

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **05.09.2019**

Pronounced on : **18.09.2019**

Coram

THE HONOURABLE MR. JUSTICE **R.SURESH KUMAR**

C.R.P (PD) Nos.1584 and 1585 of 2019
and C.M.P.Nos.10379 and 10382 of 2019

1. P.S.Govindaswamy Naidu & Sons' Charities
A public charitable Trust,
having office at PB 1609,
Avanashi Road, Peelamedu,
Coimbatore - 641 004
Rep. by its Managing Trustee
Mr.L.Gopalakrishnan.

2. L.Gopalakrishnan

3. G.R.Karthikeyan

4. D.Lakshminarayanawamy

5. R.Krishnamoorthy

6. Koneru Satyanarayana

7. V.Lakshminarayanawamy

8. J.Anand

.. Petitioners in both the CRPs
vs.

V.Prakash @ G.N.V.Prakash

.. Respondents in both the CRPs

Petitions filed under Article 227 of the Constitution of India, as
against the order and decretal order as made in I.A.Nos.2 and 3 of

2019 in O.S.No.160 of 2018, dated 26.03.2019 on the file of the Principal District Judge, Coimbatore, dismissing the application filed by the petitioners under Order XVII Rule 3A of Civil Procedure Code.

For Petitioners : Mr.G.Masilamani, Senior counsel
for Mr.R.Karthikeyan

For Respondent : Mr.R.Shankara Narayanan, Senior counsel
Assisted by Mr.Vidhya Shankar

COMMON ORDER

These two Revision Petitions have been filed challenging the fair and decreetal order passed by the Principal District Judge, Coimbatore in I.A.No.2 of 2019 and I.A.No.3 of 2019 in O.S.No.160 of 2018, dated 26.03.2019.

2. The parties in these Civil Revision Petitions are called as per the array of the parties in the suit itself. Since these revision petitions have been filed by the same parties and parties to the proceedings are also one and the same and the issue raised in both the revision petitions are inter related and the arguments were advanced by both sides on these revisions simultaneously, with the consent of both sides, both these Civil Revision Petitions are disposed of by this common order.

3. That the plaintiff filed a suit in O.S.No.160 of 2018 on the file of the Principal District Judge, Coimbatore for a Judgment and Decree in the following terms :

"13. The plaintiff therefore prays for a Judgment and Decree against the Defendant :

13.1. Declaring that pursuant to Chapter-IV Clause iv(c)(i) of the Scheme of Administration governing the 1st Defendant Trust and as the sole surviving adult male member of the PSG Narayanaswamy Naidu Branch of the family, the plaintiff is entitled to be recognised as the Founder Trustee of the 1st Defendant Trust, in the vacancy caused by the demise of Mr.V.Rajan.

13.2. Consequent to declaration sought for in Prayer 13.1 herein above, granting permanent injunction restraining the defendants from, in any manner, interfering with the right of the plaintiff as a Founder Trustee of the 1st Defendant Trust and his performing his role, responsibilities and duties as a Founder Trustee of the 1st Defendant Trust.

13.3. Declaring that all the meetings of the Board of Trustees of the 1st Defendant Trust held after expiry of 60 days from the date of demise of the Mr.V.Rajan, without Notice to

the plaintiff as a Founder Trustee and without allowing the participation of the plaintiff as Founder Trustee are null and void, inoperative and incapable of being given effect to.

13.4. Consequent to the relief sought for in prayer 13.3 herein above, granting permanent injunction restraining the 1st Defendant Trust from in any manner acting on or giving effect to any Resolution passed by the Board of Trustees of the 1st Defendant Trust after expiry of 60 days from the date of demise of Mr.V.Rajan, without notice to and without permitting participation of the plaintiff at such meetings.

13.5. Consequent to the relief sought for in prayer 13.3 herein above, granting permanent injunction restraining the Defendant Trust from convening or holding any meeting of the Board of Trustees of the 1st Defendant Trust without notice to and without permitting participation of the plaintiff as a Founder Trustee."

4. The background history, of course in nutshell, which gives raise to file this suit by the plaintiff, are to be noted first.

5. That the first defendant, M/s. P.S.Govindaswamy Naidu & Sons' Charities is a public charitable Trust, which was constituted by a Deed of Trust, dated 25.01.1926 and in order to manage the Trust a scheme of administration, dated 29.02.1936 was formulated and sanctioned by the Principal Sub-Court, Coimbatore in O.S.No.145 of 1935, therefore the said scheme of administration still governs the management and administration of the first defendant Trust.

6. There are two set of Board of Trustees comprised in the Trust as four Trustees are Founder Trustees and five are to be elected. The Founder Trustees shall hold office for their life time or until they make resignation as contemplated under Chapter IV of the Scheme of Administration.

7. In the context of the present issue, it is to be noted in the relevant portion of Chapter IV of the Scheme of Administration, especially Chapter IV (B) under the heading "Qualifications and Disqualifications for Trusteeship", the following has been provided for :

"(B) Qualifications and Disqualifications for Trusteeship :

(a) Qualifications for the Trusteeship

No person shall be elected or hold office as Trustee unless

- (i) he is a Hindu
- (ii) he resides in the Madras Presidency and
- (iii) he is not less than 21 years age.

No person other than a Founder Trustee shall be elected or hold office as Trustee unless in addition,

(1) he has paid in the next previous year, by himself or as the Managing Member of a Joint Hindu family, tax or taxes to Government or any Municipality aggregating under all heads to an amount not less than Rs.250/- or

(2) he is a Graduate of any Indian University or University of England or Scotland recognised by Government and has paid in the next previous year by himself or as Managing Member of a Joint Hindu family tax or taxes to Government or to any Municipality aggregating under all heads to an amount of not less than Rs.125/- or

(3) he has made a gift of not less than Rs.5,000 or of property of value of not less than Rs.5,000 to the Charities either as addition to the Trust properties or earmarked for one or more of the objects herein before mentioned, or

(4) he is a retired gazetted officer of the Government."

8. In this context, it is to be further noted that, among the four Founder Trustees, one Narayanaswamy Naidu was also the Founder Trustee and he had been there in that capacity till his death, i.e., 1938, as he died leaving behind his two sons, one G.N.Venkatapathy and one V.Rajan. After the demise of the said Narayanaswamy Naidu in 1938, the said G.N.Venkatapathy held the office of the Founder Trustee for Mr.Narayanaswamy Naidu branch till 1994, where the said Venkatapathy also died. After the demise of Venkatapathy, his brother V.Rajan, who is the second son of late Narayanaswamy Naidu had been inducted as one of the Founder Trustee representing Narayanaswamy Naidu branch and since 1994, he held the office as one of the Founder Trustee. In fact he had been acting as a Managing Trustee of the first defendant Trust between 2000 and 2005. The said V.Rajan was having a son called Naren and the late G.N.Venkatapathy is having a son called V.Prakash @ G.N.V.Prakash, who is the plaintiff.

9. Since V.Rajan was holding the post of Founder Trustee till 2015, during his life time, he nominated or he paved the way to his son

Naren to become the Founder Trustee in place of V.Rajan, accordingly in the year 2015, the son of V.Rajan, i.e., Naren Rajan has become one of the Founder Trustee and unfortunately, he died in a short span, i.e., on 21.05.2015. Due to the death of the son Naren of Mr.Rajan, again Rajan had taken the Founder Trustee. During these period, there had been some litigations, as suit in O.S.No.631 of 2012 had been filed, where the issue was whether the plaintiff or the said Naren can take the mantle of Founder Trusteeship of the Narayanaswamy Naidu branch and finally the said suit came to be disposed of by Judgment and Decree, dated 16.04.2013, holding that, the said Rajan had no right to nominate his successor, i.e., Naren as Trustee. Thereafter on 18.04.2013, the first defendant Trust Board had elected the plaintiff as the Founder Trustee by a Resolution. Thereafter it seems that, A.S.No.178 of 2013 was filed against the Judgment and Decree made in O.S.No.631 of 2012. Thereafter on 21.05.2015, the said Naren Rajan himself passed away as stated supra. The plaintiff in June 2015, i.e., on 02.06.2015 and 03.06.2015 made email communications / requests to the Trust Board expressing his willingness to act as a Founder Trustee on behalf of the Narayanaswamy Naidu branch and he called upon the defendants 1 to 5 to recognise the plaintiff as the Founder Trustee.

10. In this regard, further litigations had been there, as the original suit in O.S.No.1225 of 2015 was filed on the file of the Principal District Judge, Coimbatore, sought for some injunction restraining the defendants 1 to 5 from holding the Trust Board meeting and the fourth defendant G.Rangasamy had filed a suit in O.S.No.1952 of 2015, seeking injunction against the Board of Trustees from filling up the vacancies in the Trust Board, which was allegedly the subject matter of challenge before this court in a related CRP in C.R.P.No.665 of 2015.

11. In this context, it is to be further noted that, on 21.06.2017, the said V.Rajan also passed away. Therefore for the branch of Narayanaswamy Naidu, the only surviving male descendant is the plaintiff, hence, immediately after the demise of the said Rajan, the plaintiff, on 30.06.2017, made a request to the Trust Board for appointment of the plaintiff as one of the Founder Trustee representing the Narayanaswamy Naidu branch.

12. Certain clarifications seems to have been sought for by the Trust Board from the plaintiff in the context of the Judgment and Decree made in O.S.No.631 of 2012 and this was responded on 9/49

01.08.2017 by the plaintiff and again he wrote a letter on 08.11.2017 to the Trust Board to recognise him as Founder Trustee.

13. At this juncture, on 29.04.2018, the plaintiff filed the suit in O.S.No.160 of 2018 for the relief mentioned in the plaint, as has been extracted herein above.

14. Pleadings have been completed in the said suit and examination of witnesses also commenced, where, the plaintiff himself has been examined as P.W.1 and through him Exs.A.1 to A.36 were marked. During the cross examination of P.W.1, Exs.B.1 to B.3 also had been marked. At this point of time, the present Interlocutory Applications, i.e., I.A.No.2 of 2019 and I.A.No.3 of 2019 in O.S.No.160 of 2018 had been filed by the defendants 1 to 3 and 5 to 9. In order to have a better understanding, the prayer sought for in both the Interlocutory Applications are extracted hereunder :

In I.A.No.2 of 2019, the following prayer has been sought for :

"For the reasons stated in the accompanying affidavit, the petitioners pray that this Hon'ble court may be pleased to pass an order granting them leave to examine themselves as their witnesses at a later stage after examining the

official of the US Consulate in Chennai as witness on their behalf at first instance in the O.S.No.160 of 2018 and thus render justice."

In I.A.No.3 of 2019, the following prayer has been sought for :

"For the reasons stated in the accompanying affidavit, the petitioners pray that this Hon'ble court may be pleased to pass an order issuing summons / subpoena to The Chief of the Consular Section, office of the Consulate General of United States, No.7, Nungambakkam High Road, Near Gemini flyover, Chennai - 600 034, the official in the office of the Consulate General of USA in Chennai, to come and produce a specimen green card of USA with Rules and Regulations thereof as document and also give evidence regarding the rules and regulations governing the green card of USA in the O.S.No.160 of 2018 and thus render justice."

15. In the said two Interlocutory Applications, the plaintiff filed common counter statement. After hearing both sides, the learned Principal District Judge, vide the common impugned order, dated 26.03.2019, dismissed I.A.No.3 of 2019 and in view of the said dismissal, as a sequel, I.A.No.2 of 2019 also was dismissed. Aggrieved

over the said orders, dated 26.03.2019 made in I.A.Nos.2 and 3 of 2019, these two revision petitions respectively have been filed by the defendants.

16. In so far as I.A.No.2 of 2019 is concerned, the prayer sought for is to grant permission or leave to examine the defendants themselves as their witnesses at a later stage, after examining the official of the US Consulate in Chennai as witness on their behalf at first instance in O.S.No.160 of 2018. The said I.A.No.2 of 2019 was filed under Order XVIII Rule 3A and Section 151 of CPC.

17. Order XVIII Rule 3(A) CPC reads thus :

"3A. Party to appear before other witnesses
Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the court, for reasons to be recorded, permits him to appear as his own witness at a later stage."

18. Since the defendants sought for the prayer to issue notice / subpoena to the US Consulate General office at Chennai, to summon

the Consular or his official to depose before the Court, in other I.A., (I.A.No.3 of 2019), the present prayer in I.A.No.2 of 2019 was sought for by the defendants to permit them to be examined as their witnesses at a later stage instead of before examining any third party witnesses, as has been contemplated under Rule 3(A) of Order XVIII. The prayer sought for in I.A.No.2 of 2019 can be decided by the Court below only depending upon the outcome of the decision to be made in I.A.No.3 of 2019 and since I.A.No.3 of 2019 was dismissed by the Court below, the learned Judge had also chosen to dismiss I.A.No.2 of 2019. Therefore no separate arguments were required to be made by both sides before this Court, in so far as the rejection of I.A.No.2 of 2019 and the arguments were made only in respect of I.A.No.3 of 2019 elaborately by both sides and therefore those arguments made by both the learned Senior counsel appearing for the parties would be taken into account.

19. In this context, Mr.G.Masilamani, learned Senior counsel appearing for the defendants (Civil Revision Petitioners) submits that, since Chapter IV of the scheme of administration provides the qualification for the Trusteeship, where under IV (B) (a) (ii), it is one of the essential qualification, to become a Trustee of the Trust Board,

that, he must reside in the Madras presidency. In this context, the learned Senior counsel made submissions that, the plaintiff long back obtained Green card from US Administration and by virtue of the Green card, he became the permanent resident of United States of America and most of the time in a year, he had been residing only in America. Since he is still holding the Indian passport and Indian citizenship, he used to visit India and merely because he visits India and stays for a brief period in India, especially at Coimbatore, it cannot be construed that, he resides in Madras Presidency on permanent basis.

20. The learned Senior counsel would further clarify that, since the scheme of administration was framed in 1930's, when condition IV (B) (a) (ii) was mentioned, it has been mentioned as Madras Presidency. In so far as that territorial area is concerned, Madras Presidency was consisting of the present State of Tamil Nadu, the present State of composite Andhra Pradesh and some parts of State of Kerala, which was erstwhile Cochin-Travancore State.

21. Therefore within the area of any of these States, which form part of the then Madras Presidency during the Pre-Independence India,

if he resides as a permanent resident, then alone he would be entitled to become a Founder Trustee of the first defendant Trust.

22. In this context, the learned Senior counsel would draw the attention of this Court on the photo copy of the Green card of the plaintiff and submitted that, the Green card of the plaintiff, which was produced before the Court below and the same has also been marked as Ex.B.3, specifically mentions that, "UNITED STATES OF AMERICA - PERMANENT RESIDENT". By relying upon the said Green card, the learned Senior counsel would further expand his argument by stating that, since the holder of the Green card of the United States of America must be a permanent resident of America, he cannot claim that, he resides permanently in India for the purpose of Chapter IV (B) (a) (ii).

23. The learned Senior counsel would make further submissions that, in the teeth of the said Green card issued to the plaintiff, his claim that, since he is the citizen of India and he is having only Indian Passport and he is an Income-Tax Assessee in India, therefore he can claim that, he satisfies the condition at Chapter IV (B) (a) (ii) to become eligible to hold the permanent Founder Trusteeship for Narayanaswamy Naidu branch, cannot be accepted.

24. The learned Senior counsel has further made the submission that, the plaintiff may be an Indian citizen and he might be the holder of Indian Passport, but the fact remains that, he is a Green card holder of United States of America, which means, he is a permanent resident of America. Once such Green card is issued, the conditions attached with the Green card, should be followed by the card holder with regard to the residence is concerned. The relevant rules and regulations framed in this regard by the US authorities are to be strictly adhered to. In order to ascertain what is the exact rules and regulations or the conditions imposed by US authorities on Green card holder, especially in the context of permanent residency of the individual Green card holder is concerned, even though attempt has been made by the defendants through the website concerned, much light has not been thrown and the exact rules and regulations as well as the conditions imposed by the US authority for the Green card holders to follow, has not been available or the defendants could not get access to those documents and therefore only in that context, the defendants filed the said applications before the Court below, seeking the aforesaid prayer, the learned Senior counsel contended.

25. In respect of the objection raised by the plaintiff before the Court below, by citing the Vienna Convention on Diplomatic Relations, 1961 as well as the Diplomatic and Consular Relations, Privileges and Immunities mentioned in the agreement between the United States of America and India signed at New Delhi, dated 19.11.2017 that, the Courts in India cannot issue summons or subpoena to the Foreign Diplomats and its officers in Indian soil, the learned Senior counsel would contend that, the restrictions emanated from the Vienna Convention would be made applicable only to the Foreign Diplomats and High Commissions and the same cannot be made applicable to Consular General Office, which is, more or less, undertaking only the commercial transaction and activities being undertaken between the sending country and receiving country.

26. In this context, in support of the said contention of him, the learned Senior counsel would rely upon the meaning and explanation given to the words 'Consul', 'Diplomatic Agent' and 'Diplomatic Immunity' in P.Ramanatha Aiyar's Advanced Law Lexicon. In order to appreciate the same, the explanation given to those words in the said Dictionary, as has been heavily relied upon by the learned Senior counsel for the defendants, are extracted hereunder :

"Consul : A consul is an official appointed by his Government to reside at a definite place abroad, and there fulfil certain duties in the interest of his country and fellow subjects.

"'Consul', in English Statutes means a Consul-General, Consul, Vice-Consul, Pro-Consul or Consular Agent."

1. A governmental representative living in a foreign country to oversee commercial and other matters involving the representative's home country and its citizens in that foreign country. Because they are not diplomatic agents, consuls are subject to local law and jurisdiction. 2. (Roman Law) One of two chief magistrates elected annually during the Republic to exercise supreme authority. Under the Empire, the consulship was reduced to a sinecure, held by appointees of the emperor or the emperor himself. (Black, 7th Edn., 1999)

"Consuls are commercial, not diplomatic agents. They reside abroad for the purpose of protecting the individual interests of traders, travellers, and mariners belonging to the State which employs them... They exercise jurisdiction over their countrymen, their persons are inviolable, their residences maybe used as asylums in the case of war or tumult,

and in fact they possess more than the ordinary diplomatic Immunities." T.J.LAWRENCE, A Handbook of Public International Law 86-87 (10th ed. 1925).

"Consuls are not diplomatic agents; they perform various services for a state or its subjects in another state, without, however, representing the former in the full sense. They may be nationals of either state, and generally they are made subject to the authority of the diplomatic representative of the state for which they act. They watch over commercial interests of the state for which they act; collection information for it; help its nationals with advice, administer their property if they die abroad, and register their births, deaths and marriages; they authenticate documents for legal purposes, take depositions from witnesses, visa passport, and the like." J.L.BRIERLY, The Law of Nations 216 (5th ed. 1955).

"The usual criterion used for the distinction between diplomats and consuls is the representative character of the former of which the latter are devoid. However, this distinction is not altogether correct. Undoubtedly diplomatic agents have a general representative character since in all matters

and relations they represent their country in the state to which they are accredited. Consuls, on the other hand, as state organs, also represent their country in another state, but only in matters within their competence. Thus, the representative character of consuls is, like their competence, specific, and secondary to that of diplomatic agents. Constantin Economides, "Consuls", in 1 Encyclopedia of Public International Law 770 (1992).

Diplomatic. \$\$ See under 'DIPLOMATICS'.

Diplomatic agent. An agent employed by a State in its diplomatic service or in its intercourse or negotiations with other States. [S.78(6), Indian Evidence Act (1 of 1872)]

A 'DIPLOMATIC AGENT' is the head of the mission or a member of the diplomatic staff of the mission. [(English) Diplomatic Privileges Act, 1964, Sch. (1)]

Also see Vienna Convention and Diplomatic Relations, 1961, Art. 1(e).

Diplomatic Immunity. The freedom from legal proceedings in the UK that is granted to members of diplomatic missions of foreign States by the Diplomatic Privileges Act 1964. This Act incorporates some of the provisions of the Vienna Convention on Diplomatic Relations

(1961), which governs diplomatic immunity in international law. The extent of the immunity depends upon the status of the member in question, as certified by the Secretary of State. If he is a member of the mission's diplomatic staff, he is entitled to complete criminal immunity, but his civil immunity relates only to acts performed in the course of his official duties. For domestic staff, both criminal and civil immunity are restricted to official duties. Similar immunities are granted to members of Commonwealth missions by the Diplomatic and other Privileges Act 1971, and to members of certain international bodies under the International Organisations Acts 1968 and 1981. Under the Diplomatic and Consular Premises Act 1987, the Secretary of State may remove diplomatic or consular premises that are being misused. (England) (Oxford Law Dictionary, 5th Edn., 2003)."

27. By citing the said meaning and explanation given to the said words, Consul, Diplomatic Agent and Diplomatic immunity, the learned Senior counsel would further contend that, if at all there is any immunity, i.e., the immunity from criminal jurisdiction of the receiving State and also civil and administrative jurisdiction, at the best, can be

extended only to Diplomatic Agent / High Commissioner and not to the Consul or the officials and staff attached with the Consular's office or Consulate General office.

28. Therefore he would submit that, now the prayer sought for before the Court below is, to issue summons / subpoena to the official / staff of the US Consul, i.e., Consulate General of United States at Chennai, to come and produce a specimen Green Card of USA with rules and regulations thereof as document and also to give evidence regarding the rules and regulations governing the Green card of United States of America.

29. The learned Senior counsel in this context would also rely upon Section 106 of the Indian Evidence Act and would submit that, the burden of proof will lie only on the shoulder of the plaintiff to prove that, by virtue of the Green card issued to the plaintiff, not withstanding the status of Green card holder as a permanent resident of United States of America, he can be a permanent resident of India and it is enabling him to be a permanent resident of India. The relevant rules and regulations as well as the conditions imposed by the US administration has given specific permission for the Green card

holder like the plaintiff to reside in the originated country, i.e., in India and not in United States. Since the said burden lies on the plaintiff only, unless he comes forward to produce those documents, i.e., rules and regulations pertaining to the Green card, the said plea raised by the plaintiff that, he satisfies the conditions imposed under Chapter IV (B) (a) (ii) cannot be accepted. In this context, in order to disprove his claim, though such a burden is not lying on the shoulders of the defendants, only to assist the Court, in the interest of justice, the said two applications had been filed by the defendants to summon the concerned official or staff of the US Consul office at Chennai, to produce the relevant rules and regulations of Green card and also to depose before the Court below to substantiate the said rules and regulations and if the same is materialised, certainly the stand taken by the plaintiff, in the context of a Green card holder, can very well be testified and the issue raised in the suit can be given a quietus. Therefore, the learned Senior counsel would contend that, the rejection of the said applications by the Principal District Court, Coimbatore in the impugned orders are unjustifiable and unacceptable and also against the principles explained herein above. Hence the interference of this Court by way of revision against the impugned orders is very much necessary, he contended.

30. Per contra, Mr.R.Shankara Narayanan, learned Senior counsel appearing for the plaintiff has made submissions, by relying upon certain averments made in the written statement filed by the defendants before the Court below in the suit, which are extracted hereunder :

"The defendant submits that the defendant Trust, a Public Charitable Trust, being established to carry out objectives beneficial to the common public at large and administered as per the provisions of the Scheme Decree, is all the more bound to conduct its affairs in strict compliance with the law laid down under the Scheme and all the common law principles for its activities. It is, therefore, essential that the matter of appointment of a Founder Trustee holding office for life must be beyond all doubts on the basic requirements of qualifications. Considering the claim of the plaintiff to be appointed as a Founder Trustee in the background of the duty of the Board of Trustees as explained supra, it is clearly seen that the plaintiff, having categorically admitted that he holds a Green card of the U.S.A., has however failed to produce the same to the Board for its consideration. Under these circumstances, the Board of Trustees had to

verify the nature of a Green card of the U.S.A., from the public domain website of the U.S.A. A specimen copy of the Green card obtained from the said source filed herewith clearly contain a caption "PERMANENT RESIDENT - UNITED STATES OF AMERICA". The relevant Rules of Travel by a Green Card holder state that all his travels to India are "Trips Abroad". While matter stands so, the Board will be failing in its duty if it appoints the plaintiff as Founder Trustee as the same will amount to violation of the Scheme.

The defendant submits that the plaintiff has made much about the mention by the Managing Trustee in his reply to the plaintiff and in the minute of the Defendant - of the term "permanently", while it was only an attempt of placing the requirement under the Scheme that the plaintiff cannot be eligible when he is not residing in India. In the situation at hand, wherein the plaintiff has admitted that he is a holder of the Green card of the U.S.A, and wherein the title of a specimen Green card declares that the holder is a "Permanent" resident of the U.S.A, the contra claim of the plaintiff about his residence in India has been

disproved. This is an overwhelming proof that the plaintiff is a permanent resident of a foreign country which is in direct opposition to the eligibility requirements of the Scheme. While the rules of travel of a Green card holder state that all his travels out of the U.S.A are "trips abroad", the plaintiff is intending to be a Trustee of the defendant during such of his "trip abroad". Weighed against this truth, the documents presented by the plaintiff to claim that he is residing in India can at best be proof that he has been travelling to India frequently and owns properties in India and is also operating a bank account in India which can all very well be done by residing in the U.S.A permanently. It is submitted that the intent of the framers of the Scheme in prescribing that a Trustee must be a resident of India is to enable the incumbent to carry out the fiduciary duty of a Trustee with the seriousness that it requires and not for anyone to handle it in a casual manner during his "trips" to India from the U.S.A."

31. By relying upon these averments made by the defendants in the written statement before the Court below, the learned Senior counsel for the plaintiff would submit that, what has been stated in the

said two paragraphs in their written statement by the defendants are the information available to any one in the concerned website or any other source of US Administration with regard to the status of a permanent resident of United States of America. Those averments made in the written statement, according to the learned Senior counsel, discloses that, the defendants were able to have an access to the U.S websites or authorities concerned, to get those information and apart from the said information, no other information could be possibly available, as, if any other information had been available with U.S Administration, the same would have been provided in the public domain as it is the rules and regulations pertaining to the permanent resident of U.S.A. Knowing well these factors, the defendants still wanted to get more to suit their convenience in order to disprove the claim of the plaintiff. Their wish in this regard, according to the learned Senior counsel, cannot be fulfilled by the trial Court by summoning the officials or staff of U.S Consulate General at Chennai.

32. In so far as the contention made on the side of the defendants by the learned Senior counsel that, there has been vast difference between the Foreign Diplomat / High Commission and the Consul General, as the former relates to administrative, diplomatic and

foreign relations between the countries and the latter would be dealing with the commercial transactions and the commercial interest of the citizens of both countries, it is the submission of the learned Senior counsel for the plaintiff that, in so far as the said distinction as projected on behalf of the defendants side by the learned Senior counsel, that would not be available in as much as the Diplomat / Consulate General / High Commission and their official and staff's entitlement of immunity is concerned.

33. To substantiate and elaborate the said contention, the learned Senior counsel has relied upon the Vienna Convention on Diplomatic Relations 1961, where he relied upon Article 31, which reads thus :

"1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of.

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

- (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

...
..."

34. The learned Senior counsel also relied upon the terms of the agreement between India and United State of America signed at New Delhi, dated 19.01.2017, which came into effect on that date, where, he particularly relied upon Article 2 and 3, which reads thus :

"Article 2 : Privileges and Immunities of Consular Officers

Each party shall extend to consular officers of the other party, privileges and immunities equivalent to those afforded to diplomatic agents under the Vienna Convention on Diplomatic Relations.

Article 3 : Privileges and Immunities of Consular Employees

Each party shall extend to consular employees of the other party privileges and immunities equivalent to those afforded to members of the administrative and technical staff under the Vienna Convention on Diplomatic Relations."

35. He would submit that, thus, in view of Articles 2 and 3 of the Agreement, dated 19.01.2017, there has been no difference between Consular officers, Consular employees and the Diplomatic Agent / High Commission or the officers and staff of the Diplomatic office, in so far as it relates to the entitlement of privileges and immunities are concerned.

36. In other words, he would submit that, what are all the privileges and immunities available to the Diplomats and his officials and staff would mutatis mutandis be applicable to the officers and staff of the Consulate General office also.

37. Therefore, he would submit that, in so far as the Consulate General office of U.S.A at Chennai is concerned, it is fully covered under the said agreement, as per which, the Consular General, the officials, staff etc., are having the full immunities and privileges and

what has been available to the Diplomats under Article 31 of the Vienna Convention Agreement, will be equally applicable to these people also, where, under Article 31(2), a Diplomatic Agent is not obliged to give evidence as a witness. Therefore, here also a Consul General or his officials and staff equally not obliged to give evidence as a witness.

38. When that being so, it is thoroughly impossible for Indian Courts to issue summons / subpoena to the Consulate General Office, as has been sought for now by the defendants before the Court below, to summon them either to produce any documents or to depose before the Court in support of the documents, he contended.

39. The learned Senior counsel would also rely upon Sections 38, 78 and 84 of the Indian Evidence Act. By relying upon those sections of the Indian Evidence Act, the learned Senior counsel for the plaintiff would further submit that, under Section 78(6), the public document of any other class in a foreign country may be proved by producing the original or certified copy by the legal keeper thereof with the certificate under the seal of Notary Public or Diplomatic Agent that is duly certified by the officer, having legal custody of the original. Therefore

the burden of proof lies only with the defendants to get such a certified copy of whatever document they wanted to rely upon, especially in the present context the so called rules and regulations pertaining to the Green card and to produce the same to disprove the claim of the plaintiff within the meaning of Section 78 of the Indian Evidence Act.

40. He would also submit that, Sections 38 and 84 of the Indian Evidence Act also make it abundantly clear that, in order to form an opinion by Court, of law of any country, any statement of such law contained in a book purported to be printed or published under the authority of Government, that shall be relevant. The collection of laws and reports of foreign countries published under the authority of that country also can be taken as genuine and the Court can presume like that under Section 84 of the said Act. Therefore the learned Senior counsel would further contend that, if at all the defendants want to establish a case that, there has been a different set of rules and regulations available in the US Administration pertaining to Green card holder and based on such rules and regulations, a permanent resident of United States with the capacity of Green card holder cannot be treated as a permanent resident of any other country especially India, even though he is having the Indian Passport and having all lien in

India and have a multiple trips and visits to India, the said factor can be very well established by the defendants only by producing the relevant documents as contemplated under various provisions of the Indian Evidence Act as has been discussed above and therefore in this context, the defendants cannot compel the Court to issue summons / subpoena to Consular General officials or staff to produce documents as they have been fully immuned and having the privilege of not being obliged to be called for to appear before the Court of law for deposition or giving evidence.

41. Therefore the learned Senior counsel has concluded by saying that, the Court below, after having considered all these aspects, especially in the context of privileges and immunities provided to Foreign Diplomats, Consular General, High Commission and their officials and staff under both the Vienna Convention as well as the Diplomatic Agreement between two countries, dated 19.01.2017, had given the decision stating that, the Court below is not empowered to issue summon / subpoena as prayed for by the defendants and accordingly, those applications were dismissed, of course rightly. Hence, the same do not require any interference from this Court, by way of revision.

42. I have heard and considered the said submissions made by the learned Senior counsel appearing for both sides and also have perused the materials placed before this Court carefully.

43. What triggered the defendants to move the two applications before the Court below is that, the plaintiff filed the suit to make a claim by way of declaratory relief to become one of the Founder Trustee of the first defendant Trust representing one branch namely late Narayanaswamy Naidu branch and in order to get the said relief, the plaintiff should prove before the Court below that, he satisfy the eligibility conditions under Chapter IV of the scheme of administration, wherein one of the condition, i.e., condition No.IV (B) (a) (ii) is that, he must reside in the Madras Presidency and for the present context, we can take it that, he must be residing in the State of Tamil Nadu.

44. In this context, since it is the case of the defendants that, the plaintiff has shifted his residence long back to US and he married a foreign woman and he had been residing in US for very long years, with the result, he has been given the Green card, i.e., permanent resident status at US and once he got the permanent resident status, he cannot claim that, he is the resident of India and he continuously

resides at India, especially in Tamil Nadu to fulfil the said condition No.(ii) of Chapter IV (B) (a). Therefore in order to disprove the said claim of the plaintiff, the defendants filed these two applications before the Court below and in I.A.No.3 of 2019, the prayer sought for is that summon / subpoena to be issued to the US Consulate General office at Chennai to summon an officer or staff to produce the rules and regulations pertaining to U.S. Green card and depose before the Court regarding the said rules and regulations.

45. Even though Section 106 of Indian Evidence Act, speaks about the burden of proof, here in the case in hand, it is the definite case of the plaintiff that, even though he is a Green card holder of US, he is still the citizen of India and the mere holding of the Green card of US will not mandate the plaintiff to permanently reside at US, as there is no such obligation to permanently reside at US and he can visit India and reside at India and accordingly, for the past several years, though he is holding the Green card of US, he has been visiting India and he is residing in India, especially at Coimbatore, i.e., part of Tamil Nadu. In so far as said stand taken by the plaintiff is concerned, he has produced the copy of the Green card, of course after having verified with the original produced before the Court below. If a stand is taken

by the plaintiff that, he is holding the Green card of US and by virtue of that, his right of residing in India is not taken away by any express provision of law, then the burden of proof shifts to the defendants as they only set up a case stating that, as per the rules and regulations and the conditions imposed by the US Government, a Green card holder of United States must be a permanent resident of US and therefore he cannot claim residentship at any other country, including in India and therefore the claim of the plaintiff that, he resides in India and accordingly, satisfying the condition imposed under Chapter IV of the scheme of administration, cannot be accepted is concerned, the said stand taken by the defendants have to be proved or in other words, the stand of the plaintiff has to be disproved only by the defendants and therefore rightly they approached the Court below by filing these two applications with the respective prayers.

46. However in so far as the prayer sought for in I.A.No.3 of 2019 is concerned, the lower Court has taken a stand that, in view of the provisions under Vienna Convention and also in view of the Articles mentioned in the agreement between India and United States made in the year 2017, the Diplomats, High Commissions as well as the Consulate General and the officials and staff attached to those offices

are having the special privileges and immunities and especially under Article 31(2) of Vienna Convention, no one from these offices can be summoned by the Courts in any receiving country for the purpose of evidence. Considering these aspects, the trial Court rejected the application in I.A.No.3 of 2019 and in view of the said rejection, the consequential prayer in I.A.No.2 of 2019 also has been rejected.

47. Whether the plaintiff has satisfied the residential condition imposed under Chapter IV (B) (a) (ii) or not is a matter to be decided by the trial Court. However in the present revision, the only issue to be decided by this Court is, as to whether the Indian Courts, especially the trial Court who passed the impugned order, has got power and jurisdiction to issue summons under Order XVI, Rule 2 and 3 of CPC, summoning the official or staff of US Consulate General office at Chennai to produce certain documents, i.e., the rules and regulations on the Green card holder and depose before the Court pertaining to the said rule.

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48. In order to find out answer to the said question, first the argument made by the learned Senior counsel appearing for the defendants that, the privileges and immunities given to the Diplomatic

mission (High Commission in respect of Commonwealth Countries) as per the Vienna Convention cannot be extended to Consulate General offices, has to be examined. The learned Senior counsel has relied upon the Dictionary meaning and explanation given to various terms like Consul, Diplomatic Agent and Diplomatic immunity. Those meanings and explanations suggested that, Consuls are looking after the commercial interest and they are not Diplomatic Agents and a Government representative living in a foreign country is to oversee commercial and other matters involving the representing / home country and its citizens in that foreign country, because they are not Diplomatic Agents. Therefore Consuls are subjected to local law and jurisdiction. By relying upon these meanings and explanations, the learned Senior counsel vehemently contented that, the Consul and their officials and staff attached to Consul's office cannot be construed as Diplomatic Agents and therefore the privileges and immunities cannot be extend to such Consul office.

49. However the learned Senior counsel appearing for the plaintiff has relied upon the agreement entered into between India and United States regarding the Diplomatic and Consular Relations Privileges and Immunities signed at New Delhi, dated 19.01.2017,

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wherein Article 2 and 3, which has already been extracted above, make it clear that, the privileges and immunities afforded to Diplomatic Agents under the Vienna Convention on Diplomatic relations shall be extended to Consulate offices of both the parties concerned. Therefore it is a specific agreement between India and United States, under which, what are all the privileges and immunities available to Diplomatic Agents under Vienna Convention on Diplomatic Relations, shall be made available or extended to Consulate office of these countries. In view of this bilateral agreement between India and United States, the Indian Courts, in the considered opinion of this Court, cannot say that immunities and privileges available to a Diplomatic Agents under Vienna Convention cannot be extended or available to Consular offices, especially the Consular offices of United States of America. Therefore the said contention raised by the learned Senior counsel for the defendants that, under Vienna Convention, those privileges and immunities cannot be availed by the Consular offices and their staffs and officials, cannot be accepted and is liable to be rejected, accordingly it is rejected.

50. Now let us see, in the context of the applicability of immunities and privileges to the Consulate General Offices also,

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whether the lower Court can summon the Consular General or officer or staff of the US Consulate General at Chennai, as has been prayed for in the application filed by the defendants.

51. In Article 31(2) of Vienna Convention, it has been specifically made that, "A diplomatic agent is not obliged to give evidence as a witness". Therefore it is abundantly clear that, a diplomatic agent including Consular General or Consular office people are not obliged to give evidence in a receiving country (i.e., in India).

52. Hence the part of the prayer in I.A.No.3 of 2019, to summon the Chief or staff of the Consulate General of United States at Chennai to give evidence regarding the rules and regulations governing the Green card of United States of America, is completely ruled out and such a directive cannot be issued by the Court below.

53. However, under Order XVI Rule (1) of CPC, a list of witnesses, shall be presented by the parties immediately within 15 days from the date the issues are settled and if no such list is given or if any witnesses omitted to be given in the list under Rule 1 of Order XVI, a party desirous of obtaining any summons for the attendance of

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any person as a witness, can file an application in the Court to that effect and under Rule 3, the Court may for reasons to be recorded, permit the party to call such person as witness.

54. Under Rule 2 of Order XVI, it makes only the word "any person". Therefore the Court, for reasons to be recorded, can issue summons to any person as a witness on an application filed by the party under Rule 2 of Order XVI of CPC.

55. Here in the case in hand, such an application has been filed by the defendants in I.A.No.3 of 2019 requesting the Court to summon officials or staff from US Consulate office at Chennai as a witness to depose. Apart from that, certain documents were directed to be produced by such witness, i.e., rules and regulations on US Green card.

56. In this context, if we apply the privileges and immunities, especially in the context of Article 31(2), the immunities and privileges certainly would be available to the Consulate General office of US at Chennai, as they are not obliged to give evidence as a witness. But at the same time, whether the Court is prevented from issuing a summon

to the Consulate General office within the meaning of Order XVI Rule 2 and 3 of CPC is concerned, there is no express bar in CPC prohibiting the Court from issuing such summon / subpoena.

57. However Section 8 of the Diplomatic Relations (Vienna Convention) Act, 1972, has provided the following :

"8. Restrictions on entry into diplomatic premises:

No public servant or agent of the Central Government, a State Government or any public authority shall enter the premises of a diplomatic mission for the purpose of serving legal process, except with the consent of the head of the mission. Such consent may be obtained through the Ministry of External Affairs of the Government of India."

58. Under Section 8 of the said Act, as extracted above, no public servant, i.e., either Central or State Government servant or public authority would be permitted to enter into the premises of a diplomatic mission for the purpose of serving legal process, except with the consent of the head of the mission and such permission shall be obtained only through the Ministry of External Affairs of the Government of India.

59. Relying upon Section 8 of the said Act, the Lower Court has taken a stand that, in view of the prohibition that even a public servant cannot enter into the diplomatic mission for the purpose of serving the court notice or summon without a consent obtained from them through the Ministry of External Affairs, the Court does not have power to issue summon / subpoena.

60. No doubt Section 8 as referred to above has made a prohibition that, no public servant can automatically enter into the premises of the diplomatic mission including the Consular General office, but at the same time, if any communication is sent by any one to the Consulate General or various designation and officials of such Consulate General office, either by way of a communication or by post or any other mode, those communication would normally be reached the Consular General office and on receipt of the same, it is for them to act upon as they desire.

61. In this context, if at all any summons or notice is sent by the Court, the same can be delivered as any other communication / letter or tapal by Indian postal department and once the summon or notice, the trial Court served by post to the diplomatic mission, on receipt of the same, it is up to them to respond or not to respond.

62. If at all the diplomatic mission, after having receipt of any such notice or summon sent through post, has not responded, the Court cannot compel such addressee / witness for such appearance and cannot take action for the act of not responding. In this context, the power vest with the Courts under Order XVI Rule 10 CPC cannot be exercised against the foreign diplomat or foreign consulate or High Commission or any other official or staff attached with those offices.

63. From the above discussion, therefore it is derived that, the privileges and immunities available to foreign diplomats under Vienna Convention would be extendable or available to the foreign Consular General office and their staff also, especially the Consular General office of US in view of the bilateral agreement between India and United States, dated 19.01.2017.

64. Once such privileges and immunities are available to the US Consular General office at Chennai under Vienna Convention, under Article 31(2), no one from that Consular General office can be summoned to be a witness in any Indian Court. Therefore summoning them for the purpose of adducing evidence by way of mandatory direction is completely ruled out.

65. However if any notice or summon is issued by the Court seeking certain documents to be produced from the US Consular office, especially in the present case at the US Consular General Office at Chennai and such summons or notices are served through post to the said Consular's office, it is for them to respond on receipt of such notices or summons from the Court through post.

66. In this context, having receipt of such notices or summons through post sent by the Court, if the Consular General Office of US at Chennai has not responded, no consequential action can be taken by the Court below invoking Order XVI Rule 10 of CPC.

67. But at the same time, if they positively respond to the notice and summon only for the purpose of producing or sending some documents available with them, the Court can utilise those documents sent by them and in that case, certainly it will have an evidenciary value within the meaning of Section 84 of the Indian Evidence Act.

68. In view of the aforesaid principles, which alone since have been emanated in view of the legal position as has been discussed above, this Court is of the considered opinion that, the Court below

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can very well issue notice / summon to the US Consular office at Chennai only for the purpose of production of rules and regulations pertaining to Green card being issued by US Administration, only as an information in order to assist the Court and not for the purpose of summoning any one from the Consular office as a witness.

69. Once such notices / summons received by the US Consular office sent through post is responded positively by them by sending any materials / documents / literatures to that effect as sought for by the Court, the same can be utilised as supporting evidence or secondary evidence within the meaning of Section 84 of the Indian Evidence Act.

70. In view of the above, this Court is inclined to dispose of these two Civil Revision Petitions with the following orders :

(i) The impugned order passed in C.R.P (PD).No.1585 of 2019 is modified to the effect that, the Court below can issue notice / summon by post to the US Consular Office at Chennai only for the purpose of production of literatures / documents pertaining to the rules and regulations, if any, on Green card holders, issued by the US Administration.

(ii) Once such notice is issued and the same is responded by the addressee in the manner they deem it fit and accordingly if anything send by them, the same can be utilised as evidence within the meaning of Section 84 of the Indian Evidence Act and accordingly, the Court below can proceed further.

(iii) In so far as C.R.P.(PD).No.1584 of 2019 is concerned, depending upon the outcome or the result of the notice / summon to be issued as directed above, the plea raised or prayer sought for by the defendants in I.A.No.2 of 2019 can be decided and therefore for the said purpose, the present impugned order made in the said I.A.No.2 of 2019, which is impugned in this Civil Revision Petition, is set aside.

With these directions and observations, both the Civil Revision Petitions are ordered accordingly. However there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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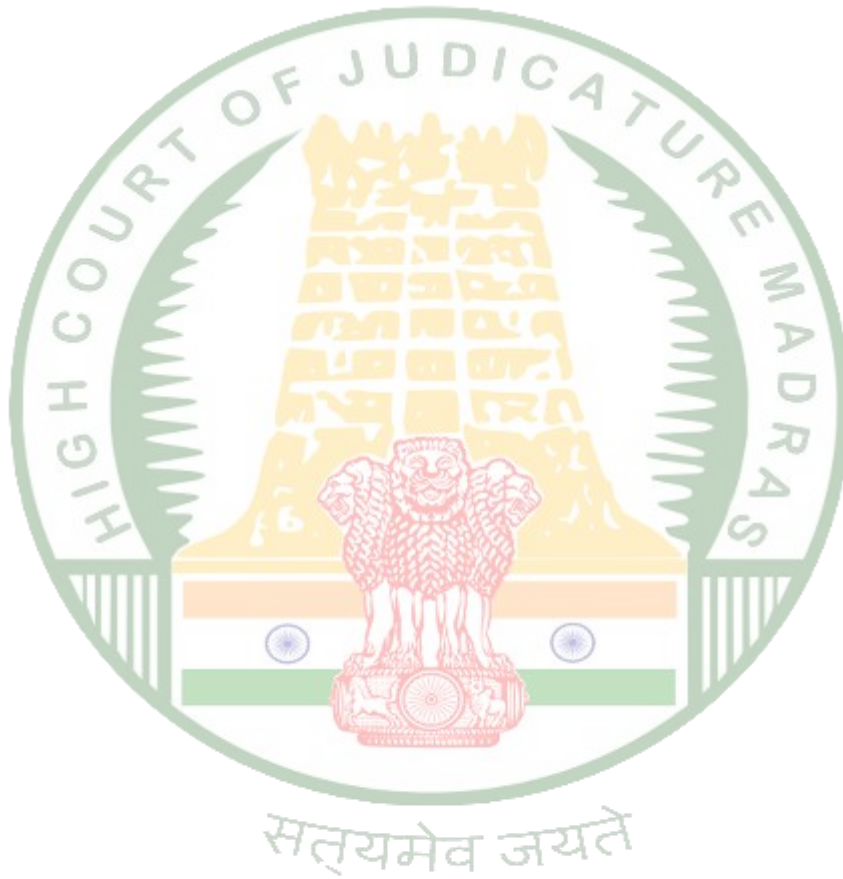
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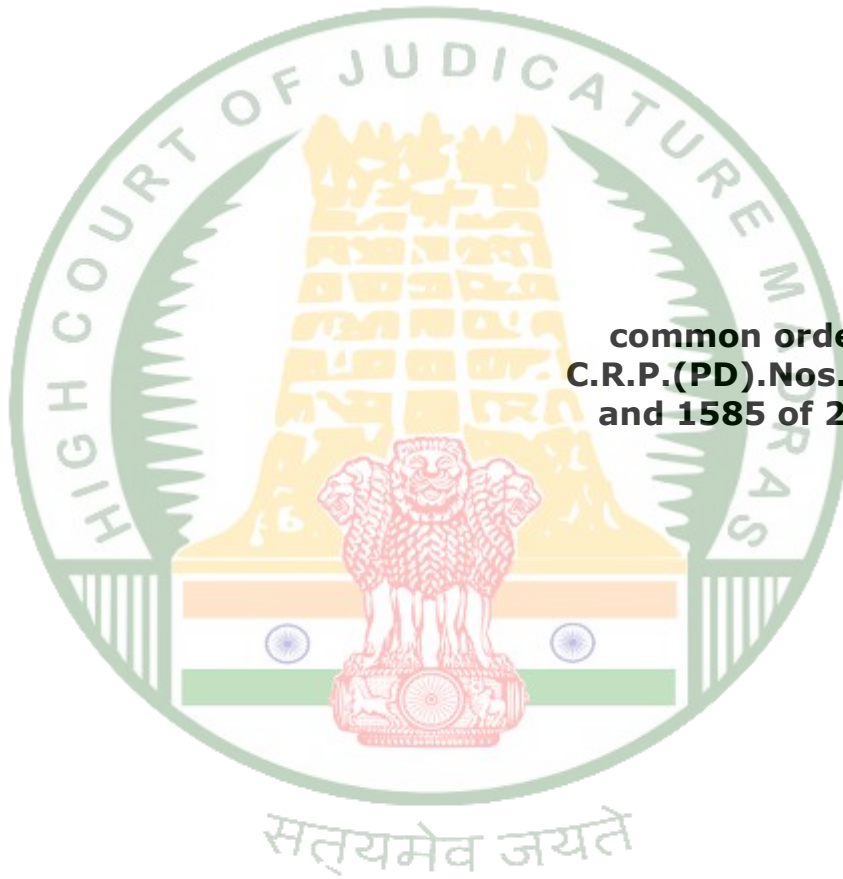
The Principal District Judge,
Coimbatore.



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R.SURESH KUMAR, J

tsvn



**common order in
C.R.P.(PD).Nos.1584
and 1585 of 2019**

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