

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 30TH DAY OF JANUARY 2019

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

A. Nos.7019 and 7020 of 2018
in
C.S.No.685 of 1997

1.P.Parthasarathy
S/o.P.L.Narasimha Gupta
No.53, Eluthukaran Street
Kaladipet, Madras - 600 019.

2.P.Lakshminarayanan
S/o.P.L.Narasimha Gupta
No.53, Eluthukaran Street
Kaladipet, Madras - 600 019.

3.E.Prem Kumar
S/o.E.Raghu
No.53, Eluthukaran Street
Kaladipet, Madras - 600 019.

...Plaintiffs

-Vs-

1.P.Lakshmi Bai (Since deceased)
Wife of P.L.Narasimha Gupta
No.53, Eluthukaran Street
Kaladipet, Madras - 600 019.

2.G.Subhasini
W/o.Mahindharan
No.55, Eluthukaran Street
Kaladipet, Madras - 600 019.

3.M.V.Rukmani

4.E.Amresh

5.E.Prevalika

...Defendants

Defendants 4 and 5 declared as Majors in A.No.6747, 6746 of 2017 Dt: 21.11.2017 and Discharged Duties of P.Chandra Guardian ship in A.No.6745 of 2017 Dt: 21.11.2017.

6.P.L.Narasimha Gupta
S/o.Late P.V.Balarama Chetty
Old No.53, New No.36
Eluthukaran Street
Kaladipet
Chennai - 600 019.

The 6th Defendant impleaded as per order in A.No.2943/02
dt:01.10.2002 and condone the delay in Carrying out
amendment ordered in A.No.3846 of 2004 on 06.10.2004.

A.No.7019 and 7020 of 2018:

1.P.Parthasarathy
S/o.P.L.Narasimha Gupta
No.53, Eluthukaran Street
Kaladipet, Madras - 600 019.

...Applicant

-Vs-

1.P.Lakshmi Bai (Since deceased)
Wife of P.L.Narasimha Gupta
No.53, Eluthukaran Street
Kaladipet, Madras - 600 019.

2.Kankipati Kannaiah Chetty Charities
Represented by its Trustees
P.Lakshminarayana
S/o.P.Lakshminarasimha Gupta
No.5, Perumal Koil Street
Minjur, Chennai - 600 019.

3.G.Subhasini
W/o.Mahindharan
No.55, Eluthukaran Street
Kaladipet, Madras - 600 019.

4.G.Nagarajan
No.55, Eluthukaran Street
Kaladipet
Chennai - 600 019.

5.M.V.Rukmani

6.E.Ambresh

7.E.Pravalika

5th to 7th Defendants residing at
No.53, Eluthukaran Street
Kaladipet, Chennai - 600 019.

8.P.L.Narasimha Gupta
S/o.Late P.V.Balarama Chetty
Old No.53, New No.36
Eluthukaran Street
Kaladipet
Chennai - 600 019.

9.E.Prem Kumar
S/o.E.Raghu
No.53, Eluthukaran Street
Kaladipet
Chennai - 600 019.

...Respondents

A. No.7019 of 2018:

Application praying that this Hon'ble Court be pleased to direct the Respondents 2 to 4 to vacate and discharge the official duties as Trustees of the Trust namely Kankipati Kannaiah Chetty charities functioning at 53/55 Eluthukaran Street, Kaladipet, Chennai - 600 019.

A. No.7020 of 2018:

Application praying that this Hon'ble Court be pleased to appoint Respondents 6 and 7 as Managing Trustees of the above Trust by allowing this application.

These Applications coming on this day before this court for hearing the court made the following order:

These two applications have been filed with the following prayer:

- (i) to direct the respondents 2 to 4
to vacate and discharge the official

duties as Trustees of the Trust namely Kankipati Kannaiah Chetty Charities, functioning at 53/55, Eluthukaran Street, Kaladipet, Chennai - 19; and

(ii) to appoint respondents 6 and 7 as Managing Trustees of the above Trust.

2. After having heard Mr.S.A.Rajan, learned counsel appearing for the respondents 2, 3 and 4 as well as the learned counsel appearing for the other respondents and after having heard the applicant / plaintiff, who appeared party-in-person, this Court in the interest of justice is inclined to pass the following order.

3. As per the compromise decree, dated 01.11.2016, this Court having accepted the compromise memo, passed a compromise decree, through which the applicant and the respondents 2 to 4 had been appointed as Trustees. The relevant portion of the order made in C.S.No.685 of 1987 on 01.11.2016 is extracted hereunder for easy reference :

"MEMORANDUM OF COMPROMISE UNDER ORDER 23
RULE 3 OF C.P.C

Suit filed praying for decree and judgment against defendants,

directing the second defendant to render account in respect of the Trust known as the Kankipatti Kanniah Chetty

Trust now functioning at No.53 and 55, Eluthukaran Street, Kaladipet, Chennai 600 019, and its properties morefully described in the schedule A, B, C of the plaint commencing from 1976 namely, 01.04.1976 till date. The following members shall be appointed as Trustees as follows:

1. P.Parthasarathy
2. P.Lakshminarayanan
3. G.Subashini
4. G.Nagarajan

signed at Chennai on this day of October, 2006.

...

6. The parties are present today and signed the memo of compromise accepting the terms of the same. The plaintiffs have also taken out an application in A.No.4376 of 2006 under Order 23 Rule 3 CPC and Order XIV Rule 8 of High Court O.S. Rules to record the above memo of compromise. The said application is ordered as prayed for. That apart, both the parties as well as their counsel have agreed to adhere to the conditions imposed by this Court in the decree in C.S.No.832 of 1989, in addition to the terms of memo of compromise entered in the present suit.

7. Accordingly, there shall be a decree in terms of above compromise as

well as the conditions imposed in the decree in earlier suit, C.S.No.832 of 1989 dated 27.02.1991. The memo of compromise entered in this suit shall form part of the decree. There shall be no order as to costs."

4. Pursuant to the said compromise decree, the applicant, i.e., the first plaintiff as well as the respondents R2 to 4 since had been appointed as Trustees had been acting upon. However it is the main grievance of the applicant that, though he along with other three, i.e., respondents 2 to 4 was appointed through compromise decree as Trustees, the other three Trustees, i.e., R2 to 4 are not co-operating with him in discharging the functions entrusted to the Trustees, which includes collection of rent from tenants and thereby huge rent arrears are there, for which no effective steps can be taken by the Trustees.

5. However the said allegation has been stoutly denied by the learned counsel appearing for the respondents 2 to 4 and he would infact submit that, as per the compromise memo, though four members have been appointed as Trustees, for all practical purposes, respondents 2 to 4 had allowed the applicant to act as a Managing Trustee and he must lead the Trustees team and to discharge the functions entrusted to the Trustees. Whatever endeavour the Trustees want to make

or want to take to discharge the functions of the Trustees, that can be lead by the applicant and for such efforts, other Trustees, i.e., respondents 2 to 4 shall give whole hearted co-operation.

6. In view of the said submission made by the learned counsel appearing on behalf of the respondents 2 to 4, the applicant who appeared party-in-person has submitted that, if this Court gives such a clarification that, the applicant can act as a Managing Trustee of the Trust Board consisting of four Trustees, including the applicant and he can lead all activities on behalf of the Trust Board with the co-operation of the others, certainly he will be satisfied and the prayer sought for in these two applications need not be gone into.

7. In the meanwhile, the learned counsel appearing for the respondents 6 and 7 would submit that, they are also interested in becoming Trustees and if ultimately the Court comes to the conclusion that, the respondents 2 to 4 have to be ousted from the Trusteeship, the respondents 6 and 7 are ready and willing to take the charge as Trustees.

8. Since this Court has not come to any such conclusion to oust the respondents 2 to 4 at this juncture from the Trusteeship, the question of inducting respondents 6 and 7 as Trustees would not arise at this juncture. However in future, depending upon the developments and circumstances,

it is open to the respondents 6 and 7 to claim Trusteeship, not as a matter of right, because of the situation, that would arise in future and if such situation arise and any claim comes from the respondents 6 and 7, that would be considered by this Court.

9. In the circumstances, this Court gives the following clarification for smooth and effective functioning of the Trust Board headed by the applicant herein :

(1) The applicant herein, namely Mr.P.Parthasarathy shall be the Managing Trustee of the Trust. The other three Trustees, i.e., respondents 2 to 4, namely P.Lakshminarayanan, G.Subashini and G.Nagarajan shall act as Trustees.

(2) The three Trustees shall give full co-operation to the Managing Trustee and in this regard, whatever decision to be taken by the Trust Board, that shall be discussed among the Trustees, including the Managing Trustee and other Trustees and as far as possible, unanimous decision can be taken.

10. In so far as the complaint of non-cooperation from the respondents 2 to 4 is concerned, the Managing Trustee

shall be at liberty to seek co-operation as assured by them from other Trustees and in this regard, in spite of written communication / request is made by the applicant, if no co-operation for any specific act to be done on behalf of the Trust Board, is coming or arrived at, certainly the Managing Trustee shall be at liberty to act upon on behalf of the Trust and such decisions would be subject to approval of this Court in case any complaint or mismanagement is noticed by other Trustees against the applicant and brought to this Court to that effect.

11. This arrangement shall continue for a period of one year and thereafter within this one year period, if the other Trustees, i.e., respondents 2 to 4 on the one side and the applicant / the Managing Trustee on the other side found any non-cooperation from each other, that can be brought to the notice of this Court by appropriate application and that shall be considered at that time on merits.

With these clarifications, these two applications are disposed of.

Sd./- R.S.K.J.

30.01.2019

//Certified to be a true copy//

Dated this the day of 2019.

DL/14.02.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.