

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

**CRP (PD).NO.1905 OF 2019 &
CMP.NO.12537 OF 2019**

1. Chinnasamy
2. Thangannan
3. Ramasamy
4. Ramamoorthy

..Petitioners

-VS-

Ponni Charitable Trust
represented by its
President Mr.M.Subramaniam
having office at 858,
Samalapuram and Post,
Tirupur

.. Respondent

Prayer: Civil Revision petition filed under Article 227 of Constitution of India against the order dated 30.04.2019 in I.A.No.97 of 2019 in O.S.No.52 of 2019 on the file of Principal District Judge, Tiruppur.

For Petitioner : Mr. T.R.Rajagopal
Senior Counsel

For Respondent : Mr.ARL.Sundaresan
Senior Counsel

ORDER

The present Civil Revision Petition is filed against the order dismissing the petition I.A.No.97 of 2019 in O.S.No.52 of 2019 filed under Order 7, Rule 11 CPC for rejection of plaint by the defendants.

2. Heard Mr.T.R. Rajagopal, learned Senior Counsel appearing for the petitioners and Mr.ARL.Sundaresan, learned Senior Counsel appearing for the respondent.

3. Learned Senior counsel appearing for the petitioners/defendants vehemently contended that the respondent/ plaintiff being a public trust should be represented by the Board of Trustees and not by an office bearer of the Trustees. Further, the office bearer claims himself as the Managing Trustee without there being any valid resolution passed therefor asked for the Trust Deed coram held a meeting with seven trustees. As per the plaint documents only four of the trustees have passed the resolution which, *per se* is not sustainable and filing of the suit by one of the trustees is not

maintainable.

4. Further, as per the terms of the trust, a person can be elected as a President for two years and can be re-elected for one more year. Even though, the plaintiff is said to be represented by the Managing Trustee, the President of the Trust Board, specific details are lacking and without specific pleading, as a whole, suit does not reveal any cause of action. Therefore, the suit shall be rejected for non disclosure of cause of action.

5. Per contra, the learned counsel appearing for the respondent/plaintiff would contend that in the affidavit filed in support of the petition for rejection of plaint, the defendants would themselves admit that the plaintiff continued to be a President of the Trust Board till 27.12.2018. The resolution passed in the meeting by the Board of Trustees held on 28.1.2019 is not valid.

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6. Since the legal notice issued by the defendants was not replied and that the plaintiff is challenging the General Body Meeting held on

27.12.2018, wherein, the 4th defendant was elected as a President is being challenged by the plaintiff by giving paper publication would bind on him, the disputed questions of facts has to be decided only during the trial and the plaint shall not be rejected in limine.

7. It is true to state that the plaintiff Trust is a public trust and is represented by the President of the trust. The petitioners claim themselves as Trustees. But the application discloses that there is a division among the trustees and four trustees on the plaintiff side and three trustees on the defendant side. The defendants have taken support of the retired trustees also. The plaint document includes the resolution, which authorises the president Mr. M.Subramani to represent the plaintiff trust, as such that resolution is contested by the defendants as invalid. Thus the question of law has become disputed question of fact.

8. Whether there was a meeting held on 29.1.2018 or not, whether Mr.M.Subramani was authorised to file a suit on behalf of the trust or not and the validity of the resolution are to be decided only through evidence.

The contention of petitioner/defendant that whether there was coram to pass a resolution was available on the date of meeting or not, is also a disputed question of fact. Both the sides claim that they have conducted meeting. If there is division among both the meetings, it may not have full coram. Therefore, all these things has to be proved only after full fledged trial.

9. The contention of the learned Senior counsel for the petitioner that there are only 60 documents filed along with the plaint and the Board resolution was inserted at a later point of time for the reasons best known to the plaintiff would itself show that the affairs are not transparent and that the failure to give specific details which should be pleaded specifically would render the suit without any cause of action. But whether the framing of suit is proper or not, whether there is non-joinder or mis-joinder of necessary parties are there or not, is again the question of fact, which should be decided after trial.

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10. It cannot be said that the plaint does not disclose any cause of action. On the face of it, the plaint discloses the cause of action for

maintaining the same. The trial Court discussed all these issues elaborately and held that paragraph 10 of the plaint discloses various cause of actions and to support the same, the plaintiff has filed as many as 60 documents. Whether such cause of action are true or not, can be decided only in the suit after trial and hence dismissed the application.

11. Since the disputed question of law raised by the petitioner has become the disputed question of fact by their own averments in the petition under Order 7, Rule 11 CPC, these disputed questions of fact can be decided only after a full fledged trial. Therefore, I do not find any infirmity in the order passed by the trial Court. The Civil Revision Petition merits no consideration. Accordingly, it is dismissed. No costs. Consequently, the connected CMP.No. 12573 of 2019 is closed.

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30.08.2019

msr

Index: Yes/No

Internet: Yes/No

Speaking order/non speaking order

To

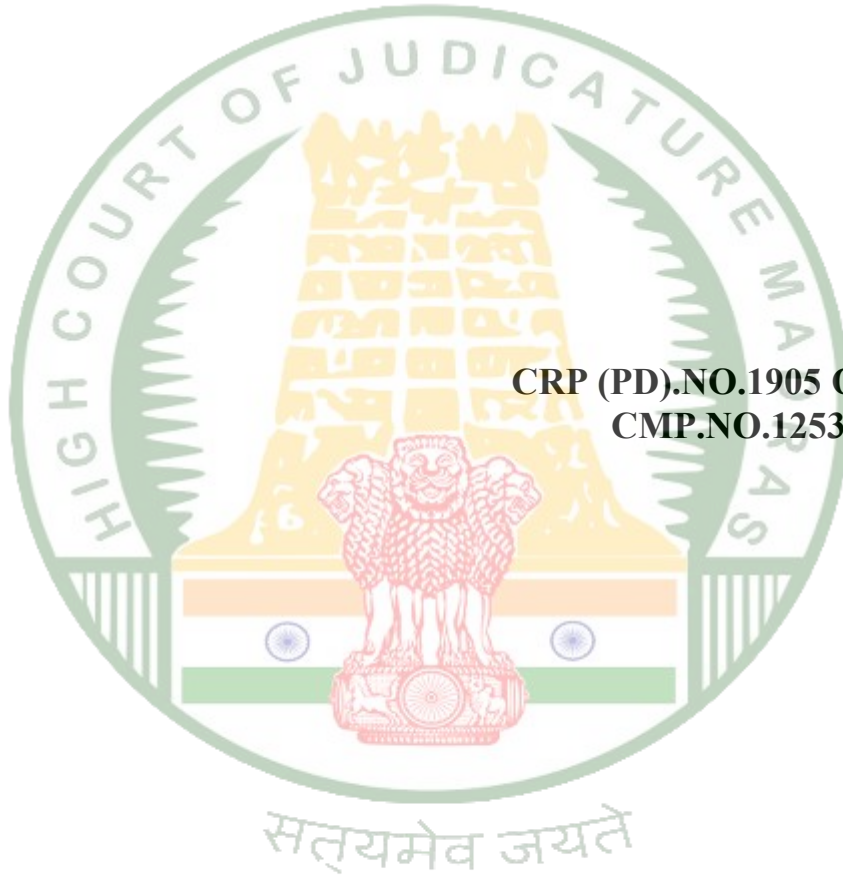
The Principal District Judge,
Tiruppur.

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Order dated 30.08.2019 in C.R.P.(P.D.)No.4109 of 2011

M.GOVINDARAJ, J.

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