

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03..01..2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Original Side Appeal No.332 of 2013

- 1.M/s.Aynavaram Educational Trust,
Rep. by its Chairman, Janab Haji K Moosa,
- 2.Janab Haji K Moosa,
S/o.Kadar Sha,
Chairman, Aynavaram Educational Trust
- 3.Mrs.M.Rasheetha,
W/o.Janab Haji K Moosa,
Trustee, Aynavaram Educational Trust
- 4.Janab Khadar Sha,
S/o.Janab Haji K Moosa,
Trustee and Secretary,
Aynavaram Educational Trust

Respondents 1 to 4 are having their office and are
residing at No.17, Officers Colony, First Floor,
Aynavaram, Chennai 600 023.

... Appellants

-Versus-

Janab Hafeez Mohammed,
Vice Chairman and Trustee,
Aynavaram Educational Trust,
Residing at Door No.203,
AK Swamy 1st Street,
Secretariat Colony, Madras 600 010.

... Respondents

Original Side Appeal under Order 36, Rule 1 of
Original Side Rules r/w Clause 15 of Letters Patent, praying
to set aside the order and decretal order dated 15.06.2012
made in O.A.No.777 of 2011 in C.S.No.622 of 2011.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.AR.L.Sundaresan,
Senior Counsel for
Mrs.AL.Gandhimathi

JUDGMENT

(Judgement of the Court was delivered by S.NAGAMUTHU. J.)

M/s.Aynavaram Educational Trust is the 1st defendant in C.S.No.622 of 2011. Admittedly, the 2nd defendant is the Chairman and the defendants 3 and 4 are the trustees of the 1st defendant Trust. The plaintiff is one of the trustees and the Vice Chairman of the said trust. It is alleged that the defendants have removed the plaintiff from the trusteeship and consequentially from the post of Vice Chairman by resolution dated 19.05.2011. Seeking a declaration that the said resolution is void and for permanent injunction against the defendants, the plaintiff filed C.S.No.622 of 2011. Pending suit, he filed an original application in O.A.No.777 of 2011 seeking interim injunction against the defendants 2 to 4 from in any manner interfering with his functioning as Vice Chairman and Trustee of the 1st defendant trust. It was contested by the defendants. The learned single Judge by order and decretal order dated 15.06.2012 granted interim injunction as prayed for. Challenging the same, the defendants 1 to 4 have come up with this original side appeal.

2. We have heard the learned counsel appearing for the appellants/defendants and the learned senior counsel appearing for the respondent/plaintiff and also perused the records carefully.

3. At the outset, we should mention that the interim order granted by the learned single Judge has been in force from 15.06.2012 and there has been no stay granted by the Division Bench. Thus, as of now, the respondent/plaintiff is functioning as the Vice Chairman and the Trustee of the 1st defendant.

4. According to the appellants/defendants, the respondent/plaintiff was removed from the trusteeship as well as from the Vice Chairmanship mainly on the ground that he was acting against the interest of the 1st defendant trust and on the ground of misconduct. These allegations are denied by the respondent/plaintiff. We find that there are lot of disputed facts involved in the matter. On going by the pleadings alone we cannot decide the issues and hold that the removal of the respondent/plaintiff is illegal. Since the respondent/plaintiff was admittedly the Vice Chairman and the Trustee of the 1st defendant Trust until 19.05.2011; since it

is not possible for this court to decide as to whether the removal is valid or not without there being any evidence; since the issues are to be resolved only in the suit; and since the interim order granted by the learned single Judge has not been stayed and as of now, the respondent/plaintiff is functioning as Vice Chairman and Trustee of the 1st defendant Trust, we find no reason to interfere with the order impugned in this appeal. However, considering the nature of the claim made by both parties and the allegations made against each other, we can only request the learned single Judge to expedite the trial of the suit in C.S.No.622 of 2011 and dispose it of preferably within a period of three months from the date of receipt of a copy of this order.

5. In the result, the original side appeal is dismissed, however, with the above observations. Considering the facts and circumstances of the case, there shall be no order as to costs. We make it clear that any observation made either by the learned single Judge or by us in this judgement shall not have any bearing when the suit is taken up for final hearing.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk

The Sub Asst. Registrar, Original Side,
High court, Madras.

+ 1 cc to Mr.V.Raghavachari, Advocate SR.NO.479

O.S.A.No.332 of 2013

SS [CO]
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