

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) NO.646 OF 2017
AND CMP NO.3254 OF 2017

S.Srinivasan

... Petitioner

Vs.

The Okkaliga Vaalibar Sangam
Rep. by its President,
No. 71, Okkiligar Street,
Coimbatore.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 05.12.2016 passed in I.A.No.134 of 2014 in O.S.No.523 of 2010 on the file of Principal District Judge, Coimbatore.

For Petitioner : Mr.P.Ravi Shankar Rao
For Respondent : Mr.L.Mouli

ORDER

This Civil Revision Petition is directed against the order dated 05.12.2016 passed in I.A.No.134 of 2014 in O.S.No.523 of 2010, by the learned Principal District Judge, Coimbatore.

2. The petitioner is the defendant before the Trial Court.

The suit was filed by the respondent/plaintiff to (i) declare them as one of the Co-Trustees along with the petitioner/defendant in "Sri Devanna Gowder Memorial Trust; (ii) to direct the petitioner / defendant to render true and correct of accounts of all the amounts collected by him and the amounts spent by him in respect of Sri Devanna Gowder Memorial Trust and to remit the balance amount to the Trust account; and (iii) to grant permanent injunction, restraining the defendant, his men; relative and agents in any manner individually deal with the funds and the property of Sri Devanna Gowder Memorial Trust.

3. The petitioner / defendant has filed a petition under Order VII Rule 11 of the Civil Procedure Code to reject the plaint on the ground that the plaint does not disclose the cause of action.

4. Admittedly, the relief sought for in the plaint is to declare the respondent / plaintiff as one of the Co-Trustees in the Trust. Originally, the plaint was filed under Order VII Rule 1 read with Section 92 of the Civil Procedure Code. However, at a later point of time, by way of an amendment, Section 92 was deleted. It is sought that it is not a suit against the Public Charities, but against an individual. The petitioner / defendant was also described as an individual. In para IV of the plaint, the cause of action was said to

have arisen in the year 1932, when the plaintiff Sangam was established and when the Trust was conducted in a peaceful manner by the founder trustee and when the defendant was nominated as co-trustee along with the respondent / plaintiff, when the petitioner/ defendant failed to run the Trust as per the intention of the founders and also failed to furnish the accounts and not properly co-operating with the respondent/plaintiff to run the Trust jointly. Therefore, the entire the cause of action revolves around the Trust, particularly, after the appointment of a co-trustee and rendition of accounts.

5. As per Section 92 of Civil Procedure Code, in respect of Trusts, leave of the Court shall be obtained to institute a suit. In this case, by way of amendment, Section 92 of the Civil Procedure Code was deleted and leave was not granted. The Trial Court while discussing this issue, has observed that the suit was filed under Section 92 of the Civil Procedure Code and after due process i.e., obtaining permission of the Court the suit was taken on file.

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6. The learned counsel for the petitioner would vehemently contend that the Court below has not granted any leave and the finding is wrong.

7. The learned counsel appearing for the respondent also admits that no leave was granted, as by way of amendment, Section 92 CPC was deleted. However, the learned counsel for the respondent / plaintiff would contend that the defendant was impleaded in his individual capacity and not as a Trustee, and therefore, leave is not necessary.

8. From the perusal of the averments made in the plaint, as well as the cause of action and the relief sought for, it is clear that entire the suit revolves around the Public Charitable Trust, namely Sri Devanna Gowder Memorial Trust. The main relief itself is for declaring the respondent / plaintiff as one of the Co-Trustees and for rendition of accounts. It is also crystal clear that under Section 92 of the Civil Procedure Code, the issue is revolving around appointment of Trustees and rendition of accounts of a Trust and the suit shall be filed under Section 92 of the Civil Procedure Code, with the leave of the Court. Therefore, on the preliminary issue itself is that the plaint does not disclose a cause of action in respect of an individual person, but the cause of action pertains to a Trust. In effect, there is no cause of action against an individual and therefore, the issue raised by the petitioner/ defendant is under Order VII Rule 11 of the Civil Procedure Code.

9. The next point taken for consideration was that there

was another suit filed, for same relief and for the very same cause of action. On this issue, the Court below has observed that it is not disputed that a suit was filed earlier and same was withdrawn. It is seen from the factual averments that on the very same issue, previously a suit was filed and the same was dismissed as withdrawn.

10. The learned Counsel appearing for the petitioner would rely on a judgment of the Hon'ble Supreme Court in **T.ARIVANANDAM VS. T.V. SATYAPAL AND ANOTHER [AIR 1977 SC 2421(1)]** wherein it has been held as follows:

"5.....The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11. C.P.C. taking care to see that the ground mentioned therein is fulfilled".

11. The learned counsel for the petitioner would further rely on a judgment of the Hon'ble Supreme Court in **SALEEM BHAI AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS [AIR 2003 SC 759]** wherein it has been held that a petition under Order VII Rule 11 of the Civil Procedure Code, can be filed at any stage.

12. The learned counsel for the petitioner would rely on

another judgment of the Hon'ble Supreme Court in ***THE CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL CHARITABLE SOCIETY REP. BY ITS CHAIRMAN VS. M/S.PONNIAMMAN EDUCATIONAL TRUST REP. BY ITS CHAIRPERSON / MANAGING TRUSTEE [AIR 2012 SC 3912]***

wherein it has been held as follows:

“It is clear that if allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by the Krishna Iyer, J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code”.

13. Therefore, from the perusal of the above judgments, it is clear that the entire averments revolves around the Public Trust, which was challenged in a previous litigation and dismissed as withdrawn. In these circumstances, the contention of the petitioner that the plaint does not disclose the cause of action holds good.

14. The learned counsel appearing for the respondent would submit that the previous litigation was dismissed as withdrawn and no issues either directly or substantially, were

decided on merits and therefore, the issue of *resjudicata* will not arise.

15. Be that as it may, as stated supra, the plaint does not disclose a clear cause of action. As held by the Hon'ble Supreme Court, vexatious litigation shall be nipped in the bud. The instant case is a clear example of the same and therefore, the plaint shall be rejected, as it is without any cause of action and barred in view of Section 92 of the Civil Procedure Code.

16. In the result, the order dated 05.12.2016, passed in I.A.No.134 of 2014 in O.S.No.523 of 2010, by the learned Principal District Judge, Coimbatore, is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

सत्यमेव जयते

28.07.2017

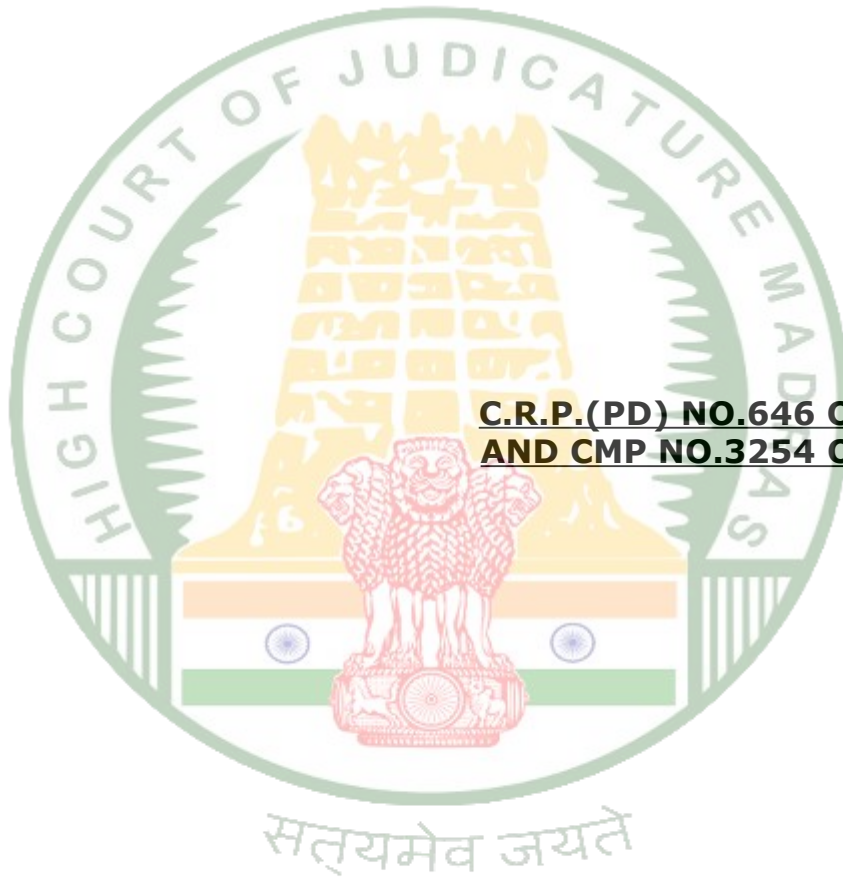
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To

The Principal District Judge,
Coimbatore.

M.GOVINDARAJ, J.



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