

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 25TH DAY OF APRIL, 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. No.6533 of 2017
in
CSD.No.36131 of 2017

1. Sri Vupputur Alwar Chetty's Charities
Represented by its Hereditary Trustee
Mr.Vupputur Ramesh
No.183, Govindappa Naicken Street,
Chennai 600 001.

2. Mr.Vypputur Sethuram
Son of Late Vupputur Ethirajulu Chetty
Hereditary Trustee
Sri Vupputur Alwar Chetty's Charities
No.183, Govindappa Naicken Street,
Chennai 600 001.

3. Mr.Vupputur Ramesh
Son of Late Vupputur Emberumanar Chetty
Hereditary Trustee
Sri Vupputur Alwar Chetty's Charities
No.183, Govindappa Naicken Street,
Chennai 600 001.

4. Mr.Vupputur Swaroop
Son of Late Vupputur Ananda Krishna Chetty,
Hereditary Trustee
Sri Vupputur Alwar Chetty's Charities
No.183, Govindappa Naicken Street,
Chennai 600 001. ...Applicants/Plaintiffs

-vs-

1. Mr.Thatha Sampath Kumar
Son of Late Thatha Alwar Chetty
Ground Floor, Sathyagraha Apartments,
New No.15, Nallappan Street,
Mylapore, Chennai 600 004.

2. Mr.C.Vivekananda
Son of Late C.Gopal Chetty
A-7, Prince Towers, Third Floor,
No.4, Subbarayan Street,
Marvadi Thottam, Mylapore, Chennai 600 004.

3. Mr.A.Balasubramaniam
Father's name not known to the plaintiff
Flat No.1, Lakshmi Sadan, 25/55,
3rd Cross, Lazarus Church Road,
Mandaveli, Chennai 600 028.

...Respondents

Application praying that this Hon'ble Court be pleased to grant leave appellant/plaintiff in filing the main suit under section 92 of C.P.C.

This application coming on this day before this Court for hearing the court made the following order:

This application has been filed, seeking leave to file the suit under Section 92 of CPC.

2. The suit has been filed by Sri Vupputur Alwar Chetty's Charities, represented by its Hereditary Trustee, Vupputur Ramesh, Vupputur Sethuram, Vupputur Ramesh and Vupputur Swaroop, against three Defendants, namely, Thatha Sampath Kumar, C.Vivekananda and A.Balasubramaniam. The 2nd, 3rd and 4th Plaintiffs are Hereditary Trustees.

3. The 1st Defendant is a life Trustee and the 2nd and 3rd Defendants are also Trustees. The suit had been filed for a judgement and decree, to remove the 1st Defendant as life Trustee of the 1st Plaintiff Trust and to

grant permanent injunction, restraining the Defendants from interfering with the management of the 1st Plaintiff Trust and for costs of the suit.

4. In the present application, it has been stated that the first Plaintiff Trust is a Trust for public charities. In the year 1922, the male Members of the Vupputur family, Vupputur Alwar Chetty, Vupputur Ethirajulu Chetty and Vupputur Thiruvengadathan Chetty, had formed the 1st Plaintiff Trust by executing a trust deed dated 28.8.1922. Six Trustees were appointed, namely, (1) Vupputur Alwar Chetty, (2) Vupputur Ethirajulu Chetty, (3) Vupputur Thiruvengadathan Chetty, (4) Thatha Nagaiah Chetty as life Trustees and (5) Rao Bahadur Pothur Ayyanna Chetty and (6) Sami Venkatachalam Chetty as ordinary Trustees. It has been stated that the founder of the Plaintiff Trust, Vupputur Alwar Chetty wanted to keep the management of the of the said Trust within his family, namely, Vupputur family. A representation was given to Thatha family. It has been stated that the Defendants, who are close relatives, with an intention to grab the property of the 1st Plaintiff Trust, had conspired to remove the presence of all Members of the Vupputur family.

5. It has been further stated by the Plaintiffs that one of the Members of the Vupputur family, namely, Vupputur Jeevan lodged a complaint dated 18.7.217 to the

Plaintiff Trust against the Defendants 1 to 3 and sought to take action to remove the 1st Defendant as life Trustee and the Defendants 2 and 3 as ordinary Trustees. It has been further stated that the 1st Defendant family is also running their family trust, namely, T.V.R.Subbi Chetty's Families Charities, which was registered under the Hindu Religious and Charitable Endowment Department of Government of Tamil Nadu. The 1st Defendant has faced various charges of misappropriation of properties and funds of the said T.V.R.Subbi Chetty's Families Charities. He was suspended from acting as President/ Hereditary Trustee by order of the Commissioner of Hindu Religious and Charitable Endowment, dated 29.4.2009.

6. It has been further stated by the Plaintiffs that the 1st Defendant, with an intention to take control of the Plaintiff Trust, got himself appointed as life Trustee and other Trustees did not know that he was facing charges of misappropriation. It has been further stated that the 1st Defendant, in collusion with the 2nd and 3rd Defendants, had acted in derogation of expressive and constructive provision of the trust deed of the Plaintiff Trust. He was suspended on 25.9.2017 and the order was communicated on the same day. The Defendants also attempted to trespass into the premises of the 1st Plaintiff Trust. They also lodged a complaint against the

deponent of the affidavit, namely, the 3rd Plaintiff, before C5, Kothawal Chavadi Police Station in CSR.No.577/CSR/C5/2017. There was also an earlier suit in CS.No.520 of 2015. It has been further stated that leave has to be granted under Section 92 of CPC.

7. In the counter affidavit filed by the 1st Defendant, it has been stated that when there is a dispute with respect to right of Trustees pending before this Court, the Plaintiffs cannot state that they are persons interested. It has been further stated that the present proceedings are not bona fide in nature. It has been filed only to ventilate personal grievance. It has also been stated that the suit has been filed to achieve personal interest of the Plaintiffs to take revenge against the Defendants/ Trustees. It has been further stated that the Defendants are loyal to the Trust purely acting for the benefit of the Trust and therefore, prayed that the application must be dismissed.

8. This Court heard the arguments of the learned counsel on either side.

9. It is a fact that the 1st Plaintiff Trust, Sri Vupputur Alwar Chetty Charities, had been instituted in the year 1922, by way of a trust deed dated 28.8.1922. Vupputur Alwar Chetty was the founding Member. He was the author of the Trust. He appointed six Trustees, namely,

(1) Vupputur Alwar Chetty, 92) Vupputur Ethirajulu Chetty, (3) Vupputur Thiruvengadathan Chetty, (4) Thatha Nagaiah Chetty as life Trustees and (5) Rao Bahadur Pothur Ayyanna Chetty and (6) Sami Venkatachalam Chetty, as ordinary Trustees. The trust deed also indicated the manner in which a Trustee should be subsequently appointed. The Trust was formed with an object to perform charities to the public by using the income from the properties at Govindappa Naicken Street, Geoge Town, Chennai, West Uthara Street, Srirangam, Stringer's Street, Chennai and Anderson Street, Chennai.

10. With respect to necessity for instituting the suit and for removal of the 1st Defendant as life Trustee and for permanent injunction against the Defendants from interfering with the functioning of the Trust, it has been stated that the 1st Defendant was running his own family Trust, by name, T.V.R.Subbi Chetty's Families Charities. He had been removed by the order of the Commissioner of Hindu Religious and Charitable Endowment Department, dated 29.4.2009 in view of the complaints of misappropriation of property and funds. It has been specifically stated that he and the other Defendants had colluded with each other to grab the properties of the 1st Plaintiff Trust.

11. There is also a complaint by Thatha Sudarsan, dated 9.8.2017 against the 1st Defendant, requesting the

1st Plaintiff Trust to remove the 1st Defendant. There was also another complaint, dated 18.7.2017 by Vupputur Jeevan to remove the 1st Defendant. The 1st Plaintiff Trust, by order dated 25.9.2017 removed the 2nd and 3rd Defendants as ordinary Trustees from the 1st Plaintiff Trust. This order was also communicated on the same day. It has been further stated that the Defendants employed rowdy elements on 29.9.2017 and attempted to trespass into the premises of the 1st Plaintiff Trust. This was successfully prevented by the Plaintiffs. The Defendants also lodged a false complaint against the 3rd Plaintiff before C5, KothawalChavadi Police Station, in CSR.No.577/CSR/C5/2017.

12. Under Section 92 of CPC, the first ingredient to be satisfied is that a suit must be instituted by two or more persons having interest in the Trust. In the present case, the 2nd, 3rd and 4th Plaintiffs are actually life Trustees. Consequently, they are persons having interest in the Trust. The suit has been filed to remove the 1st Defendant as life Trustee. Under Section 92(a), the suit can be filed to remove a Trustee.

13. However, the averments in the plaint will have to be decided at the time of trial. The Plaintiffs will have to establish the grounds on which they seek removal of the 1st Defendant as life Trustee. There are issues to be decided and which issues can be decided only during the

trial on the basis of the evidence both oral and documentary.

14. At this juncture, the only primary question, which this Court has to deal with, is whether the persons, who instituted the suit, are persons interested in the Trust. The 2nd, 3rd and 4th Plaintiffs being life Trustees are certainly persons interested in the 1st Plaintiff Trust. Consequently, leave as prayed for has to be granted.

15. In the result, this application is allowed as prayed for. No costs. the Registry is directed to number the suit if it is otherwise in order.

Sd/.C.V.K.J

25.04.2018

//Certified to be true copy//
Dated at Madras this the day of 2018.

COURT OFFICER(O.S.)
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