



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.1488 of 2016 (PD)

and

C.M.P(MD)No.7255 of 2016

1.M.Noorjakhan

2.MLM.Quduputhinajeb .. Petitioners/Respondents/Defendants

Vs.

1.MLM. Quduputhin Ibek

2.Sarmila Parveen .. Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.427 of 2015 in unregistered O.S.No. Of 2015, dated 26.04.2016, on the file of the Principal Sub Court, Tirunelveli by allowing this Civil Revision Petition.

For Petitioners :Mr.H.Arumugam

For Respondents :Mr.A.Arumugam

for M/s.Ajmal Associates

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decretal order passed in I.A.No.427 of 2015 in un-numbered O.S.No. Of 2015, dated 26.04.2016, by the Principal Sub Court, Tirunelveli.

2.The Petitioners are the respondents in I.A.No.427/2015 in un-numbered O.S.No. /2015 on the file of Principal Sub Court, Tirunelveli. The respondents filed said application under Section 92 of Civil Procedure Code for permission to file suit for framing a scheme for Melapalayam Muslim Girls Higher Secondary School and Alminar Nursery and Primary school. According to the respondents, the Melapalayam Muslim Girls Educational Society the first respondent herein was started by father of the first respondent and father-in-law of second respondent and is registered under Societies Registration Act as Registration No. 17/1988. The society was formed to spread religious and Education among Muslim girls and to establish Educational Institutions for the said purpose.



3. According to the respondents, the second petitioner is an Executive Committee Member and he is also employed as Office Assistant in Muslim Girls Higher Secondary School run by the first petitioner society and is receiving salary. As per amended By-law, 13 members of first petitioner society can not be employed in any post. No school committee was formed. Due to misunderstanding between respondents and second petitioner, he is trying to remove the respondents from the post held by them and is creating confusion in the management of school. Due to misunderstanding, there is problem in managing school. It affects education being imparted to students. Under the circumstances, the respondents filed un-numbered suit and filed I.A.No.427/2015 praying for leave to file the suit.

4. The petitioners filed counter affidavit and denied the averments made by the respondents. According to the petitioners, the application filed by the respondents under Section 92 of Civil Procedure Code is not maintainable as first petitioner is not a Trust and it is only a Society governed by provisions of Societies Registration Act. The petitioners contented that it is the first respondent, who is creating problems in the management of the school and he is ill-treating the teachers and only by the intervention of the second petitioner, the teachers did not take any action against the first respondent. The suit and application are not maintainable in the Court of Subordinate Judge as he has no power to entertain and dispose the issue involved. Only the Principal Civil Court has jurisdiction to entertain the application under Section 92 of Civil Procedure Code.

5. The learned Judge considering all the materials on record, Judgment reported in 2007 (6) MLJ 1657 and the arguments of the learned counsel for the parties, allowed the application holding that the question whether the first petitioner's society is a Public or Private Trust can be decided with reference to its object and only after adducing evidence it could be decided whether it is a Trust or Society.

6. Against the order of allowing the I.A.No.427 of 2015, dated 26.04.2016, the petitioners have come out with the present Civil Revision Petition.

7. The learned counsel for the petitioners reiterated the averments made in the counter affidavit and averments mentioned in the grounds of revision and submitted that the learned Judge erred in holding that whether the first petitioner is a Public or Private Trust or Society can be decided only by considering the object of society and by considering the evidence. The learned counsel for the petitioners contented that the learned Judge failed to see that first respondent was registered under Societies Registration Act and is governed by provisions of said Act and



Bye-Laws. The respondents themselves have admitted that the first petitioner is a Society.

8. The learned counsel for the petitioners relied on following Judgments:-

(i) (2007) 6 MLJ 1657 (S.Govindasamy v. Gowthiya Sangam) wherein in paragraph 11 it has been held as follows:

"11. The lower appellate Court while considering the point as to whether the plaintiff society is a 'public trust' or a 'private trust' after considering the various provisions contained in Exhibit A-3 bye-laws of the society and particularly the objects of the society and the provisions contained at page 25 of the bye-laws, has recorded a categorical finding that the society has not been formed by a particular member for the benefit of a particular Section of the society and it is not functioning for the benefit of the particular Section of society, whereas it has been formed for the benefit of the entire Muslim public. The Lower Appellate Court has also observed that simply because the plaintiff society has been incorporated under the Act 21 of 1960 it cannot be described as a private society. The real character of the plaintiff society has to be determined only with reference to the objects of the society."

(ii) (2006) 2 M.L.J. 528 (Rajamanickam, K. (died) v. Periyar Self-respect Propaganda Institution, Tiruchirappalli) wherein in paragraphs 4, 9 & 10 it has been held as follows:

"4. Section 92, Civil Procedure Code will be applicable in case of any alleged breach of any express or constructive Trust created for public purposes of a charitable or religious nature or where a direction of the Court is deemed necessary for the administration of any such Trust. In that event the Advocate General or two or more persons in the Trust and having obtained the leave of the Court may institute a suit under that provision for similar remedies provided thereunder; for example removing any Trustee, appointing a new Trustee, vest any property in a Trustee, directing the removed Trustee to deliver possession of any Trust property, directing accounts and enquiry and also settling scheme etc.

9. In order to maintain the suit under Section 92 Civil Procedure Code the petitioners / plaintiffs should show the existence of a Trust and the alleged breach of the terms of the Trust; besides which the interestedness of the petitioners / plaintiffs in the running of the Trust shall also be made known.



Magamai Sangam v. K.A.Gurusamy) wherein in paragraphs 13 it has been held as follows:-

"13. The suit is not filed to vindicate the individual rights but to vindicate the welfare of Thuraiyur Nadar people residing in Chennai, who are the beneficiaries of the charitable trust created. Even from the object of the 1st plaintiff-sangam as mentioned in paragraph 4 of the plaint, it is clear that the Sangam was formed with a view to do charity to the beneficiaries therein providing free education, assistance to the handicapped and economically downtrodden person and to provide financial assistance for the children of those people who suffered due to fire accident, flood and other natural calamities. Paragraph 5 of the plaint also deals with as to how the Sangam is getting income for the purpose of doing charity.

(ii) 2011(2) L.W. 19 (Davind Linvingston v. David Viswanathan & others) wherein in paragraphs 10 & 13 it has been held as follows:-

"10. Section 92 C.P.C., would come to play when the direction of the Court is deemed necessary for the administration of a Trust as regards all the affairs of the Trust. Section 36(1) of the Act empowering and enables the District Registrar of Co-operative Societies to hold an inquiry into the constitution, working and financial condition of the registered society. When the reliefs offered by both the statutes to an aggrieved party are carefully considered, it has to be observed that the scope of Section 92 C.P.C. Is larger than Section 36 of the Act. When mismanagement, mal-administration and irregularities in a large scale in any trust is alleged by a party concerned, definitely under Section 36 of the Act, District Registrar could not decide the dispute. Section 92 has been brought to the statute book specifically for all the affairs as regards various branches of administration as enumerated in the provision as above. The District Registrar cannot travel beyond his powers vested on him under Section 36 of the Act which deals with respect to constitution, working and financial condition of the society. Framing of a scheme and grant of permanent injunction restraining the defendants from alienating Trust properties without sanction of the Court would never come within the ambit of Section 36 of the Act. Only a Civil Court, exercising original jurisdiction shall have the power to decide the disputes under Section 92 of C.P.C. In such view of this matter, it is held that the Civil Court alone has got jurisdiction to try the dispute. If the parties invoke Section 36 of the Act, it would not serve any purpose. So, the parties cannot be driven to follow Section 36 of the Act to



apply before the District Registrar to get the grievances redressed as pleaded in the plaint. It is to be noted herein that the petitioner had not preferred any appeal from the order passed under Section 92 of C.P.C., in this case. The petition has been filed when the suit is in part-heard stage.

13. In the light of what are stated above, this Court is of the considered opinion that under Section 92 of C.P.C., the suit is very well maintainable and it cannot be held that the suit is barred by law viz., by Section 36 of the Act and hence the order challenged before this Court does not warrant any interference from this Court, which deserves to be confirmed and accordingly it is confirmed. The revision suffers dismissal."

11. I have carefully considered all the materials on record and perused the judgments relied on by the counsel for the parties and heard the arguments of the parties.

12. The issue to be decided in the Civil Revision Petition is whether the learned Judge is right in holding that only after considering the object of first petitioner and after considering evidence it can be decided whether first petitioner is a Public Trust or a Private Trust.

13. This issue is no longer res-intergra. The learned Judge of this Court reported in 2011(2) L.W. 19 (Davind Linvingston v. David Viswanathan & others) held that scope of Section 91 of Civil Procedure Code is wider than Section 36(1) of Tamil Nadu Societies Registration Act and when a direction of the court is deemed necessary for the administration of a Trust as regards all the affairs of the Trust, section 92 of Civil Procedure Code would come to play. A Division Bench of the Court in the Judgment reported in 2004(1) CTC 481 (Chennai Vazhal Duraiyur Nadar Uravin Murai Magamai Sangam v. K.A. Gurusamy) considering the object of Sangam registered under Tamil Nadu Societies Registration Act held that said Sangam is Public Trust and Section 92 of Civil Procedure Code is applicable. In the Judgments reported in 2007(6) MLJ 1657 (S. Govindasamy v. Gowthiya Sangam) relied on by the learned counsel for petitioner, it is held that only by considering the object of the Society it can be decided whether the society is a Public or Private Trust. In paras 11 and 12 of the Judgment it is held as follows:-

"11. The lower appellate Court while considering the point as to whether the plaintiff society is a 'public trust' or a 'private trust', after considering the various provisions contained in Exhibit A-3-byelaws of the society and particularly the objects of the society and the provisions contained at page 25 of the bye-laws, has recorded a categorical finding that the society has not been formed by a particular member for the benefit of a particular Section of the society and it is not functioning for the benefit of the particular Section of society, whereas it has been formed for the benefit of



the entire Muslim public. The Lower Appellate Court has also observed that simply because the plaintiff society has been incorporated under the Act 21 of 1960 it cannot be described as a private society....."

"12. By applying the said principle, the Lower Appellate Court on a careful consideration of the rules and regulations contained in Exhibit A-3 has come to the conclusion that the plaintiff society has been incorporated for the benefit of the Muslim public and on that ground has recorded a finding that it is a public charitable trust....."

14. Further contention of the learned counsel for the petitioners that only Principal Civil Court having original jurisdiction has jurisdiction to entertain an application filed under Section 92 of Civil Procedure Code has no force. As per the Section 92 of Civil Procedure Code, the application has to be filed in the Principal Civil Court or in any other Court empowered in that behalf by the State Government. Whether the Sub Court, Tirunelveli is empowered by the State Government to entertain and decide an application under Section 92 of Civil Procedure Code can be decided only by Sub Court, Tirunelveli.

15. The Judgments relied on by the learned counsel for petitioner do not support the case of the petitioners. On the other hand, the Judgments relied on by the learned counsel for the respondents are squarely applicable to the facts of the present case. The learned Judge has given cogent and valid reasons for allowing the application. The reasoning of the learned Judge is in consonance with principles decided by this Court. There is no error or infirmity in the order of the learned Judge, warranting interference by this Court.

16. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assitant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

The Principal Sub Judge, Tirunelveli.

+1cc to.AJMAL ASSOCIATES, Advocate, in SR No.11430

AM/SSS

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