

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

A.S. No.1024 of 2007

V. Arunachala Reddiar [Deceased]

Seenu Murthi

.. Appellant/Plaintiff

2nd appellant brought on record as
LR of the deceased sole appellant
vide order of this court, dated 08/12/2016
made in cmp.no.19724 of 2016 in A.S.1024/2007

Vs.

1. A. Rajaram
2. M.R. Subramania Reddiar
3. D.K.B. Mani
4. S. Vemanna
5. Rashyaraaj
6. T. Perumal
7. V. Raghuram
8. M. Radhakrishnan
9. B. Munirathinam
10. Swami Abedananda Trust

Rep. by its Managing Director
Thellar Village
Tindivanam High Road
Tiruvannamalai- 604 406.

... Respondents

R10 impleaded as party respondent
vide order of this court, dated 21/09/2017
made in CMP NO.3783 of 2017 in A.S.1024/2017.

Prayer : APPEAL is filed under Section 96 of Code of Civil
Procedure, 1908 against the judgement and decree dated
29.08.2006 made in O.S. No. 5 of 2005 on the District Court,
Tiruvannamalai.

For Appellant : Mr. V. Raghavachari

For Respondents : Mr. K. Venkatasubban
for R1, 3 to 7, 9 & 10
R2 and R8 - died

JUDGMENT

The plaintiff in O.S. No. 5 of 2005, on the file of the District Court, Tiruvannamalai, has come forward with this appeal.

2.1 The brief facts on which the plaintiff rests the cause of action for laying the suit is that the plaintiff is the author of a public charitable trust, and has endowed some properties for it. The defendants are the other trustees, who according to the plaintiff, contend that the plaintiff had been removed from the trusteeship. This alleged removal of the plaintiff from trusteeship is not legitimately done. It is further alleged that the trust is not managed properly by defendants 5 to 8, who are not the members or trustees. Pivoting his cause for the present action on the aforesaid allegations, the plaintiff had laid the suit:

- a) for a declaration that the plaintiff is a trustee of Swamy Abedhanandha Trust,
- b) for declaration that the defendants 5 to 8 are not members of the trustees,
- c) for a direction to the defendants to submit accounts from July 1986 and the period of their management,
- d) for a direction to appointment of receiver to take charge of the trust and the institutions forthwith till a scheme is framed as per provisions in Section 92 of CPC.

2.2. The defendants/ respondents resisted the suit and the suit came to be dismissed on 29.08.2006.

3. During the pendency of this appeal, the plaintiff had died and his legal heir was brought on record as the sole appellant.

4. Heard both sides. The counsel for the appellant submitted that even the defendants have admitted that the plaintiff has not been removed from his trusteeship, yet the trial court has ventured to state that he has been removed since the plaintiff did not attend three consecutive meetings of the Board of Trustees. It is essentially a finding by the Court and not a decision of the Board of Trustees, argued the counsel.

5.1 It may have to be stated here that the first relief which pertains to plaintiff's claim of right to office as a trustee is his personal right, and cannot survive his death to devolve on his heir. So far as relief (b) is concerned, it is not a heritable right and therefore this also cannot be decided in this case.

5.2 As regards the relief (c) and (d) are concerned, they require a pre-suit leave to sue from the court under Section 92 of CPC. However, no leave is seen to have been obtained in the suit, and hence even if the original plaintiff were to be alive, the suit cannot be maintained for considering plaintiff's entitlement to these prayers.

6. At any rate, since the Trust in this case is a public Trust, the present appellant (son of the plaintiff) has an independent right to institute a suit, if only he has a cause of action. He is therefore free to file a separate suit, if he is so advised.

7. In conclusion, this appeal abates and the appellant herein is free to work out his remedy as per law. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy//

Sub Assistant Registrar

avr

To:

1. The District Court,
Tiruvannamalai.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.No.45799

+1cc to M/s.Sarvabhauman associates, Advocate SR.No.45664

A.S. No.1024 of 2007

GJ(CO)
RMP(28/09/2018)

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