



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (NPD) (MD) No.352 of 2014

and

M.P. (MD) Nos.3 and 4 of 2014

Tirunelveli Diocesan Trust Association,
No.5, Punithavathiar Street,
Palayamkottai,
Tirunelveli - 627 002.
Through its Secretary and Treasurer,
A.Devadoss, S/o.Arputham

... Petitioner

vs

1.Ashok
S/o.Gunapaul

2.Gnanadoss
S/o.Ayyadurai

3.Rt.Rev.Jeyapaul David
S/o.Swamidasan

4.Selwyn Jeyaraj
S/o.Jacob

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned Principal Sub Judge, Tirunelveli, passed in I.A.No.668 of 2013 in O.S.No.25 of 2009 on 12.02.2014.

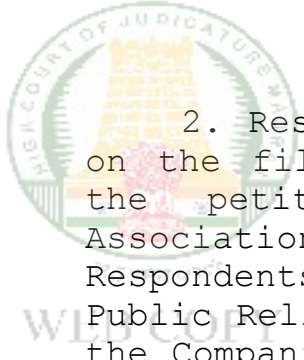
For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent R1 : Ms.Lita Srinivasan

For Respondent R2 : Mr.H.Arumugam

O R D E R

This revision arises against the order of learned Principal Sub Judge, Tirunelveli, passed in I.A.No.668 of 2013 in O.S.No.25 of 2009 on 12.02.2014.



2. Respondents 1 and 2/plaintiffs preferred O.S.No.25 of 2009 on the file of learned Principal Sub Judge, Tirunelveli, against the petitioner/first defendant, Tirunelveli Diocesan Trust Association and respondents 3 and 4/defendants 2 and 3. Respondents 1 and 2/plaintiffs informed that the petitioner is a Public Religious and Charitable Trust Association registered under the Companies Act and that they and others were the beneficiaries. Informing mismanagement and wrong doings in relation to properties and monies of the petitioner association and complaining of acts of breach of trust, respondents 1 and 2/plaintiffs primarily sought settlement of a scheme for the administration of the petitioner association. They also sought removal of defendants 2 and 3 from the trusteeship of the petitioner association and directions for accounts. Respondents 1 and 2/plaintiffs have sought permission to file suit in keeping with Section 92 CPC. Petitioner and respondents 3 and 4 moved I.A.No.668 of 2013 praying for rejection of the plaint. Respondents 1 and 2/plaintiffs have filed a counter. After hearing both sides, the Court below (Principal Subordinate Judge, Tirunelveli), has dismissed the application under order dated 12.02.2014, giving rise to this revision.

3. Court below in negating the contention that second defendant had retired on 10.08.2009 and that the tenure of third defendant has expired during March 2013, hence, they ceased to hold the office attributed to them and thus the prayer for their removal from the trusteeship had become infructuous, observed that the third defendant had been impleaded also in his personal capacity and as such it could not be contended that the suit has become infructuous as against him. Court below also took note of the position that the suit had not been filed merely for removal of defendants 2 and 3 from the trusteeship of petitioner/first defendant association but that the same also sought the settlement of a scheme for administration of petitioner/first defendant association and also sought accounts. In answering the submission of petitioner that already a scheme for management was in existence from 1919 (the scheme referred to being the constitution of the Diocesan of Tirunelveli informed to be in existence from 1919. The Tirunelveli Diocesan Trust Association having been registered as a company under the Companies Act, 1913, one of the principal objects being to aid and further the work of the Church of South India in the Diocesan of Tirunelveli), that the plaint did not disclose any grievance against the said scheme and therefore, the question of framing a new scheme did not arise, Court below observed that the question of whether the alleged scheme is functioning properly or not, whether respondents 1 and 2/plaintiffs have no grievance against the same could be decided only after a full trial and the plaint could not be rejected in view of the prayer for settlement of scheme for administration of petitioner/first defendant association. It took note of the

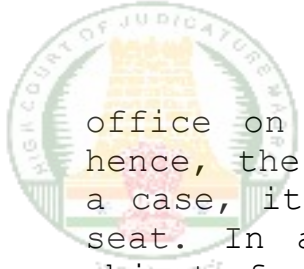


decision of the Apex Court in ***D.Ramachandran v. R.V.Janakiraman and others*** [AIR 1999 SC 1128], against partial rejection of the plaint.

4. Heard learned counsel for petitioner and learned counsel for respondents.

5. Learned counsel for petitioner submitted that the petitioner/first defendant is not a trust, defendants 2 and 3 were not trustees and in any event had left their posts in 2009 and 2013 respectively and hence, the cause of action no longer survived. The further contention was that the petitioner/first defendant admittedly was a company incorporated under the Companies Act and hence, was governed by such Act and its own Memorandum and Articles of Association. No scheme could be framed for administration of an incorporated company. Section 241 of the Companies Act, 2013 permits any member to approach the constituted Tribunal for any mismanagement or oppression and Section 245 thereof permits a class action against the company in respect of mismanagement and as also for other reasons, before such body. Section 340 of the Companies Act, 2013 barred the jurisdiction of a civil Court in view of the specific constitution of the Tribunal under the Act. Learned counsel also contended that respondents 1 and 2/plaintiffs, at no point of time, demanded accounts nor had the same been denied to them. As an incorporated company, the petitioner/first defendant has to file audited accounts every year with the Registrar of Companies. The same is a public document which anybody could access. The financial statement of petitioner/first defendant is available in printed form in the Diocesan office and anybody could inspect the same. The final submission of learned counsel for petitioner was that the suit was improperly framed. Learned counsel contended that as per paragraph No.3 of the plaint, petitioner/first defendant is the trustee of the Diocesan of Tirunelveli which was an unregistered body governed by a self contained and exhaustive scheme of management which covered its entire administration and election. The same is found in its constitution and the scheme is in existence for over 200 years. Respondents 1 and 2/plaintiffs had not pleaded that the constitution had become redundant, unworkable or was defective.

6. This Court would first put aside the contention regards the suit having become infructuous owing to the retirement of defendants 2 and 3. Generally, the question of maintainability of the suit is to be determined as on the date thereof. By subsequent turn of events, one or the other party, may inform a relief sought to be infructuous. On such position being admitted that would be the end of the matter insofar as such issue is concerned. If, on the other hand, one of the parties contends that the turn of events has not rendered a prayer infructuous, the matter can only be tried at the trial. It is now common place that many an incumbent holds on to his seat despite expiry of his term of



office on the ground that elections due have not been held and hence, the seat would fall vacant if he vacates the same. In many a case, it takes an order of Court to pry such persons from their seat. In any event, a plaint cannot be rejected piecemeal. The object for which the petitioner association has been formed is stated thus:

"3 (a) To acquire by all lawful means real and personal property and to apply both capital and income thereof and the proceeds of the sale or mortgage thereof for or towards all or any of the objects hereinafter specified.

(b) To aid and further the work of the Church of South India in the Diocese of Tirunelveli at present consisting of the District of Tirunelveli (hereinafter called the Diocese).

(c) To acquire sites for building, altering or enlarging and to build, alter or enlarge and to maintain and endow churches, chapels, churchyards, burial grounds, schools, colleges, hostels, boarding houses, hospitals, dispensaries, mission halls, prayer houses, parish rooms, residences for clergy, school-masters and school-mistresses, refuges, homes and other buildings to be used in connection with the work of the said church within the said Diocese."

Clauses 5 and 6 of the Memorandum and Articles of Association read as follows:

"5. The income and property of the association when so ever derived shall be applied solely towards the promotion of the objects and purposes of the Association as set forth in this memorandum and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever by way of profit to the members of the Association provided that nothing herein contained shall prevent the payment in good faith of out-of-pocket expenses or of remunerations to any officers or servants of the Association or to any members thereof or other person in return for services rendered to the Association or to any of the objects for which the Association is established.

Provided further that no member of the committee of management of the Association shall be appointed to any salaried office of the Association or to any office of the Association paid by fees, and that no remuneration shall be given by the Association to any member of such committee of management except ~~the payment of out-of-pocket expenses and interest on money lent or rent for premises demised to the Association.~~



6. The fifth paragraph of this memorandum is a condition on which a license is granted by the Government to the Association in pursuance of Section 26 of the Indian Companies Act, 1913.

The liability of the members is limited."

7. This Court may straightaway refer to decision of this Court in **M.Gomathinarayagam Pillai and others v. Sri Manthramurthi High School Committee, Tirunelveli and others [AIR 1963 Madras 387]**, wherein it has been held thus:

"(8) In Halsbury's Laws of England, 3rd Edn. Vol. IV at page 394, dealing with this subject the learned author states,

"The charitable corporations exists solely for the accomplishment of charitable purposes, they are necessarily trustees of their corporate property whether the beneficiaries are members of the corporation as in the case of hospitals and colleges. Accordingly like other trustees, charitable or otherwise they are subject to the jurisdiction of the court Though called directors and empowered to make and amend by laws for the corporation, apart from any provisions in the constitution of the corporation they have no right to remuneration and cannot amend the bye-laws The court has no jurisdiction over the application of administration of the corporate property of ecclesiastical or civil corporations to which as is frequently the case no trust is attached. But where property is held by a corporation as a trustee if the corporation holds it clothed with public duties, the court has always asserted its rights to interfere".

(9) The rule referred to in Stewart's Kyd's "Law of Corporations" to which we have made reference earlier, proceeds upon the principle that where there is a charter with proper powers, there is no ground to come to the court to establish the charity as it must be left to be regulated in the manner in which the charter has directed.

(10) In the present case there is no question of any charter by the administration of the charity and the rule as to exclusion of jurisdiction of this court would not obviously apply. There is no distinction in this country between an eleemosynary and lay corporations. Whenever there is a public, charitable or religious trust, the jurisdiction of the court could be invoked under S.92 of the

(10A) For the application of that section it



makes no difference whether the trustees is an individual or a company, nor is there any distinction between a company in whom the office of trustee vests and one which is specially formed for the purpose of executing the trust.

(11) If an association is registered under S.25 of the Indian Companies Act the members of it and they alone will have power to apply to the company court for reliefs in case there is mis-management. But in a case where the beneficiaries of a trust want to complaint that there has been a breach of the trust or that a direction of the court is necessary, they can file as suit under S.92 of the C.P.Code for any of the reliefs mentioned therein. The provisions of the Companies Act have no application to such a case. We are, therefore, of the opinion that the lower court was in error in declining to entertain the suit. The appeal is allowed and the lower court is directed to restore the suit to its file and dispose of the other issues in the case in accordance with law. The respondent will pay the costs of the appellant."

8. Section 26 of the Companies Act, 1913, corresponds to Section 25 of the Act of 1956 and Section 8 of the Companies Act, 2013. This Court has perused the provisions in the Companies Act, 2013, vis-a-vis, the power of the Tribunal/Appellate Tribunal and had found nothing that militates against the application of the rule enunciated in the decision referred to.

The Civil Revision Petition shall stand dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

gm

To

The Principal Sub Judge,
Tirunelveli.

+1cc to Mr.P.Santhosh Kumar,Advocate Sr.No._63391

JAM/14.11.16/GSV-PM/ 6p-3c