



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.11.2019

CORAM:

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

CRP. (MD) .No.1075 of 2012 (PD)

and

M.P. (MD) .No.1 of 2012

WEB COPY

1.Lakshmi Kumar @ Vasudevan
2.Raghunathan
3.Murali @ Ranganthan ...Petitioners / Respondents /Plaintiffs
Vs.

Shri Ahobila Mutt by his Holines,
Shri Narayana Yathindra Mahisikan,
Selaiyoor, East Tambaram, Chennai,
Represented by his Power of Attorney agent
S.Rajagopalan, S/o Srinivasa Iyengar,
East Uthara Street,
Srirangam. ...Respondent / Petitioner /3rd Defendant

PRAYER: This Petition filed under Article 227 of the Constitution of India to reverse and set aside the fair and decreetal order in I.A.No.524 of 2011 in O.S.No.556 of 2010, on the file of the Principal District Munsif Court, Trichy and dated 23.12.2011.

For Petitioners : Mr.S.Ramesh
For Respondent : Mr.S.Madhavan

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below allowing the application filed by the defendant to try the very maintainability of the suit as a preliminary issue.

2. The petitioners are the plaintiffs, who have filed a suit before the Court below against the respondent and others seeking for the relief of declaration and mandatory injunction. A reading of the plaint shows that there was already a Scheme Decree that was passed on 12.08.1969 and that the defendants have not followed this Scheme Decree and have acted in violation of the terms and conditions imposed by the Scheme Decree.

3. The respondent / third defendant filed an application before the Court below on the ground that an independent suit is not maintainable and if at all the petitioners / plaintiffs have any grievance regarding the alleged violation of the Scheme Decree, only



an application can be filed before the same Court, which passed the Scheme Decree and an independent suit will not lie.

4. The Court below after considering the rival contentions found that the preliminary objection raised by the respondent will decide the issue as to whether such a suit is maintainable under law and therefore, the Court below was willing to take it as a preliminary issue under Order XIV Rule 2 (b) of the Code of Civil Procedure.

5. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

6. The learned counsel appearing on either side made elaborate submissions. The main grievance of the petitioners seems to be with regard to the so-called violation of the terms and conditions of the Scheme Decree. It is a settled law that it is only the Scheme Court, which will continue to have a control over the proceedings and the lis and it does not become a *functus officio* on the basis of the Scheme Decree. Useful reference can be made to the judgment of this Court in the case of **Janab Dr.Hisamuddin Papa Sahib and 4 others Vs. Janab Kazim Hussain Sahib** reported in **2000-1-L.W.552**. The relevant portions of the judgment is extracted hereunder:

"But under the scheme decree, it is the Court that is empowered to appoint certain trustees. The over all control is thus with the Court. Therefore, the Court continues to have control over the proceedings and the lis. It had not ceased to have power nor has become *functus officio*. Under the scheme decree, it is only the Court that has to appoint the trustees. The trustees have to apply to the Court. The scheme decree vests with Court the power of removal of a trustee. The budget has to be submitted to the Court. The Scheme Court has power to give direction for the working of the scheme. Therefore, when an institution like this is governed by or controlled by scheme, the authority of the Court to deal with it arises from the scheme. Therefore, when the Court has still such power drawable from the scheme, then it follows that such scheme decree can be transferred from one Court to another and such powers can be equally exercised by another equal and competent Court. It will be like a Executing Court to which the decree is transferred. In that sense, the matter is still pending and the passing of a decree had not brought end to the proceedings. It still has jurisdiction to decide the dispute arising between the parties or relating to the management of the trust, removal and appointment of trustees. It still has power to issue direction for the working of the scheme. The



scheme decree only sets down the rules for administration, management and appointment. It has to be done in the term of the scheme decree. It has thus power of superintendence over the trust. The decree is thus alive and relevant. It has not become a spent force."

The above judgment clearly explains the law on the issue.

7. In the considered view of this Court, the grievance that has been raised by the petitioners can be raised by filing an application before the Scheme Court and the remedy can be worked out in accordance with law. An independent suit cannot be maintained for this purpose. Ultimately, the issue that has been raised by the petitioners will have to be resolved. The correct procedure would be to make this dispute resolved by the Scheme Court which continues to exercise its jurisdiction even after the Scheme Decree is passed.

8. In view of the above findings, the fair and final order passed by the Court below is sustained. The petitioners, instead of pursuing an independent suit, are given the liberty to file an appropriate application before the Scheme Court and agitate the very same issue, which has been raised in the suit. By adopting to this procedure, the remedy can be properly worked out without giving rise to any technical objections regarding the maintainability of the suit.

9. This Civil Revision Petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1.The Principal District Munsif , Trichy.

2.The Record Keeper,V.R.Section (2 copies)

Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.MADHAVAN, Advocate (SR-102694[F] dated 29/11/2019)

+1 CC to M/s.V. RAGHAVACHARI, Advocate (SR-102769[F]

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28.11.2019

SMA/30/12/19/3P/6C