

.IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.154 of 2018

1.Arti Meenakshi Muthiah
2.Tarun Ghai
3.Supriya Ananth Reddy
4.Sir. M.Ct.Muthiah Chettiar
Higher Secondary School Trust
rep. by its President ... Appellant
No.23, Raja Annamalai Road,
Purasawakkam, Chennai-84

Vs

Sir.M.Ct.M.Centenary School Society
Regd. as No.283 of 1992 rep. by its
Secretary Nandhini Valli Muthiah ... Respondent
No.63, Ormes Road, Kilpauk, Chennai-10

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w
Clause 15 of Letters Patent against the order dated 04.10.2017
made in Application No.2916 of 2017 in C.S.No.297 of 2017.

Prayer in Appln.NO.2916 of 2017 in CS.297/17: Praying to reject
the vexatious suit in C.S.No.297 of 2017 filed by the
respondent/Plaintiff, a defunct society, by committing fraud on
this Honourable court.

Prayer in C.S.NO.297 of 2017: Praying the pass a Judgment
and decree granting permanent injunction restraining defendants
from interfering with the management of the Sri. M.Ct.Muthiah
memorial Matriculation High Secondary School of the Plaintiff
Society

b) to ward the cost of the suit and

c) to pass such further and other orders as this Hon'ble court
may deem fit and proper and in the fact and circumstances of
this case

For Appellant .. Mr.Najeeb Usman Khan
For Respondent .. Ms.Abitha Banu

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is directed against the order dated 04.10.2017 made in Application No.2916 of 2017 in C.S.No.297 of 2017.

2.The appellants are the defendants in the suit. The suit has been filed for permanent injunction among other reliefs. An application was filed by the appellants inter alia holding that the plaint will have to be rejected under Order 7 Rule 11 C.P.C. as the respondent/plaintiff has since become defunct under the Tamil Nadu Societies Registration Act, 1975 (for short 'the Act').

3.The learned single Judge rejected the said contention by holding that a gazette publication under Section 44 (3) of the Act cannot be a prelude to the final one under Section 44(4) of the Act and the same is not a document evidencing the declaration of the Society as defunct. Incidentally, the learned single Judge took note of the fact that the respondent/plaintiff has taken steps to file the accounts, though belatedly, which is still pending consideration with the authorities concerned.

4.Learned counsel appearing for the appellant made reliance on the reply given under the Right To Information Act. It is submitted that inasmuch as the statement of accounts having not been submitted and there is a stand taken as seen from the counter affidavit filed by the Authorities, in W.P. No.24048 of 2017 qua the administration of the school, the appeal will have to be allowed.

5.We find no merit in this appeal. The requirement of Order 7 Rule 11 C.P.C. is certainly not available in the case on hand. Admittedly, the records produced by the appellants do not indicate that the respondent/plaintiff society has become defunct. Further more, the issue is still pending consideration with the authorities concerned. Thus, the ground on which the plaint was sought to be rejected is not available on facts. The question of wilful suppression, if any and the consequence flowing from it will have to be decided in the suit. Hence the appeal stands dismissed. No costs.

6.However, it is made clear that the observations of the learned single Judge in the application and the observations made by us in this appeal are intended only for the purpose of deciding the application and the appeal respectively.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

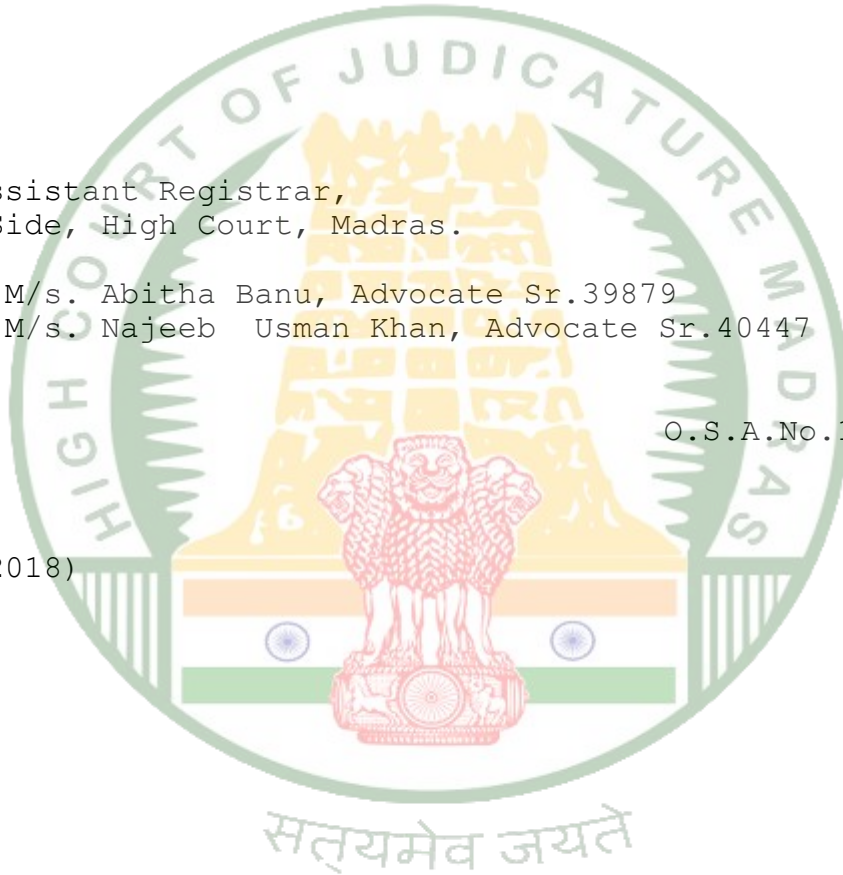
mmi
To

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

+ 1 cc to M/s. Abitha Banu, Advocate Sr.39879
+ 1 cc to M/s. Najeeb Usman Khan, Advocate Sr.40447

O.S.A.No.154 of 2018

NRI (CO)
EU(12/07/2018)



WEB COPY