

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2016

Coram

The Hon'ble Mr.Justice M.DURAIWAMY

CRP(NPD)Nos.3891 and 3892 of 2015

1. K.E.Jayaraman

2. E.P.Parthasarathy

...Petitioners in both the petitions

Vs

R.Balakrishnan

Managing Trustee

Sri Vijayaraghavalu Chetty Trust

& Smt Narasamma Estate

Old No.12, Elayalwar Koil Street,

Saidapet, Chennai 600 015

... Respondent in both the petitions

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order dated 03.08.2015 made in I.A.Nos.82 and 83 of 2014 respectively in O.S.No.2478 of 2011 on the file of XVI Additional Judge, City Civil Court, Chennai, Chennai District.

For Petitioners : Mr.S.Senthilnathan

For Respondent : Mr.V.B.Thirupathi Kumar

COMMON ORDER

Challenging the fair and final orders passed in I.A.Nos.82 and 83 of 2014 in O.S.No.2478 of 2011 on the file of the XVI Additional Judge, City Civil Court, Chennai, the plaintiffs have filed the above Civil Revision

Petitions.

2. The plaintiffs filed the suit in O.S.No.2478 of 2011 for the following reliefs:-

“ 14. The plaintiffs pray that this Hon'ble Court may be pleased to pass a judgment and decree:-

i) declaring that the defendant is not entitled to hold the office of Managing Trustee or Trustee of Sri Vijaya Raghavalu Chetty Trust and Smt. Narasamma Estate, Saidapet, Chennai 600 015.

(ii) Permanent injunction restraining the defendant, their men, agents and anybody claiming under or through him from selling, mortgaging, encumbering or otherwise alienating the properties belonging to Sri Vijaya Raghavalu Chetty Trust and Smt.Narasamma Estate, Saidapet, Chennai 600 015 described in the schedule A & B of the plaint.

(iii) Mandatory injunction for appointment of receiver to manage the A and B schedule mentioned properties till the election of the trustees of Sri Vijayaraghavalu Chetty and Smt.Narasamma Estate

(iv) directing the defendants to pay the cost of the suit.

(v) grant such further or other reliefs in the

interest of justice”.

3. The suit was originally filed before this Court and subsequently the same was transferred to the file of the City Civil Court and re-numbered as O.S.No.2478 of 2011. Since the plaintiffs have failed to appear before the trial Court, the suit was dismissed for default. Thereafter, the plaintiffs filed an application in I.A.No.82 of 2014 to condone the delay of 935 days in filing the application to restore the suit. The plaintiffs have also filed an application in I.A.No.83 of 2014 under Order 9 Rule 9 of the Code of Civil Procedure to restore the suit to file.

4. In the affidavits filed in support of the applications, the plaintiffs have stated that when the suit was transferred from the file of this Court to the file of the City Civil Court, no notice was sent to them and therefore, they could not know the pendency of the suit before the City Civil Court. Since no notice was received by the plaintiffs, they could not appear before the trial Court. Hence, they were called absent and the suit was dismissed for default. The trial Court, taking into consideration the case of both parties dismissed the application and refused to condone the delay and also refused to restore the suit to file.

5. When the matters are taken up for hearing, the learned counsel appearing for the respondent/defendant submitted that the defendant viz., R.Balakrishnan, Managing Trustee of the Trust had resigned from the Managing Trusteeship on 24.01.2013. After receiving the resignation letter dated 24.01.2013, the Board of Trustees of the Defendant Trust convened a Board Meeting on 25.01.2013 and the defendant's resignation was accepted and he was relieved from the said post. Further, in the counter filed by the defendant before the trial Court, he has stated that one S.Manohar was elected as the Managing Trustee of the said Trust.

6. Since the 1st relief sought for in the suit is to declare that the defendant is not entitled to hold the office of the Managing Trustee or the Trustee of the Defendant Trust, in view of the resignation of the defendant, the relief sought for in the suit has become infructuous. The other reliefs sought for in the suit are consequential and therefore, I am of the considered view that nothing survives for adjudication in the suit in O.S.No.2478 of 2011. Even in the case of the Civil Revision Petitions being allowed in favour of the plaintiffs, since nothing survives for adjudication in the suit, I do not find any reason to entertain the present

Civil Revision Petitions. In these circumstances, the Civil Revision Petitions are liable to be rejected and accordingly, the same are dismissed. No costs. It is open to the plaintiffs to file a separate suit in the event of any new cause of action arise in future.

11.08.2016

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To
The Registrar
City Civil Court,
Chennai.

M.DURAISWAMY,J

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