

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.06.2018	Delivered on 25.06.2018
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CORAM:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Original Side Appeal Nos.157 to 163 of 2017

Mrs.Kamala Muthiah

... Appellant
in all OSAs

Vs.

1.Mrs.Arti Meenakshi Muthiah

2.Mr.Tarun Ghai

3.Ms.Supriya ananth Reddy

4.Sir.M.Ct.Muthiah Chettiar Higher
Secondary School Trust,
represented by its President,
and having office at
No.23, Raja Annamalai Road,
Purasawalkam,
Chennai-600 084.

5.Lady M.Ct.Muthiah Chettiar
Girl's Higher Secondary School Trust,
represented by its President,
and having office at
No.13/14, Algappa Road,
Purasawalkam,

... Respondents
in all OSAs

Original Side Appeal is filed under Order XXXVI Rule 9 of the O.S. Rules read with Clause 15 of the Letters Patent against the order dated 28.04.2017 passed in O.A.No.126 of 2017, 127/17, 128/17, A.858, 859, 860 & 861/17 in C.S.No.87 of 2017.

A.No.858 of 2017:-

Application praying that this Hon'ble Court be pleased to direct the Respondents 1 to 3 to produce accounts of the 4th and

5th Respondent's Trusts from 2010.

A.No.859 of 2017:-

Application praying that this Hon'ble Court be pleased to direct the Respondents 1 to 3 to give details of the money received as advance from the third parties for transferring/selling the plaint schedule Trust Properties described hereunder.

A.No.860 of 2017:-

Application praying that this Hon'ble Court be pleased to direct the Respondent No.1 and 2, to furnish security failing which order attachment of the personal property at No.9A, Raja Anna Malai Road, Chennai 600 084 belong to the Respondents 1 and 2.

A.No.861 of 2017:-

Application praying that this Hon'ble Court be pleased to appoint a suitable person to take over the management of the 4th and 5th defendant Trusts pending disposal of the suit.

O.A.No.126 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the Respondents 1 to 3, from in any way transferring / selling the Plaint Schedule Trust properties pending disposal of the suit.

O.A.No.127 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining Respondents 1 to 3, from carrying out the day-to-day affairs of the 4th and 5th Respondent Trusts pending disposal of the suit.

O.A.No.128 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining Respondents 1 to 3, from preventing the Applicant discharging her duties as Trustee and President of the 4th and 5th defendant Trusts pending disposal of the suit.

PRAYER IN CS.87/2017

- a) Declaring that the plaintiff is the trustee for life and president of the 4th and 5th defendant trusts.
- b) Declaring the appointment of 1st defendant as president and trustee of the 4th and 5th defendant trusts as null and void.

- c) Declaring the appointment of 2nd and 3rd defendant as trustee of the 4th and 5th defendant trusts as null and void.
- d) Permanent injunction restraining the defendant Nos.1 to 3, their men, agents and subordinates or anyone claiming through them from preventing the plaintiff from discharging her functions as the trustee and president of the 4th and 5th defendant trusts.
- e) Permanent injunction restraining the defendant Nos.1 to 3, their men, agents and subordinates or anyone claiming through them from any manner dealing with the properties of the 4th and 5th defendant trusts.
- f) Appoint Dr.Jayashree Oza- Director of CEMD-Centre for Education Management and Development (New Delhi), an NGO as Administrator of the 4th and 5th defendants.
- g) To award the cost as against the defendants herein.

For Appellant : Mr.C.Ramakrishnan
for Ms.Abitha Banu

For Respondents : Mr.R.Yashod Varadhan,
For Njeeb usman khan
for R 1, 2 & R 4.

COMMON JUDGMENT

N.ANAND VENKATESH., J.

These Original Side Appeals have been filed against the common orders passed by the learned Single Judge in O.A.Nos.126 to 128/2017 and A.Nos.858 to 861/2017 in C.S.No.87 of 2017, dated 28.04.2017.

2.The plaintiff is the appellant. The appellant filed a suit for the relief of declaration and permanent injunction and also for appointment of an Administrator for the fourth and fifth respondent Trusts. The suit has been filed mainly on the ground that the first and second defendants are completely mismanaging the running of the schools and are collecting donations without obtaining any permission from the authorities and for which they are not accounting and the schools are run without any facilities and the students have stopped joining the schools as result of which several classes have been closed down and all attempts are being made to close down the schools and

sell it to third parties and thereby are trying to swindle away the trust property. The further case of the appellant was that even though she is a life trustee, she is kept away from the Trusts and therefore in order to establish her right in the Trusts and in order to safeguard the school and the Trusts properties, the present suit has been filed claiming various reliefs.

3. During the pendency of the suit, the above said applications were filed for claiming various interim reliefs. The respondents filed counter affidavit and contested these applications. That apart, the respondents also filed an application for striking of the plaint on the ground that the Trusts are already governed by a scheme decree and an independent suit of this nature is not maintainable.

4. The learned Single Judge upon considering the facts of the case dismissed all the applications by a common order on the ground that there are no merits in the applications. Aggrieved by the same, the present appeals have been filed.

5. During the pendency of these appeals, taking into consideration the interest of the boys and girls schools, report was called for from the Chief Educational Officer about the running of the school. A report dated 13.07.2017 was also filed before this Court which deals with various aspects on the functioning of the educational agency, school committee, appointments and service conditions of staff and also about the functioning of the Parents and Teachers Association.

6. This Court also requested Mr. Yashod Vardhan, learned Senior Advocate and Ms. Abitha Banu, Advocate who are the counsel appearing on either side to visit the school and file an inspection report with regard to the status of the class rooms, bathroom facilities, drinking water facilities, laboratory, staff room etc., Both of them have filed independent inspection reports.

7. Even though the scope of relief claimed in the suit touches upon determining the status of parties as life trustee, trustee, President of the Trust etc., the above said exercise was undertaken by this Court only in the interest of the schools and the Trusts that are running the schools and with an over all public interest in mind.

8. The learned counsel for the appellant would submit that till 2010, there were no problems in running the school and only after the 2nd respondent came into the picture, the whole problem started. The learned counsel further contended that both the educational agency and the school committee have not been

approved till date. That apart donations are received by the 2nd respondent from the students without issuing receipts and without permission of the CEO. Further the infrastructure of the school is in total shambles and prominent groups like computer science have been closed without any permission. The learned counsel for the appellant also contended that no accounts were submitted from 2010 onwards and only pursuant to the orders passed by this Court, the respondents submitted the accounts for the period from 2010 to 2015 which clearly shows abnormal increase in the expenses resulting in erosion of Trust funds. The students strength has come down considerably and all steps have been taken to ensure closure of the schools and alienate the property to third parties.

9. Per contra, the learned Senior Counsel appearing for the respondents would submit that the main relief sought for in the suit and all the interim reliefs squarely falls under Section 92 CPC and the appellant is not entitled to claim these reliefs in the present suit. The learned senior counsel further contends that the status of parties can be determined only after full fledged trial and the learned Single Judge has rightly dismissed the applications on this ground. The learned senior counsel further contended that the respondents are hounded with a barrage of petitions and suits filed on all sides. That apart, the staff have been agitating for a long time and not permitting the school to be run smoothly and they have also indulged in violence. It was only after getting directions of this Court for police protection, the schools started functioning normally. The learned senior counsel further contended that certain vested interest are behind all the litigations and with very great difficulty, the schools are limping back to normalcy. Finally, the learned senior counsel would submit that the apprehensions expressed by the appellant that the Trusts properties are going to be alienated and accounts is not being properly maintained are all baseless.

10. This Court has carefully considered the submissions made on either side and the materials that have been placed in the appeal. This Court does not want to go into the merits of the allegations made by the parties against each other and also the status of the parties qua their right in the Trusts and all this can be finally determined only after a full fledged trial. Presently, for the purpose of disposing of these appeals, only three immediate issues come up for consideration and the learned counsel for either parties also agreed that orders can be passed by this Court on these three issues to ensure the smooth running of the school, to ensure that accounts are properly maintained and also to ensure that the properties belonging to the Trusts are not alienated.

11.The three issues that need to be addressed are ;

(a)pending disposal of the suit, the respondents should be restrained from selling, transferring or creating any third party interest in the property/assets owned by the fourth and fifth respondent Trusts.

(b)the respondents must maintain the accounts up to date and continue to maintain the same till the disposal of the suit.

(c)to appoint an overseer to ensure a neutral person overseeing the functioning of the schools.

12.Insofar as the first issue is concerned, the respondent have given an undertaking on 19.07.2017 before this Court that they do not intend to sell, transfer or create any third party interest in the property/assets owned by the fourth and fifth respondent Trusts, without the leave of the Court. This undertaking is recorded and the respondents are directed to continue with this undertaking till the disposal of the suit.

13.Insofar as the second issue is concerned, in pursuance of the directions of this Court by order dated 23.08.2017, the respondents submitted the accounts for the period from 2010 to 2015. The respondents are directed to submit the accounts for the period 2016 and 2017, within a period of four weeks from the date of receipt of copy of this order, in the suit along with a memo and the same shall form part of the records in the suit.

14.Insofar as the third issue is concerned, this Court has gone through the report filed by the CEO and also the reports filed by the learned counsel on either side who inspected the property and also the photographs filed along with it. At this point of time, this Court does not want to interfere with the running of the schools by appointing an Administrator since it will directly affect the rights of the first and second defendants. At the same time in the interest of the schools, the students, the staff and in the interest of public at large, this Court in order to ensure that the schools are run properly deems it fit to appoint a neutral person to act as an Overseer to assess the real situation prevailing in the schools. Accordingly, we appoint Mr.T.Mohan, Advocate as an Overseer who will visit the schools at regular intervals and collect information regarding the functioning of the schools, facilities available and also regarding the compliance of the various statutory provisions under the Tamil Nadu Recognised Private Schools (Regulation) Act and the Overseer shall also file periodic reports in the suit which will enable the Court to give necessary directions, if required, depending on the report of the overseer. By appointing an Overseer, the rights of the

first and second respondents to run the schools is in no way affected and they will not be prejudiced if an overseer is appointed since the Overseer will be giving reports as a neutral person about his assessment of the running of the schools.

15.The above orders will ensure that the interest of both the parties and also the interest of the schools and also the Trusts will be sufficiently safeguarded pending disposal of the suit. The respondents are directed to pay a sum of Rs.1,00,000/- per month [Rupees One Lakh only] to the overseer towards his remuneration until further orders. The parties to the proceedings and also the Overseer shall be at liberty to approach the learned Single Judge if in case any further orders needs to be passed during the pendency of the suit, depending on the contingency.

16.These Original Side Appeals are disposed of with the above directions. In the facts and circumstances of the case there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Kp

To:

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

COPY TO:

MR.T.MOHAN, Advocate, High Court, Madras.

+1cc to Mr.ABITHA BANU, Advocate, S.R.No.39800

+1cc to Mr.Najeeb usman khan, Advocate, S.R.No.40448

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Common Judgment in
O.SA.Nos.157 to 163 of 2017

RSY(CO)
TR(18/07/2018)