



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.08.2018

DELIVERED ON : 10.10.2018

CORAM

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

Tr.C.M.P. (MD) Nos.269 and 276 of 2018

Tr.C.M.P. (MD) No.269 of 2018:

1.N.Kumarasamy
2.B.Charumathy Raja
3.K.Manikanda Raja .. Petitioners

VS

1.Adarsh Educational Trust,
rep. by its Chairman Dr.Gopal Surendran
Adarsh Vidya Kendra,
Vettoornimadam,
Nagercoil, Kanyakumari District.

2.G.Surendran (died)
3.Dr.Indira Surendran
4.Dr.Gopal Surendran
5.S.Padmanabhan
6.Jaiwant Kumar Babu
7.Dr.Mini Gopal
8.K.K.Bhaskaran Nair
9.Dr.P.Arunchan
10.Dr.Krishna Surendran
11.Priyadharshini
12.Mahesh P.Subramaniam .. Respondents

Tr.CMP. (MD) No.276 of 2018:

1.Rajammal
2.B.Sharumathy Raja .. Petitioners



Adarsh Educational Trust,
rep. by its Chairman Dr.Gopal Surendran
Adarsh Vidya Kendra,
Vettoornimadam,
Nagercoil, Kanyakumari District.

.. Respondent

Tr.C.M.P.(MD)No.269 of 2018 filed under Section 24 of C.P.C. to withdraw O.S.No.88 of 2015 from the file of the Additional District Court (Fast Track Court), Nagercoil and transfer the same to the file of the Principal District Court, Kanyakumari at Nagercoil.

Tr.C.M.P.(MD)No.276 of 2018 filed under Section 24 of C.P.C. to withdraw A.S.No.42 of 2017 from the file of the Additional District Court (Fast Track Court), Nagercoil and transfer the same to the file of the Principal District Court, Kanyakumari at Nagercoil.

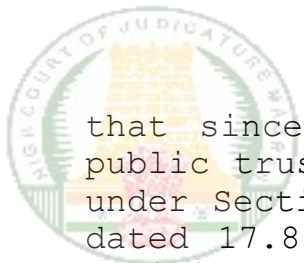
For Petitioners : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For Respondents : Mr.S.Subbiah, Senior Counsel
for Mr.V.M.Bala Mohan Thambi
(for R1, R4, R7, R9 to R11 in
Tr.CMP(MD)No.269/2018
& Respondent in Tr.CMP(MD)
No.276/18)
R2 - Died (in Tr.CMP.269/18)
No Appearance (for R3, R5, R6 &
R8 in Tr.CMP.269/18)

COMMON ORDER

Tr.C.M.P.No.269 of 2018 has been filed by the petitioners to withdraw the suit O.S.No.88 of 2015 from the file of the learned Additional District Court (Fast Track Court), Nagercoil and transfer the same to the file of the learned District Court, Kanyakumari at Nagercoil. Tr.C.M.P.No.276 of 2018 has been filed by the petitioners to withdraw the appeal A.S.No.42 of 2017 from the file of the learned Additional District Court (Fast Track Court), Nagercoil and transfer the same to the file of the learned District Court, Kanyakumari at Nagercoil.

2. The petitioners seeking withdrawal of the suit being O.S.No.88 of 2015 from the file of the learned Additional District Court (Fast Track Court), Nagercoil and transfer of the same to the file of the learned District Court, Kanyakumari at Nagercoil stating



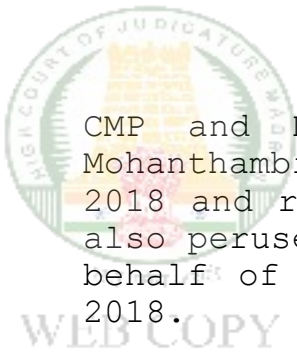
that since the first respondent trust in O.S.No.88 of 2015 is a public trust have filed I.A.No.435 of 2012 in O.S.SR.No.651 of 2012 under Section 92 of CPC seeking leave to file the suit. By an order dated 17.8.2015, the District Judge has granted permission to the petitioners to file the suit and consequently, the suit was numbered as O.S.No.88 of 2015 on the file of the said Court. Later, by an administrative order, the District Judge, transferred the suit to the file of the learned Additional District Court (Fast Track Court) Nagercoil and the said suit is now pending in the learned Additional District Court (Fast Track Court), Nagercoil.

3. It is alleged that aggrieved by the order passed in I.A.No.435 of 2012, the respondent filed Civil Revision Petition being C.R.P.No.2632 of 2015 before this Court and the same was pending. Since the Principal Civil Court of original jurisdiction namely the learned Principal District Court is the only Court competent to try the suit in terms of Section 92 of CPC, the learned Additional District Judge (Fast Track Court), Nagercoil is not competent to entertain and decide the suit. Hence, prayed for withdrawal of the suit from the file of learned Additional District Judge (Fast Track Court) and transfer the same to the learned District Court, Kanyakumari at Nagercoil.

4. Similarly, the petitioners in Tr.C.M.P.No.276 of 2018 stated that since A.S.No.42 of 2017 pending on the file of the learned Additional District Court (Fast Track Court), Nagercoil is connected with O.S.No.88 of 2015 and the verdict to be given in A.S.No.42 of 2017 will definitely have bearing on O.S.No.88 of 2015, A.S.No.42 of 2017 may also be withdrawn from the file of the learned Additional District Court (Fast Track Court), Nagercoil and transferred to the learned District Court, Kanyakumari @ Nagercoil.

5. Opposing the prayers of the petitioners, the learned Senior Counsel for respondents 1,4,7,9 to 11 in Tr.C.M.P.No.269 of 2018 and the respondent in Tr.C.M.P.No.276 of 2018 submitted that by virtue of Section 24 of CPC, the District Judge is empowered to transfer suit filed under Section 92 of CPC to the Additional District Judge for trial and disposal and therefore, there is no necessity to transfer the instant suit and appeal from the file of the learned Additional District Judge (Fast Track Court), Nagercoil to the file of the District Judge, Kanyakumari @ Nagercoil as prayed for. In support, the learned Senior Counsel relied upon the following decisions:

- (i) Ram Kishore Sharma and others v. Gopi Nath and others, reported in AIR 1979 Allahabad 281.
- (ii) Gangaagir Chela v. Rasal Singh, reported in AIR 1965 P&H 472.
- (iii) R.Ashok v. Susila Jeyaraj, reported in 2014 (4) CTC 762.



CMP and Mr.S.Subbaiah, learned Senior Counsel for Mr.V.M.Bala Mohanthambi, learned counsel for the respondent in Tr.CMP.No.276 of 2018 and respondents 1, 4, 7, 9 to 11 in Tr.CMP.No.269 of 2018 and also perused the materials available on record. No representation on behalf of the respondents 3, 5, 6, 8 and 12 in Tr.CMP.No.269 of 2018.

7. The petitioners seek transfer of the suit and appeal from the file of the learned Additional District Judge (Fast Track Court) Nagercoil on the ground that in case of more District Courts than one, only the Principal Court will be the competent to try the civil suit and therefore, the suit and the appeal, being connected with the suit, have to be withdrawn from the file of the Additional District Judge (Fast Track Court) Nagercoil and transferred to the file of the District Court, Kanyakumari @ Nagercoil.

8. In Ram Kishore Sharma and others v. Gopi Nath and others, reported in AIR 1979 Allahabad 281, the Allahabad High Court held:

"11. The controversy that arose for consideration before a Full Bench of the Punjab High Court in Gangagir Chela v. Rasal Singh (AIR 1965 Punj 472) was as to whether the Court of an Additional Dist. Judge to whom a case is transferred by the District Judge under S.76 of the Patiala and East Punjab States Union Judicature Ordinance and S.21 of the Punjab Courts Act, 1918 has jurisdiction to try a suit which according to S.92 of the Code could be instituted only in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government. It was held by the Full Bench that a suit under S.92 of the Code instituted in the Court of the District Judge became a part of the business pending before him and it could be validly assigned by him to the Additional District Judge under S.21(2) of the Punjab Courts Act, 1918 and upon such assignment the latter will be fully competent to dispose of the suit in the same manner as the District Judge. The language of the relevant provision of the Ordinance and the Punjab Courts Act, 1918 was very similar to that employed in S.8 of Act No.XII of 1887 and the power of the District Judge to transfer suits and proceedings pending before him similar to that as in S.24 of the Code. In the above-mentioned case the decision of the Calcutta High Court in Rup Keshwar Lal v. Jaijai Bibi, (AIR 1916 Cal 561) (FB) (supra) and of Kanhaiya Lal, J.C. In Gauri Nath v. Ram Narain, (AIR 1919 Oudh 311) (supra) were cited and followed with approval."

9. In Gangaagir Chela v. Rasal Singh, reported in AIR 1965 P&H 472, the Punjab and Haryana High Court held:

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10. I find it difficult to give any narrow or restricted meaning to the word "business" appearing in



S.76 of the Ordinance or S.21 of the Act and I entertain no doubt whatsoever that it would include all the work which is pending before the District Judge. When a suit under S.92 of the Code is instituted in his Court it becomes a part of the business pending before him, with the result that it can be assigned by him to the Additional District Judge under S.21(2) of the Act and in that event the latter would be fully competent to deal with and dispose of the suit in the same manner as the District Judge. I would, therefore, answer the question referred to the Full bench in the negative."

10. In *R.Ashok v. Susila Jeyaraj*, reported in 2014 (4) CTC 762, a learned Single Judge of this Court held:

"What is Persona Designata?

31. As defined in Black's Law Dictionary, Ninth Edition, at page 1258 the phraseology "Persona Designata" has been defined as under:

32. It is derived from Latin and defined as "a person considered as an individual (esp. in a legal action) rather than as a member of a class."

33. In *mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker*, 1995 (5) SCC 5 : 1995 AIR 2272, the Appellate Authority, namely, the District Judge, Thallassery had taken the view that since he is a persona designata he could not resort to Section 5 of the Limitation Act for condoning the delay in filing Appeal before him."

11. It is essential to refer to Section 92 of CPC, which reads as follows:-

"92. Public charities:- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court, of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree....."

12. It would be pertinent to refer to Section 2(4) of CPC, which defines the term as follows:-

"District means the local limits of the jurisdiction of principal Civil Court of original jurisdiction (hereinafter called a District Court), and includes the



local limits of the ordinary original civil jurisdiction of a High Court."

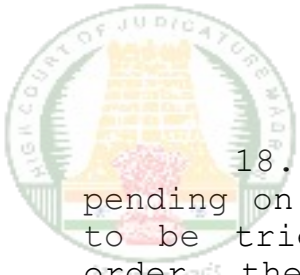
13. In their petitions, the petitioners have stated that as per the terms of Section 92 of CPC, the Principal Civil Court of original jurisdiction or any other Court competent are the Courts competent to try the suits. As per the State Government notification apart from the District Court, the Subordinate Courts have been vested with the competency to try suits of such nature.

14. Thus, keeping in mind the legislative intention that apart from the Principal Civil Court of original jurisdiction, some other Courts should also be empowered in that behalf by the State Government, it has to be necessarily held that the statutory power of the Principal Civil Court of original jurisdiction does not exclude or override the power of any other Court empowered by the State Government. When a suit under Section 92 of CPC is instituted in District Court it becomes a part of the business pending before him, with the result that it can be assigned by him to the Additional District Judge and in that event the latter would be fully competent to deal with and dispose of the suit in the same manner as the District Judge.

15. However, in the instant case, as stated supra, when the petitioners have instituted the suit (O.S. Sr.No.651 of 2012) with respect to the respondent trust, they took out an application in I.A.No.435 of 2012 under Section 92 of CPC seeking leave of the Court to file the suit and the same was granted by the learned District Court, Kanyakumari @ Nagercoil vide order dated 17.8.2015. Thereafter only, the suit was numbered as O.S.No.88 of 2015. Aggrieved by the leave granted, the respondents have filed C.R.P.No.2632 of 2015 before the High Court.

16. It appears that C.R.P.No.2632 of 2015 preferred against the order of the leave granted in I.A.No.435 of 2012 has been tried along with C.R.P.No.2274 of 2016 by this Court. By a common order dated 20.8.2018, both CRPs have been dismissed by this Court. C.R.P.No.2274 of 2016 arises out of the order passed by the learned District Judge dated 19.8.2016 in Tr.O.P.No.495 of 2015 filed by the petitioners herein ordering transfer of O.S.No.307 of 2014 pending on the file of the learned Sub-Court, Nagercoil to be tried along with O.S.No.88 of 2015 pending on the file of the learned District Court, Kanyakumari @ Nagercoil. Finding that there was no illegality in the order of the learned District Judge, this Court dismissed C.R.P.No.2274 of 2016.

17. As far as C.R.P.No.2632 of 2015 is concerned, by the same order, this Court, dismissed the said CRP holding that no valid grounds have been made out by the petitioners therein to interfere with the order of the learned District Judge. Thus, the contention of the petitioners that C.R.P.No.2632 of 2015 is still pending is not correct.



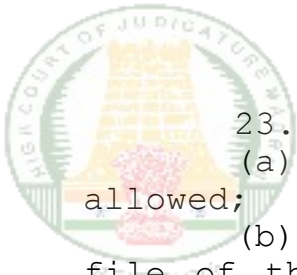
18. In view of the fact that when the suit O.S.No.307 of 2014 pending on the file of the learned Sub-Court, Nagercoil was ordered to be tried along with O.S.No.88 of 2015, on an administrative order, the learned District Judge ought not to have transferred O.S.No.88 of 2015 to the file of the learned Additional District Judge (Fast Track Court), Nagercoil retaining O.S.No.307 of 2014 pending on its file. Moreover, pending C.R.P.No.2632 of 2015 challenging the leave granted, the learned District Judge has transferred O.S.No.88 of 2015 to the file of the learned Additional District Judge (Fast Track Court), Nagercoil.

19. Therefore, in the interest of justice and the fact that the connected suit O.S.No.307 of 2014 is pending on the file of the learned District Court, Kanyakumari @ Nagercoil, it would be appropriate to order transfer of O.S.No.88 of 2015 to the file of the learned District Court, Kanyakumari @ Nagercoil from the file of the learned Additional District Judge (Fast Track Court), Nagercoil. No prejudice would be caused to the respondents and/or respondent trust, if O.S.No.88 of 2015 is transferred to the file of the learned District Court, Kanyakumari @ Nagercoil. Though the petitioners have stated that in case of more District Courts than one, only the Principal Court i.e., the Principal District Court, will be the competent to try the civil suit, the same has not been established by the petitioners. However, nothing has been produced by the respondents to show that in event the suit being O.S.No.88 of 2015 is withdrawn from the file of the learned Additional District Judge (Fast Track Court) Nagercoil and transferred to the file of the learned District Court, Kanyakumari @ Nagercoil much hardship and/or prejudice would be caused to them.

20. As far as Tr.C.M.P.No.276 of 2018 is concerned, the petitioners sought transfer of A.S.No.42 of 2017 from the file of learned Additional District Judge (Fast Track Court), Nagercoil, to the file of the learned District Court, Kanyakumari District @ Nagercoil.

21. On a perusal of the typed set of documents filed in both Tr.C.M.Ps., it is seen that the suit properties are more or less one and same and the respondent trust is also the same. As rightly argued by the learned counsel for the petitioners, the verdict to be given in A.S.No.42 of 2017 will definitely have a bearing on O.S.No.88 of 2015 and therefore, if the same Court hears and decides the suit and appeal, there will not be conflicting decisions.

22. For the foregoing reasons, I am of the view that the petitioners are entitled to seek transfer of O.S.No.88 of 2015 and A.S.No.42 of 2017 from the file of the learned Additional District Judge (Fast Track Court) Nagercoil to the file of the District Judge, Kanyakumari @ Nagercoil.



23. In the result:

(a) both the Transfer Civil Miscellaneous Petitions are allowed;

(b) O.S.No.88 of 2015 and A.S.No.42 of 2017 pending on the file of the learned Additional District Judge (Fast Track Court), Nagercoil are ordered to be withdrawn and transferred to the file of the learned District Court, Kanyakumari @ Nagercoil;

(c) the learned District Court, Kanyakumari @ Nagercoil is directed to dispose of the suit in O.S.No.88 of 2015 and A.S.No.42 of 2017 within a period of four months from the date of receipt of a copy of this order. Both the parties are directed to give their fullest co-operation for early disposal of both the cases. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Additional District Judge,
(Fast Track Court)
Nagercoil.

2.The Principal District Judge,
Kanyakumari District @ Nagercoil.

+1cc to M/s.Sarvabhauman Associates, Advocate in SR No.89993

+1cc to Mr.V.M.Bala Mohan Thambi, Advocate in SR No.89884 &89882

Tr.CMP(MD)Nos.269 and 276 of 2018

NM/RSK/SAR I/12.11.18/8P/6C.