IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
04~03~2019	01~04~2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

S.A.Nos.1257 and 1258 of 2008

S.A.No.1257 of 2008

1. S.A. Venugopal
2. S.A. Janardhanan
3. S.A. Karunakaran
4. S.A.Vijayakumar ... Appellants/Appellants/Plaintiffs

Versus

1. B.Babu alias Karunakaran
2. Mrs. Padmavathi ... Respondents/Respondents2&3/ Defendants

S.A.No.1258 of 2008

1. S.A. Venugopal
2. S.A. Janardhanan
3. S.A. Karunakaran
4. S.A.Vijayakumar ... Appellants/Appellants/Plaintiffs

Versus

1. B.Babu alias Karunakaran
2. Mrs. Padmavathi
3. Mannulingam
4. Rajkumkar ... Respondents/Respondents2,3&4/ Defendants 2,3&4

Second Appeal No.1257 of 2008 filed under Section 100 C.P.C. against the decree and judgment passed in A.S.No.8 of 2005 dated 25.09.2007 confirming the decree and judgment passed in O.S.No.116 of 2003 dated 13.12.2004 on the file of the Principal Subordinate Judge, Tiruvannamalai.

Second Appeal No.1258 of 2008 filed under Section 100 C.P.C. against the decree and judgment passed in A.S.No.9 of 2005 dated 25.09.2007 confirming the decree and judgment passed in O.S.No.117 of 2003 dated 13.12.2004 on the file of the Principal Subordinate Judge, Tiruvannamalai.

For Appellants	..	Mr.S. Parthasarathy, Senior Counsel for Mr.J. Ramakrishanan
For Respondents	..	No appearance [for R1 & R2] [in both S.As.] Not ready in Notice [R3 & R4]

COMMON JUDGMENT

A.S.No.8 of 2005 filed against the decree and judgment of the Subordinate Judge, Tiruvannamalai, dismissing the suit in O.S.No.116 of 2003 filed by the Plaintiff for removing the first Defendant from the post of trusteeship of the suit property as per will dated 30.03.1958 and appointing the Plaintiffs as Trustees or appointing new trustees and also for framing scheme for proper administration of the suit property and its trust by the Plaintiffs. Similarly A.S.No.9 of 2005 filed against the decree and judgment of the Subordinate Judge, Tiruvannamalai dismissing the suit in O.S.No.117 of 2003 filed for permanent injunction against the defendants 1 to 3 from in any manner entering the suit property by way of mortgage, long term lease and sale to the 4th defendant or to any other person and making any structural alteration of the building.

2. Both the suits were tried jointly by the trial court. Trial Court dismissed both the suits on the ground that the Trust is the private trust and no scheme is required. As against which two appeal suits were filed in A.S.No.8 and 9 of 2005 respectively. First Appellate court in A.S.No.8 of 2005 filed against the comprehensive suit for framing scheme has held that the suit properties are public purpose. Having held no scheme is required since the first defendant was administering the trust property. In injunction suit, restraining the defendants from leasing the property for more than three years after 26.01.2025, against which the present Second Appeals are filed.

3. S.A.No.1257 of 2008 filed by the Plaintiffs against the dismissal of comprehensive suit and confirmed in the first appeal. S.A.No.1258 of 2008 also filed by the Plaintiffs against the dismissal of the injunction suit and the same was reversed in the first appeal.

4. Since the issues are same and the parties are same, this Court is decided to dispose of both these Second Appeals in a Common Judgment. For the sake of convenience, the parties are

arrayed as per their own ranking before the trial Court. The brief facts leading to filed these two Second Appeals are as follows:

4.(a) The First Defendant is elder brother of the Plaintiffs, Second Defendant is the son of the First Defendant and the Third Defendant is the wife of the First Defendant. The property originally belong to one Arunagiri Chetty and his wife Veerammal. The Plaintiffs and First Defendant are sons of the Arunagiri Chettiar. Arunagiri Chettiar executed a Will on 22.2.1899 in respect of his properties in favour of his wife Veerammal and his Grand daughters Kannammal. Balammal, Rukmani Ammal and daughter in law Sundarammal. He had also appointed executors of the said Will and directed his wife Veerammal and executors to carryout the Trust made by him under the said Will. One such charitable purpose mentioned in the said Will being, lighting of the lamps in Arunachalaeswarar Temple daily, doing Mandagapadi on Karthigai festival and feeding the poors during Karthigai Festival season. He had directed his wife Veerammal to do the above charities and after her death directed the grand daughter Rukmani Ammal to continue the charity. Veerammal has been doing the charities as per the Will of Arunagiri Chetti during his life time. She had executed a registered Will on 9.8.1915 in favour of Rukmani Ammal and styled it as "Dharma Paripalana Kainkarya Pathiram". In the said document she had appointed Rukmani Ammal as a trustee to look after the trust properties without any powers of alienation and do all the charities as per the wishes of her husband. Veerammal has set apart the suit property and its income to be spent only for the purpose of doing charities mentioned in the said document. In pursuance of the above document, Rukmani Ammal took possession of the suit property and other properties and she was doing all the charities mentioned in the said document.

4.(b) Said Rukmani Ammal executed a registered Will dated 30.3.1958 in respect of all her properties as well as the suit property which she in possession as trustee. She has directed that the income from the suit property should be utilised for the Mandagapadi of Lord Arunachaleswarar as it was done by her and her predecessors out of the income from the suit property. After the death of the Plaintiffs' father, the First Defendant as the eldest male member of the family took over the trusteeship and doing the charity as per the Will of Rukmani Ammal out of the income from the suit property. The First Defendant has been managing the suit property as trustee over which the plaintiffs have a right to participate. The First Defendant had now moved out to Tiruvannamalai and had settled down at Madras permanently. Hence, with a view to defeat the object and wishes of the predecessors as found in the documents, making arrangements to dispose of the suit property to third parties. Since he has no power to alienate the property he is attempting to create a permanent lease in favour of the third parties and thereby deprive and defeat the object of the Trust.

4.(c) The intention of the original owner Arunagiri Chetty and Veerammal is to continue the charity from generation to generation. Hence the suit is filed for removing the First Defendant from the post of trusteeship and appointing the plaintiffs as trustees or appointing new trustees from amongst the members of the family of Arunagiri Chetty and Veerammal and also framing a scheme for the proper administration of the suit property and its trust. In the suit filed for bare injunction in O.S.No.117 of 2003 the plaintiffs sought for permanent injunction against the defendants from in any manner creating encumbrance over the suit property by way of mortgage, long term lease and sale to the 4th defendant or to any other person and making any structural alteration of the building. In the above suit 4th defendant has added as a party.

5. First Defendant filed written statement stating that the leave under Section 92 of C.P.C. has not been properly obtained. There is no public purpose involved in the suit property. Performance of Mandagapadi has no religious purpose. Even without getting a direction same could have been done. Defendant is doing the charity as per the Will dated 30.3.1958. As per the above Will, First Defendant as the elder son alone is entitle to continue the charity. He is regularly performing the charity on the Rishabhavaganam day in the Karthigai Festival. There is no direction in the Will to light the lamp in the Arunachaleswarar Temple daily. Even though there is no necessity to feed the poor during the Karithigai festival season, this defendant is doing this, out of his own interest and volition. He is feeding the poor. This defendant is utilising the income of the suit property for the performance of Mandagapadi for Lord Arunachalaeswara on the 5th day of the Karthigai Festival. He is continuously doing so from the date of death of his father. The suit property is the house. The defendants are occupying the same, it will not fetch any income whatsoever. Further, in order to pay the necessary taxes to the municipality and it become necessary to lease out the property to others. The intention of the original proposer is being faithfully carried out by this defendant. The plaintiffs have no interest in the suit property. Hence prayed for dismissal of the suit.

6. In O.S.No.116 of 2003 the following issues have been framed:

1. Whether the 1st Defendant is liable to be removed from the post of trusteeship of the suit property?

2. Whether the plaintiffs are entitled to appoint as Trustees?

3. Whether any scheme is required for proper administration of the suit property and its trust?

4. Whether this court having jurisdiction to enquire the case?

5. Whether the Suit is maintainable under Setion 92 of C.P.C. ?

6. To what relief the Plaintiffs are entitled for?

7. In O.S.No.117 of 2008, the following issue has been framed:

1. Whether the Plaintiffs are entitled for grant of permanent injunction against the Defendants 1 to 3 from in any manner encountering the suit property byway of mortgage, long term lease, pemanent lease and sale, to 4th Defendant or to any other persion and making any structural alteration of the buildings along with costs?

8. On the side of the Plaintiff P.W.1 was examined and Exs.A.1 to A5 were marked. On the side of the Defendants D.Ws.1 and 2 were examined and Ex.B.1 to B.23 were marked.

9. The trial court found that suit property is only private Trust and dismissed both the suits. Whereas the First appellate Court has held that the trust is public purpose. However, no scheme is necessary. The First Defendant is administered the Trust property and in the Injunction suit the First Appellate Court has granted injunction restraining the defendants from leasing the property for more than three years after 26.01.2025.

10. At the time of the admission the following substantial questions of law were framed:

> a) Whether the judgment and decree of the Courts below are sustainable in law especially when they have miconstrued the receitals Ex.A.1 and Ex.A.2
>
> b) Have not the Courts below committed an error in law in holding that the 1st defendant is not guilty of misfeasance, malfeasance and nonfeasance?
>
> c) In the face of the recitals of Ex.A.1 and Ex.A2, is not the Judgment of the Lower Appellate Court perverse in holding that the 1st Defendant by executing Ex.A7 Lease has not acted detrimantal to the interest of the Trust?

11. In addition to that this Court has also framed the following additional substantial question of law:

> d) Whether any variation or alteration made by the trustee in subsequent documents without any authority is valid in law?

12. The learned Senior Counsel vehemently contended that though two Second Appeals were filed, main appeal is in respect of O.S.No.116 of 2003 for proper administration of the trust. Originally under Ex.A.1 document dated 22.02.1899 a trust was created by one Arunagiri Chetty wherein he has set apart the suit property specifically known as 'C' Schedule property in the above Will for the purpose of feeding the poor people in Arunachalaeswarar Temple at Tiruvannamalai. Similarly, it is specifically stated in the above document that after the life time of his wife and daughter-in-law his legal heirs jointly carrying out the object of the trust. So, according to him only all the legal heirs are entitled to be a trustee as per document Ex.A.1. Whereas under Ex.A.2 the wife of the founder has executed a Will in favour of her only daughter Rukmani Ammal and handed over the properties in the Will which is contradictory to the original trust deed Ex.A.1. Therefore subsequent Will Ex.A.3 dated 30.03.1958 also cannot valid in the eye of law. since without any authority the variation has taken place. Learned Senior counsel also brought to the notice of this court the genealogy tree:

SRI GUNNI ARUNAGIRI CHETTY wife : SMT. VEERRAMMAL

son:

SRI.SUNDARESA CHETTY wife: SMT. SUNDARAMMAL

daughter: SMT.KANNIAMMAL husband: SRI.MUNUSAMI CHETTY	daughter:SMT.BALAMMAL (died on 03.12.1974) husband: SRI.GENIJI KESAVA CHETTY	daughter: SMT.RUKMANI AMMAL husband: SRI.S.R.ANNAMALAI CHETTY

NO ISSUES	daughter: VISALACHI AMMAL (died on 287.6.1992) husband: SRI.RANGANATH CHETTY	son: PALAN @ S.A.ARUNAGIRI CHETTY wife: S.A.JAGADAMBAL	son: SRI. SUNDARAM @ S.A.SUBBURAYA CHETTY wife: SMT.RADAMMAL	son: GOVINDA CHETTY wife: PADMAVATHI AMMAL	daughter: KOKILA MMAL husband: VENUGO PAL CHETTY	daughter: SARASWA THI AMMAL husband: KUPPUSA MY CHETTY

NO ISSUES	sons: 1.S.A.BALARAMAN (died on 29.4.2008) 2.S.A.VENUGOPAL 3.S.A.JANARTHANAN 4.S.A.KARUNAKARAN 5.S.A.VIJAYAKUMAR daughter: 6.A.B.MEERABAI	1..S.S.KRISHNAMURTHY (died) 2.S.S.SANKARAN (died on 22.5.87) 3.KOUSALYA (all are died)	1)S.G.SRINIVASAN died on 8.11.1997 2)S.G.JAYABALAN 3.S.G.SEKAR 4)LALITHA 5)SHANTHA 6)VASANTHA 7)PREMA 8)BHUVANESWARI	SONS-4 DAUGHTERS 3	SON -1 DAUGHTERS5

S.A.BALARAMAN ISSUES 1) S.B.BABU 2)VAITHIYANTHI 3)SRIDEVI	S.S.KRISHNAMURTHY ISSUES 1 S.K.BASKARAN 2.S.K.SRINIVASAN 3.S.K.SARAVANAN 4.S.K.ANANDAN 5.S.K.PRAKASH 6. JAYANTHI 7. LATHA 8.KALPANA	S.G. SRINIVASAN ISSUES 1) S.S.BABU 2) RAMARANJAN 3) JAYANTHI

13. According to him, only the legal heirs of the one branch alone given right under Ex.A.3 which is not permissible under law. The very object of the trust is for public purpose. Hence, the First Appellate Court having found that the trust is for public purpose, but failed to frame the scheme. Hence, it is the contention of the learned Senior Counsel that the matter may be remanded to the trial Court to frame scheme after the direction to the plaintiff to implead all the legal heirs as shownin the genealogy tree for the better administration of the Trust. In support of his contention he placed reliance of the the judgment reported in Sri Agasthiyar Trust, Madras v. Commissioner of Income Tax, Madras. [(1998) 5 Supreme Court cases 588].

14. As far as the second appeal filed against the suit for bare injunction, it is the contention of the learned Senior Counsel for the appellants that the First Appellate court has granted permanent injunction. The same may be continued till the scheme properly framed by the trial Court.

15. The suit has been originally filed for framing of scheme. The suit itself proceeded as if the plaintiffs and defendants family alone are entitled to administer the Trust, originally founded by one Arunagiri Chetty. Under Ex.A.1 the trust was created. On careful perusal of the same makes it clear that the 'C' Schedule property shown in the above said document which is subject matter of the suit. The object of the Trust was to feed poor people. Similarly it is also clearly stipulated that though his wife Veerammal and his daughter in law Sundarammal were given in-charge of the properties to do charities, it is specifically stated in the document that after their life time all the legal heirs including husbands are to be continued to do the charities. Similarly it is also clearly mentioned in the document in the Tiruvannamalai temple they have to do the charities. Under Ex.A.2, Veerammal wife of Arunagiri Chetty has executed a Will dated 9.8.1915 in favour of the Rukmani Ammal one of the grand daughters to continue the trust. This Will is in fact contradictory to the object of the Trust deed and that the Trust Founder has specifically mentioned as per Ex.A.1 that charities should be carried out by all the legal heirs. By varying the above object of the founder Ex.A.2 has been executed.

16. Under Ex.A.3 Rukmani Ammal has executed a Will as a Trustee in respect of the property to the First Defendant as a Trustee. It is curious to note that Ex.A.2 and Ex.A.3 is in fact executed contradictory to the intention of the founder trustee to do charities by all the legal heirs. Ex.A.2 and Ex.A.3 varied the object of the trust. Therefore, those variation in fact contradictory to the object of the founder trust. In the judgment reported in Sri Agasthiyar Trust's case (supra) the Honourable Supreme Court has held as follows:

> "14. As we have already observed, the Deed of 1941 originally gave the power to the founders to revoke the Trust but this power was taken away by a subsequent document which was executed on 26th August, 1943. It is thereafter that the Trust became an irrevocable Trust. The powers of the trustee in respect of the said Trust continued to remain the same as set out in Clause (8) of the partnership deed which has been extracted hereinabove. The said trustee was only required to carry out the objects of the Trust and spend the Trust funds for

charitable purposes in the manner indicated therein. No power was given to the trustee to amend, alter vary or change in any manner the objects of the Trust as created in 1941. The result of this is that neither the trustee nor the founders could bring about any change in the objects of the Trust as set out in their partnership deed dated 28th November, 1941. This being so, the document dated 1st July, 1944 executed by the trustee was clearly without any authority and was non est. He had no right or jurisdiction to execute the document of 1st July, 1944 which in effect changed the objects of the Trust radically and in fact converted what was meant to be a public charitable trust to a non-charitable trust as held by this Court in East India Industries Case when the Deed dated 1st July, 1944 was construed by it. It will be useful at this juncture to refer to the following passage from Tudor on Charities (6th Edn.). At page 131, it is stated as follows:

> "When a charity has been founded and trusts have been declared the founder has no power to revoke, vary or add to the trusts. This is so irrespective of whether the trusts have been declared by an individual, or by a body of subscribers, or by the trustees."

15. When the founders of the trust have no power to alter or vary the terms of the Trust a trustee appointed to manage the properties of the Trust for securing its object can under no circumstances be regarded as having such a power specially when the original deed dated 28th November, 1941 does not bestow such power on him. Such a question also came up for consideration before the Madras High Court in Thanthi Trust Vs. Income-Tax Officer [91 ITR 261]. Dealing with the question whether founder of a Trust had power to revoke the same, at page 284-85, this Court observed as follows:

> "It is well established that the subsequent acts and conduct of the founder of the trust cannot affect the trust if there has been already a complete dedication. (Vide krishnaswamy Pillai v. Kothandarama Naicken , Sunder Singh Malloah Singh Sanatan Dharam High School Trust, Indaura Vs. Managing Committee, Sunder Singh Mallah Singh Rajput High School Indaura , and

Gokuldas Jumnadas and Co. V. Lakshminarasimha Chetti. If a valid and complete dedication had taken place, there would be no power left in the founder to revoke and no assertion on his part or the subsequent conduct of himself or his descendants contrary to such dedication would have the effect of nullifying it. If the trust had been really and validly created, any deviation by the founder of the trust or the trustees from the declared purposes would amount only to a breach of trust and would not detract from the declaration of trust. Therefore, the subsequent conduct of the founder in dealing with the funds of the trust long after the creation of the trust may not put an end to the trust itself."

16. We are in full agreement with the principle stated in the aforesaid passage and we hold that the trustee had no authority or jurisdiction to execute a fresh Trust Deed and the document dated 1st July, 1944 is of no consequence and is no more than a scrap of paper. The Trust as originally established by the Deed dated 28th November, 1941 remained unchanged or unaffected by the later document dated 1st July, 1944."

17. When the object of the trust intended that charities to be performed by all the legal heirs, against that object giving right to one branch of family is certainly a variation. Therefore, this court is of the view that having found that Ex.A.1 object itself is purely public charities all the parties viz., the legal heirs of the Arunagiri Chetty and family are necessarily to be heard and included in the suit. Therefore, the finding of the First Appellate Court that there is no need to frame the scheme is hereby set aside. This Court being parens patriae and custodian of the trust properties for better administration of the trust, scheme has to be framed. Accordingly, the finding of the First Appellate Court that no scheme is necessary is set aside and the rest of the findings that the Trustee is for public purpose is sustained. Therefore, the matter is remanded to the trial Court to frame necessary scheme for the proper administration of the public charitable after direction to the plaintiff to implead all the legal heirs of the founder trustee as set out in the genealogy tree above and frame the scheme. The trial Court shall frame the scheme keeping with the object of the Trust set out in Ex.A.1.

18. Accordingly, the suit in O.S.No.116 of 2003 is remanded to the trial Court, for the plaintiff to take steps to implead all the legal heirs. The trial court after hearing all of them, frame a scheme and appoint trustees for better administration of the Trust. As far as the finding of the First Appellate Court in A.S.No.9 of 2005 granting permanent injunction is sustained till proper scheme is framed by the trial Court.

19. With the above observation S.A.No.1257 of 2008 is partly allowed and remanded back the matter to the trial Court. The trial Court shall frame the scheme and dispose of the suit within ten (10) months from the date of receipt of copy of this judgment. S.A.No.1258 of 2008 is dismissed confirming the judgment of the First Appellate court in A.S.No.9 of 2005. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ggs.

To

1. The Principal Subordiante Judge, Thiruvannamalai

2. The District Judge, Thiruvannamalai.

3. The Section Officer,
VR Section, High Court, Madras.

+2 ccs to Mr.J.Ramakrishnan, Advocate, S.R.No.31124 and 31125

Common Judgment in:
S.A.Nos.1257 and 1258 of 2008

PP(CO)
SSM(22/08/2019).