



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.02.2018

PRONOUNCED ON : 25.09.2018

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CRP (MD) (PD) No.966 of 2013

M.Balasubramaniam ... Petitioner

versus

1 M.Narayana Pillai

2.N.Maharajan

3 D.John Rose

4.I.Sameer

... Respondents

Prayer : Civil Revision Petitioner filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 25.03.2013, passed by the II-Additional Subordinate Judge, Nagercoil in I.A. No.39 of 2013 in O.S. No.3 of 2013.

For Petitioner : Mr.S.Madhavan

For Respondents : Mr.P. Thiagarajan for R1 and R2

Mr.PT.Ramesh Raja for R3

No appearance for R4

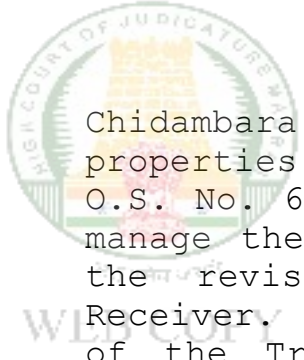
ORDER

This Civil Revision Petitioner preferred against the fair and decreetal order, dated 25.03.2013, passed by the II-Additional Subordinate Judge, Nagercoil in I.A. No.39 of 2013 in O.S. No.3 of 2013, which was filed by the petitioner/1st defendant under Order 7 Rule 11 of Code of Civil Procedure to reject the plaint.

2. The plaintiffs/respondents 1 and 2 herein have filed the suit in O.S. No. 3 of 2013 praying for a declaration to declare that the lease deed dated 19.07.2012 executed by the first defendant/revision petitioner herein in favour of the third defendant/third respondent herein, as void and unenforceable and for a consequential permanent injunction restraining the defendants from making any construction or alteration in the plaint schedule property.

<https://hcservices.ecourts.gov.in/hcservices/>

3. According to the plaintiffs/respondents 1 and 2 herein, the properties mentioned in the plaint schedule belonged to Arulmighu

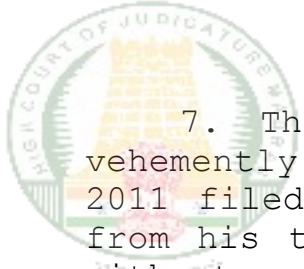


Chidambara Vinayagar Temple Trust. For administering the properties belonged to the Trust, a scheme decree was passed in O.S. No. 68 of 1986 whereby an advocate receiver was appointed to manage the properties of the Trust. After successive Receivers, the revision petitioner/first defendant was appointed as a Receiver. While so, one S. Ramachandran, one of the beneficiaries of the Trust, has filed E.A. No. 199 of 2011 to remove the revision petitioner/first defendant from his trusteeship and it is pending. During the pendency of the EA No. 199 of 2011, it is alleged that the revision petitioner/first defendant, in abuse of his powers as an Official Receiver, has executed a lease deed dated 19.07.2012 in favour of the third defendant with a right to put up a construction in the land measuring 15.85 cents belonged to the Trust. In such circumstances, the plaintiffs/respondents 1 and 2 herein have filed the suit.

4. On notice, the revision petitioner/first defendant has filed I.A. No. 39 of 2013 under Order VII Rule 11 of CPC to reject the plaint by contending that he has been appointed as Receiver as per the scheme decree framed in respect of the Trust properties. After his appointment as Receiver, he had made several developments to the trust properties and only in order to augment the income of the Trust, he had executed the lease deed in favour of the third defendant. It is his specific contention that when a scheme decree has been framed, the plaintiffs/respondents 1 and 2 herein have to only file an application before the competent Court and a separate suit is barred. Further, without getting prior permission from the competent Court, the receiver cannot be sued by the plaintiffs. The suit has not been valued properly and the Court fee paid is inadequate. There is no cause of action for filing the suit and therefore, the plaint has to be rejected.

5. The application filed by the revision petitioner/first defendant was contested by the plaintiffs/respondents 1 and 2 herein stating that the revision petitioner, has abused his position as an Receiver. The relief prayed for in the present suit cannot be granted by the executing Court. The third defendant is a retired Deputy Superintendent of Police and he, in collusion with the Receiver, has put up a construction in the property.

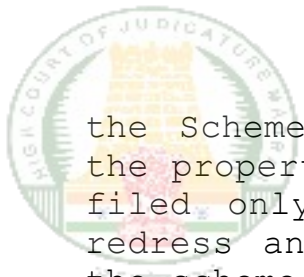
6. Before the trial Court, on behalf of the revision petitioner/first defendant, Exs. P1 to P10 were marked. On behalf of the plaintiffs/respondents 1 and 2 herein, Exs. R1 to R10 were marked. The Court below, after considering the arguments advanced on behalf of both sides and on perusal of the documentary evidence, concluded that there is a triable issue involved in the suit and therefore, the maintainability or otherwise of the plaint has to be decided only after trial. Accordingly, the trial Court ~~has rejected the application~~ application filed by the revision petitioner to reject the plaint. Aggrieved by the same, the present Civil Revision Petition is filed.



7. The learned counsel for the revision petitioner would vehemently contend that already an application in E.A. No. 199 of 2011 filed by one Ramachandran to remove the revision petitioner from his trusteeship is pending. The respondents 1 and 2 herein, without contesting the said application, have filed an independent suit questioning the action of the revision petitioner in executing the lease deed dated 19.07.2012 in favour of the third respondent. Therefore, the separate suit filed by the respondents 1 and 2 in O.S. No. 3 of 2013, without filing an execution petition is not maintainable. The action of the petitioner, as a Receiver, can be questioned by the plaintiffs only after prior permission from the competent Court and in the absence of any such permission, the revision petitioner cannot be sued. Further, the Court below failed to consider that for seeking a declaration to declare the lease deed dated 19.07.2012 as unenforceable, the plaintiffs/respondents 1 and 2 herein, ought to have invoked Section 40 of the Court Fee Act and paid proper Court fee. The Court below also did not see that there is no cause of action for filing the present suit and therefore, the Plaint ought to have been rejected.

8. Per contra, the learned counsel for the respondents 1 and 2 would justify the order passed by the Court below. According to the learned counsel, there are triable issues involved in the suit and the maintainability of the plaint has to be gone into only during the course. The right of the revision petitioner/first defendant in executing a lease deed dated 19.07.2012 in favour of the third defendant is a separate action which had given rise to file the suit for declaration. The suit filed was proper and therefore, he prayed for dismissal of the Civil Revision Petition.

9. Heard both sides. Admittedly, there is a scheme decree in vogue and the scheme decree pertains to administration of the properties of the Trust in question. It is also not in dispute that the property, which is the subject matter of lease deed dated 19.07.2012 is also part and parcel of the properties belonged to the Trust. When a scheme decree is in force, a separate suit is not desirable. A separate suit would only multiply the litigation pertaining to the properties covered under the scheme decree. The relief sought for by the plaintiffs in the suit in O.S. No. 3 of 2013 can very well be sought for by filing an Execution Application before the Court where the scheme decree is being given effect to. Further the appointment of the revision petitioner as a Receiver is also questioned in E.A. No. 199 of 2011. During the pendency of the same, the instant suit filed by the respondents 1 and 2 is not proper. The respondents 1 and 2, instead of filing a separate suit, ought to have filed an Execution Application in the scheme decree seeking the prayer <https://hse.servecourts.gov.in/hse/services/> in O.S. No. 3 of 2013. In any event, the Court below did not consider the fact that when a scheme decree is in force and various applications are being filed before the Court where



the Scheme Decree is being implemented, any dispute relating to the properties which are covered under the scheme decree has to be filed only before the competent Court and a separate suit to redress any grievance pertaining to the properties covered under the scheme decree is not desirable.

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10. In such view of the matter, the order, dated 25.03.2013 made in I.A. No.39 of 2013 in O.S. No.3 of 2013 on the file of II-Additional Subordinate Judge, Nagercoil is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition, if any is also closed.

Sd/-

Assistant Registrar(RTI)

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Sub Assistant Registrar(CS-III)

To

The II-Additional Subordinate Judge, Nagercoil.

+1. C.C. to M/S.S.Madhavan, Advocate SR.No. 87300

+1. C.C. to M/S.P. Thiagarajan, Advocate SR.No. 87132

Order in
CRP (MD) (PD) No.966 of 2013
25.09.2018

vsi2

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