

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 25TH DAY OF APRIL 2018

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.P.D.No.100 of 2017

1.A.J.Yuvaraj Reddy

S/o A.Jayachanda Reddy,

12A/1/1st Cross,

1st Main Road,

Natesa Nagar,

Virugambakkam,

Chennai 600 092

..Petitioner

Vs.

1.A.Sankarnarayan,

S/o Ananthasayanam,

3 & 4, Thadikaraswami Koil Street,

(Stolen from trust)

Alandur, Chennai 600 016

2.ATP.Venkatachalapathy,

S/o Deenadayalu Reddy,

9/5 & 29/13 Thadikaraswamy Koil Street,

(Stolen from trust)

Alandur, Chennai 600 016

..Respondents

Original Petition praying that this Hon'ble Court may be pleased to correct the error MANIFEST miscarriage of justice in setting up title to trust property for himself, benamy holdings in collusion with trustee, trust fund and properties were swindled the cestui que trust can assert a lien over the entire property and pass orders to award the remedy as HALLET'S CASE for valuable remedy it gave CESTUI QUE TRUST to claim charge on mixed assets, trustees must

make good the loss, answerable for maladministration, fails to produce account for it when lawfully demanded by the CESTUI QUE TRUST or ordered by the court as distinction between a right IN PERSONAM and a right in rem is index to the necessary limits of the Doctrine of tracing for while an obligation IN PERSONAM was created by the transaction no right in rem arose enforceable by tracing orders hence to protect and recover trust property as trust in FINANCIAL WATERLOO.

This Original Petition coming on this day before this court for hearing the court made the following order:

The Registry had put up this OPD.NO.100 of 2017 for maintainability.

2. The OP has been filed in CS.No.247 of 1962, by A.Yuvaraj Reddy, against A.Sankarnarayan and ATP.Venkatachalapathy. The provision of law has not been given. The heading in the Original Petition indicates that it is a petition praying to get the expenses incurred by the Petitioner Trustee to be indemnified by two Trustees.

3. According to the Petitioner, he had initiated the above proceedings in the provision of CESTUI QUE. He has stated that he has filed an execution petition, but this Original Petition has been filed to indemnify the expenses incurred by him. It has been stated that Subba Reddy Charities is a Public Trust created for the benefit of the family of the Trust. According to him, the Respondents, who were the Managing Trustees never deposited the sale proceeds of 35 plots into the Bank. They also did not deposit the sale proceeds of 60 grounds in S.No.87/A and 26 plots in S.No.87/B. It has been further stated that the Petitioner has a remedy to claim

a charge on the assets and to direct the Respondents to sponsor for the loss caused by recovery of the Trust property.

4. The Registry had returned OPD.No.100 of 2017, raising the following grounds:-

1. Cestui Que Trust is defined as the beneficial of the Trust. Section 15 of the Trust Act states that a Trustee can be permitted to invest the money in a beneficial manner, viz. Cestui Que Trust. Based on this how this petition is maintainable in this Hon'ble Court.

2. Original Petition can be filed before this Court for only grant of permission to sell the Trust property. When this petition is not for such purpose, how this petition is maintainable in this Honourable Court?

3. When already a suit has been filed for the said Trust, how the OP filed above CS.No.247 of 1962 is maintainable in this Honourable Court?

5. The Petitioner had re-presented the same and had given an elaborate explanation. He had stated that the Petition was filed based on Indian Trust Act and that the principle Cestui Que is a new issue, which has come up for consideration in this Court for the first time. It is stated that it relates to doctrine of tracing. The guiding principle is that a Trustee cannot assert a title of his own to trust property. Where there is property in the hands of a trustee into which it can be shown that the trust fund/ property has gone, the CESTUI Que can assert a lien over the entire property.

6. According to the Petitioner, the Doctrine has two components, namely if a trustee, in breach, has converted the funds/ property into some other form and had gained in some other form, then any gain accrues to the trust and loss falls on the trustees. The other aspect is that if a trust mixed the trust funds with other funds/ property, then they would have to be determined.

7. This is an unfortunate case where the party-in-person has been agitating on his own. The papers presented are not in the manner expected in a judicial proceedings. The Petitioner has impressed his needs in his own words and insisted to seek legal justice in his own words.

8. It is also to be mentioned that he has filed an execution petition earlier and this Court had permitted to number the same with a direction that merits can be examined thereafter. The powers of this Court should not be showed to a litigant who knocks at it on the rigid grounds of procedure. The procedure laid down is only to enable justice to be advanced. The Court should take an extra step to see that a litigant, who gropes in the dark is shown the right path. With this objective in mind, I would direct the Registry to number the OP if it is otherwise in order subject to the maintainability or legality of the issues raised being decided thereafter when notice is issued to the Respondent. This Court might also explore the possibility of advising the Petitioner to take assistance of a Legal Aid Counsel.

9. Accordingly, the Registry is directed to number the OPD if it is otherwise in order and issues would be answered after notice is issued to the Respondent.

sd/- C.V.K.J

25.04.2018

//Certified to be a true copy//

Dated this the day of MAY 2018.

TR/8.5.2018

COURT OFFICER(OS)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.