



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM:

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

C.R.P. (MD) No. 364 of 2012

and

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

1. N. S. Sivam

2. A. V. Chandrasekaran

3. N. Pandian

4. Dssarathi

: Petitioners/Respondents/
Plaintiffs

Vs.

1. Kattangudi Devanger Uravinmurai
at Kattangudi Aruppukottgai Taluk,
Virdhunagar District
represented by the Ambalam/Secretary.

: Respondent/Petitioner/7th Defendant

2. T. Chelliah

: Respondent/Respondent/3rd Plaintiff

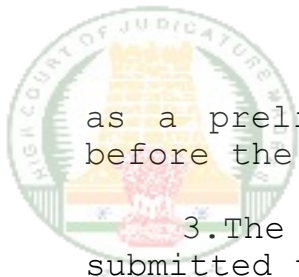
PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 08.09.2011 in I.A.No.485 of 2011 in O.S.No.1197 of 2003 on the file of the Principal Subordinate Judge, Tiruchirapalli.

For Petitioners : Mr. K. Sekar
For R1 : Mr. V. Karma
R2 Expired

ORDER

This Civil Revision Petition has been filed against the fair and final order passed by the Court below allowing the application filed by the first respondent / seventh defendant to try a preliminary issue with regard to the maintainability of the suit.

2. The petitioners have filed a scheme suit before the Court below in order to frame a scheme for the management and the administration of the trust. The first respondent, who is the seventh defendant in the suit, filed an application under Order XIV Rule 2(b) C.P.C., to decide the maintainability of the suit on the ground that the suit has been entertained without even obtaining any leave, which is mandatory under Section 92 C.P.C. The Court below has allowed the application and has decided to take the said issue



as a preliminary issue since it found that no leave was granted before the suit was entertained.

3.The learned counsel appearing on behalf of the petitioner submitted that earlier the suit was filed before the Principal Seat, Madras for the similar relief and the Principal Seat refused to grant leave and dismissed the suit. This was subsequently, confirmed by a Division Bench. The order of the Division Bench was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court granted leave and entertained the appeal in C.A.Nos.8029 & 8030 of 2001.

4.The Hon'ble Supreme Court while disposing the civil appeal, upheld the order of the Division Bench with regard to the jurisdiction. However, the Hon'ble Supreme Court had set aside the finding of the Division Bench with regard to the nature of the property involved and whether the trust is a private trust or public trust and the Hon'ble Supreme Court kept that question open and to that extent modified the order of the Division Bench. The Hon'ble Supreme Court also gave liberty to the petitioners to file suit before the concerned Court and workout their remedy, in accordance with law.

5.Pursuant to the order passed by the Hon'ble Supreme Court, the petitioners filed an application before the Court below and the same was numbered as O.S.No.1197 of 2003. Pleadings were completed and the case was at the stage of trial. At that stage, the first respondent / seventh defendant filed an application to decide the maintainability of the suit by taking it as a preliminary issue under Order XIV Rule 2(b) C.P.C.

6.This application was filed mainly on the ground that the scheme suit has been entertained and numbered even without obtaining leave from the Court to file the suit. This issue, according to the learned counsel for the petitioners, should have been raised at the initial stage and it was attempted to be raised when the suit was at the stage of trial. The learned counsel submitted that the Court below may be directed to decide the suit on merits and time may also be fixed for the completion of the proceedings.

7.The learned counsel for the respondents submitted that the Court below has come to a conclusion that no leave was granted while entertaining the scheme suit and therefore, the Court below was right in taking it as a preliminary issue to decide the maintainability of the suit.

8.This Court has carefully considered the submissions made on either side and the materials available on record.



9.The Court below has given a categorical finding that no leave has been granted before entertaining the suit. The scheme suit can never be entertained without the plaintiff being granted leave particularly when the trust in question is a public trust. The Court wants to try it as a preliminary issue since the Court below found that the same touches upon the bar to the suit created by law. If the Court finds that the suit is barred by law, there is no requirement for the Court to go into the other issues. Therefore, the Court below was right in allowing the application to try the preliminary issue raised by the first respondent. This Court does not find any illegality or infirmity in the order passed by the Court below and there is no ground to interfere with the same.

10.In the result, the order passed by the Court below is sustained and this Civil Revision Petition is dismissed. The Principal Subordinate Court, Tiruchirapalli is directed to complete the proceedings in O.S.No.1197 of 2003 within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

gns

To

The Principal Subordinate Judge,
Tiruchirapalli.

C.R.P. (MD) No.364 of 2012
13.09.2019

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