



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2018

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.PD[MD]No.2604 of 2016

and

C.M.P.[MD]No.12299 of 2016

1.A.M.Kannappa Nayanar Kalvi Arakkattalai,
A Public Charitable Trust,
Having office at Door No.1/D, Puthar Street,
Sivagangai.
Represented by its Chairman Board of Trustees,
Mr.P.Vellaichamy,
S/o. Pambaiyan

2.P.Vellaichamy

3.M.Rajendran

4.N.Lakshmanan

..Revision Petitioners/
Defendants 1 to 3 & 5

Vs .

1.Selvamani

2.N.Ramanathan

3.R.Sundaram

4.P.Malaichamy

5.Muniandi

6.Perumal

..Respondents 1 to 6/
Palintiffs 1 to 6

7.G.Vasudevan

..7th Respondent/5th Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 08.09.2016 in I.A.No.407 of 2012 in O.S.No.146 of 2012 passed by the learned Subordinate Judge, Sivagangai and allow the same.

For Petitioner : Mr.V.Sitharanjandas

For Respondents 1,2,4,5&6 : Mr.S.Srinivasa Raghavan

For Respondents 3&7 : No appearance

**ORDER**

The defendants in O.S.No.146 of 2012 are the revision petitioners herein. The respondents filed O.S.No.146 of 2012, before the Subordinate Court, Sivagangai under Section 92 of CPC.

2.The subject matter pertains to the properties of one Kannappa Nayanar Kalvi Arakkattalai. According to the plaintiffs, the said Trust is a Public Charitable Trust and that its properties have been unlawfully alienated. The plaintiffs therefore have sought a declaration that such alienation is null and void and they want the fifth defendant to hand over and deliver the said properties back to the Trust.

3.Admittedly, it is a suit filed under Section 92 of CPC. Therefore, grant of leave for instituting such a suit is a condition precedent. As rightly pointed out by the learned Counsel for the revision petitioner, the Hon'ble Supreme Court, in the decision reported in **(1991) 1 SCC 48 [R.M.Narayana Chettiar and another Vs. N.Lakshmanan Chettiar and others]** held that a suit filed without obtaining such a leave would not be maintainable at all. But in this case, the plaintiffs cannot really be blamed. They have taken out a leave application while presenting the plaint. That leave application was numbered as I.A.No.407 of 2012. But then, the Court below without passing any order in the leave application chose to number the suit straightaway. Only in the year 2016, it was realised that the suit has been numbered even without grant of leave. Therefore, the Court below by order dated 08.09.2016, allowed the said I.A.No.407 of 2012.

4.As rightly contended by the learned Counsel for the respondents / plaintiffs, plaintiffs cannot be really to faulted. It is the fault committed by the Court below. The parties cannot suffer for the mistake committed by the Court. But, in this case, there is a way out. More or less, a similar situation arose before the Orissa High Court in the decision reported in **AIR 1988 Orissa 100 [Kintali China Jaganadham and others Vs. K.Laxmi Naidu and others]**. The learned Judge took the view that the suit can be deemed to have been instituted on the date when leave was granted. Respectfully following the said decision of the Orissa High Court, I hold that the suit in question can be deemed to have been instituted on 08.09.2016. The Court below is directed to give a fresh number to the suit. The revision petitioners are entitled to file an additional written statement. But such an additional written statement shall be filed within four [4] weeks from the date of receipt of a copy of this order. All the issues relating to limitation and maintainability are left open. Since the suit was actually instituted in the year 2012 itself, the Court below is directed to dispose of the suit within a period of six [6]



months thereafter. In this view of the matter, the impugned order is confirmed subject to the directions given herein.

5. The Civil Revision Petition is disposed of, accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS-II)

To

The Subordinate Judge,
Sivagangai.

- + 1 CC TO MR.M.KAMALANATHAN, ADVOCATE IN SR NO.80037.
- + 1 CC TO MR.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR NO.80111.

MR

BU/SKN/SAR-II : 01.10.2018 : 3P/4C

ORDER MADE IN
C.R.P.PD[MD] No.2604 of 2016
24.08.2018