



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2018

Delivered on : 29.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (MD) No.1450 of 2018

and

CMP (MD) No.6290 of 2018

M.Panneerselvam

.. Petitioner

vs

1. Sri Sai Ram Educational and Charitable Trust

Orathanadu, rep. By its Managing Trustee

R.Viswanathan, S/o.Ramasamy

No.9B, R.V.Nagar, 1st Street

Orathanadu, Thanjavur - 614 625.

2. G.Gayathri

.. Respondents

Prayer: Petition under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.109 of 2017 on the file of the Subordinate Judge, Pattukottai.

For Petitioner

: Mr.V.Arul

For Respondents

: Mr.T.A.Ebenezer (for R1)

No Appearance (for R2)

ORDER

This civil revision petition is filed to strike off the plaint in O.S.No.109 of 2017 on the file of the learned Subordinate Judge, Pattukottai.

2. The facts in brief are as under: The first respondent herein is the plaintiff. The petitioner is the first defendant in the suit and the second respondent is the second defendant in the suit. The first respondent had filed the suit in O.S.No.109 of 2017 seeking, inter alia, the following reliefs:

(i) declaring the Board of Trustees, namely (1)

R.Viswanathan, (2) A.Ramakrishnan, (3) D.Selvam, (4)

Dr.P.Ramanathan are the Trustees of the plaintiff Trust,

(ii) declaring the defendants are not the Trustees of the plaintiff Trust as per the Resolutions of Board of Trustees dated 20.2.2017,

(iii) pass a decree for permanent injunction against the defendants and their men to retain them from interfering in any manner into the management, administration of the plaintiff Trust as well as the running of the beneficiary school, namely Sri Srinivasa Matric Higher Secondary School, Orathanadu.



3. It is the contention of the learned counsel appearing on behalf of the petitioner that the the signatory to the plaint, R.Viswanathan, has been expelled by way of a resolution dated 08.12.2016 and the impugned suit for declaration has been filed without challenging the said resolution dated 08.12.2016 and, therefore, the suit is unsustainable. To substantiate the said plea, the learned counsel placed reliance on the plaint averment itself, more particularly, paragraph (6), which reads as under:

"In the said letter, she had leveled wild allegations against the plaintiff Trust and went to the extent of removing the Managing Trustee namely R.Viswanathan and the Co-Trustee Ramakrishnan. Furthermore in the said letter it was stated that on 08.12.2016 a meeting of Board of Trustees of the Plaintiff Trust was convened by her and some 4 to 5 respectable persons were attended the meeting. In the said meeting Resolution was passed to remove the said Trustees of the Trust."

4. He further contended that the persons who had been expelled from the first respondent Trust had not challenged the resolution in their individual capacity, but have sought to file the suit in the name of Trust and inasmuch as Viswanathan had been expelled from the Trust way back on 08.12.2016, which is also referred to in the plaint, he has no authority to institute the suit on behalf of the trust. In other words, it is his contention that personal rights of Viswanathan and Ramakrishnan cannot be determined in a suit filed by the Trust, which is represented by one of the expelled person.

5. Per contra, it is the contention of the learned counsel appearing on behalf of the first respondent that the suit is maintainable and that the first respondent Trust had convened an extraordinary meeting of Board of Trustees on 20.02.2017 and had resolved to remove the defendants (petitioner and the second respondent) from their trusteeship for the reasons of their activities against the interest of the Trust and the same was also communicated to them on 22.02.2017.

6. He further contended that the second respondent had no authority to remove the Trustees as per the resolution dated 08.12.2016 and that the Managing Trustees of a Trust cannot be removed or expelled from a Trust excepting the procedures and circumstances incorporated in the Trust Act and the terms of the Trust Deed.

7. I heard Mr.V.Arul, learned counsel for the petitioner and Mr.T.A.Ebenezer, learned counsel for the 1st respondent and perused the documents available on record. There is no representation on behalf of the 2nd respondent.



8. A bare reading of the plaint averments itself makes it clear that by resolution dated 8.12.2016, the Managing Trustee, namely R.Viswanathan and the Co-Trustee, namely Ramakrishnan, were removed from the trusteeship of the first respondent Trust and in that Board of Trustees meeting was duly attended by the second respondent and four to five persons. The said averment also makes it clear that R.Viswanathan, who is representing the Trust in the present suit, had due knowledge of the said resolution dated 8.12.2016.

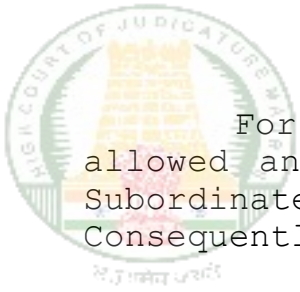
9. Another factor which is evident from a perusal of the plaint is that pursuant to the said resolution dated 8.12.2016, the expelled Managing Trustee and other trustees, without challenging the resolution, have convened another Extraordinary Meeting of Board of Trustees on 20.2.2017 to discuss about the activities of the defendants, namely the petitioner and the second respondent, and by resolution dated 20.2.2017, they were removed from the trusteeship.

10. A trust should be protected against any proved mismanagement, but the person who sues on behalf of the Trust should have the locus standi to represent the Trust or he should be competent to raise such an issue before the Competent Court as per the Indian Trust Act. In the case on hand, even as per the plaint averments, the Board of Trustees on 8.12.2016 resolved to remove the Managing Trustee, namely R.Viswanathan and the Co-Trustee, namely Ramakrishnan. Admittedly, the said resolution remains unchallenged till date.

11. When the Managing Trustee, namely R. Viswanathan, had been removed from the trusteeship by resolution dated 8.12.2016, he ought to have challenged the said resolution. It is admitted fact even as per the plaint averments that a resolution was passed to that effect by the Board of Trustees. If the procedure adopted by the Board of Trustees is found fault with, it is always open to him to challenge the same.

12. It is trite that to exercise the superintending power under Article 227 of the Constitution of India and to strike off the plaint, the Court should come to a conclusion that the suit is an abuse of process of law based on the plaint averments and the admission made by the plaintiff. When there is no subsisting legal cause of action for seeking the relief sought for in the plaint or the suit filed as such is an abuse of process, the same has to be struck off, to meet the ends of justice.

13. In the case on hand, in my considered opinion, Mr.R.Viswanathan, has no authority to represent the first respondent Trust to file a suit seeking the reliefs, referred supra, even based on the plaint averments. The present suit filed being a vexatious litigation, it is the solemn duty of the Court to invoke Article 227 of the Constitution of India to strike off the plaint.



For the foregoing reasons, this civil revision petition is allowed and the plaint in O.S.No.109 of 2017 on the file of the Subordinate Judge, Pattukottai, is struck off. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Subordinate Judge,
Pattukottai.

+1CC to Mr.V.ARUL, Advocate, SR.No. 81438

+1CC to Mr.T.A.Ebenezer, Advocate, SR.No.81393

C.R.P. (MD)No.1450 of 2018 and
CMP (MD)No.6290 of 2018
29.08.2018

VSV

ES/SKN/RSK/SAR 2/03.12.2018/4P/4C