stated. The charity in question is a private charity and only Indian Trust Act would apply for which no application for Leave is necessary. Further, in the same endorsement, plaintiffs have made endorsement as follows:-

> "As stated in compliance to Return No.3, Section 92 would not be attracted and hence strike out"

Above endorsement were made in the year 1998 and the same would clearly show that Leave under Section 92 of Civil Procedure Code was not obtained by the plaintiffs. Exs.D1, D6 and D7/recitals clearly show that properties are meant for public charities and the beneficiaries are not specific individuals but general public. 1st item of the property was earmarked for feeding the Brahmins every day besides various charities. Similarly, 2nd item of the property was also meant to use of pilgrims belong to Brahmins and Vaishnavites. P.W.1 has admitted that the 3rd item of property was already used by pilgrims. Therefore, the Court hold that even all the legal heirs of Chenchubai Ammal are entitled to become trustees, the defendants 7 and 8 are alone not entitled to manage the properties. This Court is of the view that since the charities are public in nature, comprehensive scheme is required to be framed by the Court for proper administration of trust properties. As already held, tenants are enjoying the properties without paying rent and paying property tax alone in respect of 1st item of property. All the proceedings initiated by defendants 7 and 8 to fix the fair rent also failed in view of the earlier proceedings initiated by the defendants 7 and 8. Therefore, this Court is of the view that the present suit for partition is not maintainable. Similarly, alternative relief for framing scheme also is not possible in the suit, as the suit properties are public trust and no Leave whatsoever obtained under Section 92 of C.P.C. Accordingly, all issues are answered.

11.In the result, the suit is dismissed with a liberty to the plaintiffs to file a fresh suit after obtaining Leave under Section 92 of Civil Procedure Code for framing scheme for effective administration of trust properties. No costs. Consequently, connected C.M.P. is closed.

15.12.2016

Index : Yes / No
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N.SATHISH KUMAR, J.

vga

pre-delivery judgment in
C.S. No.482 of 2000

15.12.2016