

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.03.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.395 of 2017
and
C.M.P.No.1758 of 2017

1. Ottakoothar Charitable Trust
rep.by V.S.Pushparaj
Managing Trustee
Erode-9.

2. V.S.Pushparaj

.. Petitioners

vs

1. V.Deivasigamani
2. T.Dhanasekaran
3. V.Srinivasan
4. M.B.Mohan
5. V.Ramkumar
6. J.Kasi Viswanathan
7. P.C.Balusamy
8. V.Annadurai
9. K.Manoharan
10.K.Balakrishnan
11.A.Nallasivam

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 18.11.2016 passed by the learned Principal District Judge, Erode in I.A.No.116 of 2016 in CFR No.7953 of 2015.

For Petitioners : Mr.T.Murugamanickam

For Respondents : Mr.A.S.Baalaji

ORDER

The defendants 1 and 2, who are aggrieved by the order passed by the court below in granting leave to the respondents/plaintiff to file a suit against the Public Trust, has filed the above revision.

2. The facts of the case would run thus:

(i) The case of the respondents/plaintiffs is that the petitioner/first defendant Trust is a Public Charitable Trust constituted by 15 persons vide Trust Deed dated 06.03.1991 registered as Document No.121 of 1991 on the file of the Sub Registrar Office, Erode. The salient object of the Trust are to establish, maintain, run, develop, improve, extend, grant donations for and to aid and assist the establishment, maintenance, running, development, improvement and extension of Elementary Schools, Secondary Schools, High Schools, Poly

Technic, Industrial Training Institutes, Colleges, Universities etc. According to the plaintiffs, out of the Trust funds, a school was established in the year 1991 and properties were also purchased for building additional blocks for the schools. Accordingly, two additional blocks were constructed and the school is functioning. While so, the defendants 2 and 7, in connivance with the other defendants have misappropriated the donations and tuition fees and apart from that they have also established a Private Trust known as "Shanmugam Sasikala Educational Trust", which is against the object of the first defendant-Public Trust. Therefore the plaintiffs have filed an application under Section 92(1) of the Code of Civil Procedure seeking leave of the Court to sue against the Public Trust.

(ii) The said application was resisted by the petitioners/defendants by contending that the suit itself is not maintainable under Section 92 of the Code of Civil Procedure. According to the defendants, earlier the seventh defendant filed a suit against the second defendant seeking bare injunction; however, when the second defendant was about to expose the

wrong deeds of the seventh defendant and the plaintiffs before the Court, he had withdrawn the said suit as settled out of court. Now due to the interse dispute, the plaintiff has filed the present suit by seeking leave.

(iii) The Court below, after hearing both sides, had granted leave to the plaintiffs to file a suit against the defendants, in the interest of the general public and to safeguard the Public Trust.

(iv) Challenging the said order, the present revision is filed.

3. Heard both sides.

4. At the outset itself, I would like to refer to the following judgments of this Court, (i) **1998(II) CTC 65 [G.R.Govindarajulu and Sons Charities, Coimbatore and two others vs. R.Sethurao and 12 others]** and (ii) **(2009) 4 MLJ 251 [Anikadavu Madamanai Lathekarar Kulam Sri Venkatesa Perumal Thirukovil Arakkattalai rep.by its President R.Venkudusamy and others]**, wherein it has been

clearly held that the order granting leave to institute a suit against a Public Trust under Section 92 of the Code of Civil Procedure is administrative in nature and therefore, no revision would lie under Article 227 of the Constitution of India. The relevant portion of the said judgments would run thus:

(i) 1998(II) CTC 65 [G.R.Govindarajulu and Sons Charities, Coimbatore and two others vs. R.Sethurao and 12 others]. The relevant portions are as under:

"10. I heard the counsel in detail and I feel that this Court as well as the Supreme Court have come to a definite conclusion that a revision is not maintainable either under Section 115 of the Code of Civil Procedure or under Article 227 of the Constitution of India, against the order of granting leave.

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17. Considering this case law, it cannot be doubted that this revision is not maintainable. The petitioner submitted that they have already filed an objection before

Court and contested the application that the same should not be granted. Learned counsel apprehended that if there is already an order against them, it would prevent them from filing an application for revoking the leave.

18. I do not think that such a submission is in any way correct. Learned Senior Counsel for the petitioner is invoking the principle of res judicata in the case. Once it is declared by the Supreme Court as well as by this Court that the order is administrative in character and same does not affect the rights of the parties, nor there is prejudice to the proposed defendant, there is no scope for application of res judicata in such cases. If any specific decision is required in that regard I would only refer to the decision in Simon vs. Advocate General, `1975 KLT 78, corresponding to AIR 1975 Kerala 38, which is followed in Kanna Aditya's case, 1996(2) LW 364.

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20. Learned counsel for the petitioner submitted that if there is not application of mind, remedy is open under Article 227 of the Constitution. In my view, if that principle is applied to the applications for a leave to institute a suit, I feel that the non-application of mind will be a ground to invoke Article 226 of the Constitution only if the leave to institute the suit is refused. Now, it is governed by Section 104 of the Code of Civil Procedure whether such order are made appealable.

21. *Learned counsel further submitted that, that it is the duty of the Court to see that a public trust is not harassed and the serving attitude of the trust is brought to a standstill by filing a suit. It is the duty of the Court to prevent the abuse of the process of Courts.*

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24. *I do not think that I should take into consideration any of these contentions at this stage, in view of my finding that the revision is not maintainable. Even in the cases invoking Section 151 of the Code of Civil Procedure to prevent the abuse of process of Court, I feel that the Court which exercises judicial function can do it. The inherent power is given to the Court to make such orders as may be necessary so as to meet the ends of justice or to prevent abuse of the process of the Court. "*

(ii) (2009) 4 MLJ 251 [Anikadavu Madamanai Lathekarar Kulam Sri Venkatesa Perumal Thirukovil Arakkattalai rep.by its President R.Venkudusamy and others]

"12. *It is true that the Hon'ble Supreme Court, in Vidyodaya Trust vs. Mohan Prasad R and others (supra) held that Courts have to be careful to eliminate the possibility of a suit being filed against a Public Trust under Section 92 by persons whose activities were not for the*

protection of the interest of the public Trust. But, this decision is not an authority to hold that a revision is maintainable under Article 227 of the Constitution of India against an order of the Court granting leave to institute a suit under Section 92 of CPC. In the light of the categorical pronouncement of this Court in G.R.Govindarajulu and Sons Charities, Coimbatore and two others vs. R.Sethurao and 12 others (supra) that no revision could be maintained under Article 227 of the Constitution of India against an order granting leave to institute suit against Public Trust under Section 92 of CPC, I have no hesitation to hold that the present civil revision petition filed by the petitioners is not maintainable and it is always open to them to approach the trial Court itself by filing necessary application for revoking the leave on the basis of acceptable documents and materials."

5. Keeping the aforesaid principles in mind, if the case on hand is analysed, it is seen that the Court below has granted leave to the plaintiffs to file a suit as against the defendant-Public Trust, which in the opinion of this Court, is not erroneous. Inasmuch as granting leave is only administrative in nature and that it will not affect the rights of the parties, as the matter has not been finally decided, this Court is not inclined to interfere with the order passed by the Court below. The Court below also,

while granting leave to the plaintiffs to file a suit, has specifically stated that leave has been granted only in the interest of the general public and to safeguard the Public Trust. If at all, the petitioners/defendants are aggrieved by the order granting leave, it is open to them to file an application seeking revocation of leave and that they cannot straightaway file a revision before this Court under Article 227 of the Constitution of India.

6. For the foregoing reasons, I do not find any reason to interfere with the order passed by the Court below. Accordingly, this Civil Revision Petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

21.03.2017

vj2

Index: yes/No

Internet: yes

To

The Principal District Judge, Erode

PUSHPA SATHYANARAYANA,J.,

vj2

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