

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.Nos.315 & 316 of 2017
and C.M.P.Nos.19742 & 19743 of 2017

- 1.Sri Vupputur Alwar Chetty's Charities
Represented by its Secretary
Thatha Sampath Kumar
Son of Thatha Alwar Chetty
183, Govindappa Naicken Street,
Chennai - 600 001.
- 2.Thatha Sampath Kumar
- 3.C.Vivekananda
- 4.A.Balasubramaniyam Appellants in both
O.S.As'
- Vs.
- 1.Vupputur Ramesh
- 2.Vupputur Swaroop
- 3.Vupputur Sethuram
- 4.M.Mohamed Kasim
- 5.M.B.Khalilur Rehman
- 6.M.S.City Property Consultants
Represented by its Partner
M.B.Kahlilur Rahman ... Respondents in both
O.S.As'

PRAYER:Appeals filed under Order XXXVI Rule I of the O.S.Rules
r/w Clause 15 of the Amended Letters Patent, 1865, against the
order dated 14.09.2017 made in O.A.No.663 of 2015 in C.S.No.520
of 2015 & A.No.4204 of 2015 respectively.

Prayer in O.A.No.663 of 2015:

Original Application praying that this Hon'ble court be pleased to grant an order of interim injunction restraining the respondents/defendants 2, 5 and 6 from interfering with applicant's/plaintiff's right as a life trustee in holding office of the first respondent/first defendant trust.

Prayer in A. No.4204 of 2015

Application praying that this Hon'ble court be pleased to permit applicant to file the suit for the relieves of

1. by way of declaration, in declaring the election conducted on 13.05.2015 in the first respondent/first defendant trust by the respondents/defendants 2, 5 and 6 for the application/plaintiff's trusteeship in the first respondent/first defendant trust and in consequence thereof passing of the resolution dated 13.03.2015 passed by the respondent/defendants 2,5 & 6 in the first respondent/first defendant trust that the applicant/plaintiff was not elected as trustee for further period in the first respondent/first defendant trust is illegal, void ab-initio and as such the same is not binding on the applicant/plaintiff;

2. by way of permanent injunction restraining the respondents/defendants 2, 5 and 6 from interfering with the applicant/plaintiff's right to attend the office of the first respondent/first defendant trust as life trustee of the first respondent/first defendant trust.

By omitting to seek (1)the relieves of removal of the respondents/defendants 2, 5 & 6 as trustees from the first respondent/first defendant trust, (2)for the recovery of the possession of the schedule-C property from the respondents/defendants 7 to 9 and other relieves that the cause of actions in this suit discloses and permit me to seek the same at later state.

For Appellants : Mr.V.Lakshmi Narayanan
(In both O.S.As') for Mr.N.Srinivasalu

For Respondents : Mr.R.Krishnamoorthy, S.C.
(In both O.S.As') for R.Balachandar for R1

: Mr.A.L.Somayaji, S.C. for
M/s.I.Abrar Md Abdullah for R2

COMMON JUDGMENT

(Judgment of the Court was delivered by RAJIV SHAKDHER, J)

1. The captioned appeals have been preferred against the common judgment and order dated 14.09.2017, passed by the learned Single Judge in O.A.No.663 of 2015 and A.No.4204 of 2015.

2. We are informed that O.S.A.No.316 of 2017 is directed against the decision rendered by the learned Single Judge in O.A.663 of 2015.

2.2.Likewise in so far as O.S.A.No.315 of 2017 is concerned, it is directed against the decision rendered in A.No.4204 of 2015.

3. After hearing the learned counsel for the parties, i.e., Mr.Lakshmi Narayanan, Advocate, Mr.R.Krishnamoorthy, Senior Advocate and Mr.Somayaji, Senior Advocate, we were of the view that pending disposal of the suit, a protem arrangement could be put in place.

3.1. To be noted, Mr.R.Krishnamoorthy, Senior Advocate, instructed by Mr.R.Balachandran represents respondent No.1/plaintiff in the captioned appeals, while Mr.Somayaji, Senior Advocate instructed by Mr.I.Abrar MD Abdullah, advocate, represents respondent No.2/ defendant No.3 in the captioned appeals.

3.2. Counsels are agreed that the parties, before us, are the only contesting parties and, those who are presently impacted by the impugned judgment and order. Therefore, notice is not issued, by us, to the other respondents.

4. Accordingly, counsels have consented to the following protem arrangement being put in place pending the trial of the suit in so far as the composition of the Board of Trustees is concerned:

(i) Respondent No.1/ plaintiff will continue as a trustee till the culmination of the suit and till such time a decision is rendered as to his status by the Suit-Court. In other words as to whether or not, the plaintiff / respondent No.1 is a life trustee or was co-opted at the relevant point of time as a tenure trustee will await the decision in the suit.

(ii) Appellant No.2 / Defendant No.2, who, counsels agree, is a life trustee, would continue as a trustee pending the suit and, thereafter, in accordance with the provisions of the subject trust deed.

(iii) Respondent No.2 / Defendant No.3 will continue as a trustee pending the trial like in the case of the plaintiff / respondent No.1 till a decision is rendered in the suit as to whether or not he is a life trustee.

(iv) In so far as appellant No.3 / defendant No.5 is concerned, who, we are told, has tendered his resignation, he would be considered for being co-opted on to the trust, in case, he makes an application in that behalf. In case, appellant No.3/ defendant No.5 does not make an application for being co-opted on to the trust, the trustees will free co-opt on to the trust any other independent person in accordance with mandate of the subject trust deed.

(v) In so far as appellant No.4 / defendant No.6, who, counsels agree is a tenure trustee, will continue as a trustee till his tenure comes to an end, that is, till 28.08.2020.

5. To be noted, the impugned decision of the learned Single Judge, which, inter alia, also allows A.No.4204 of 2015, is a decision which is assailed in O.S.A.No.315 of 2017.

6. Mr.Lakshmi Narayanan, says that this application could not have been adjudicated upon by the learned Single Judge as via a decision rendered by another learned Single Judge, which is dated 03.10.2016, the very same application was directed to be closed.

6.1. This fact is not disputed by the contesting respondents.

7. Given this circumstance, the learned Single Judge is requested to take up the said application for hearing once again. The direction issued in the impugned judgment and order qua this application is, therefore, set aside.

7.1. While, disposing of the application, the learned Single Judge will take into account the order dated 03.10.2016, passed in the very same application.

8. Having regard to the constructive stand taken by the counsels for the parties, we are of the view that the costs imposed by the learned Single Judge can be waived.

8.1.It is ordered accordingly.

9. Since, we are told, pleadings are complete, the learned Single Judge is requested to frame issues in the suit.

9.1. For this purpose the suit will be listed for directions before the learned Single Judge, on 13.12.2017. Parties and/or their counsel will carry draft issues to Court to facilitate framing of issues in the suit.

10. With these directions, the captioned appeals are disposed of. Needless to say, the observations made by the learned single judge in the impugned judgment and order will not impact the trial of the suit. Consequently, connected pending applications shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vsm/kk
To
The Sub Assistant Registrar,
Original Side, High Court,
Madras.

+2cc to Mr.N.SREENIVASALU Advocate, S.R.No. 82611 & 82612

+1cc to Mr.I.ABRAR MD ABDULLAH Advocate, S.R.No. 83077

O.S.A.Nos.315 & 316 of 2017
and C.M.P.Nos.19742 & 19743 of 2017

MR (CO)
TR(29/11/2017)

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