

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.02.2017

PRONOUNCED ON : 23.12.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CS.No.905 of 2006

Agila India Minvariya Kanakkeettaalar
Matrum Panam Vasulippavarkal Sangam,
Rep. by its General Secretary,
R.Janardhanam
Substituted and amended as per Order made
in A.No.767/2011 dated 16.09.2011.

.. plaintiff

Vs.

1. Tamil Nadu Electricity Workers Federation Trust,
rep. by its Trustees.

1. R.P.Michael

2. V.Ganesan

3. M.Krishnamoorthy

4. V.Ramamoorthy

5. K.K.Perumalswamy
presently having office at 92, Guruvappa Street,
Chintadripet, Chennai – 2.

2.R.P.Michael

3.V.Ganesan

4.M.Krishnamoorthy

5.V.Ramamoorthy

6.K.K.Perumalswamy

defendants 2 to 6 are retired employees of TNEB and members
of Tamil Nadu Electricity Workers Federation

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7.Tamil Nadu Electricity Worker's Federation (Reg.No.2970)
Rep. by its General Secretary Mr.V.Ramachandran
VGR Illam, 92, Guruvappa Street, Chintadripet, Chennai-2.

8.V.Radhakrishnan
(Retired TNEB Assessment Officer)

9.K.Subramanian
(retired Revenue Supervisor)

10.TAH.Ramaswami,
Proprietor,
Mr.Sree Krithika Associates,

11.Mr.S.Kamalesh
S/o.Sengothi
Rep by his mother and power agent
Tmt.S.Girija.

.. defendants

PRAYER : Civil suit is filed under Order VII Rule 1 CPC
r/w.Order IV Rule 1 of OS Rules :-

(a)For a declaration that the sale deed dated 09.03.2006 bearing Document No.763/2006 registered at Sub Registrar Office, Mylapore, Chennai-4 executed by the defendants 1 to 6 and 10 to and in favour of the 11th defendant as null and void and non-est and against the object of the Trust created by way of Trust Deed dated 30.11.1979 registered as Doc.No.2201 of 1980 at Sub Registrar Office, Mylapore, Chennai-4.

(b)For Directing the defendants to deliver vacant possession of the suit property bearing Old Door No.103, New No.26, Karaneeshwarar Koil Street, Mylapore, Chennai-4 to the trustees who may be appointed by this Court.

(c)For framing a scheme for the administration and Management of

the suit property bearing Old Door No.103, New No.26, Karaneeshwarar Koil Street, Mylapore Chennai-4.

(d)To remove the defendants 2 to 9 from trusteeship of the Tamil Nadu Electricity Workers Federation Trust and appoint new Trustees from the members of the plaintiff Union working as Assessors (cashiers) in the Tamil Nadu Electricity Board.

(e)To direct the defendants 2 and 3 to pay a sum of Rs.4,00,000/- with interest at 12%p.a. from the date of plaint. and

(f)for costs.

For Plaintiff : Mr.S.Thiruvengadaswamy

For Respondents : Mr.K.P.Gopalakrishnan
for D1, D3 to D6.

Mr.B.Srinivasan, for D8 & D9.

No appearance.

Mr.S.Thankasivan for D10 & D11

No appearance.

J U D G M E N T

The Civil Suit is filed by the plaintiff for declaration declaring that the sale deed dated 09.03.2006 bearing Document No.763/2006 registered at Sub Registrar Office, Mylapore, Chennai executed by the defendants 1 to 6 and 10 in favour of 11th defendant as null and void.

2. The first defendant is the Tamil Nadu Electricity Workers Federation Trust Rep by its Trustees i.e, defendants 2 to 6 which has been

registered as a Trust by a document dated 30.11.1979 bearing No.2201 of 1980 in the office of the Sub Registrar, Mylapore having office at No.103, Karneeswarar Koil Street, Mylapore, Chennai-40 presently office is situated at No.91, Guruvappa Street, Chintadripet, Chennai-2.

3.1 The plaintiff states that the Executive Committee meeting of the plaintiff Sangam which was held on 12.11.2006 at Trichy has passed a resolution authorizing the General Secretary of the plaintiff Sangam to file necessary legal proceedings to set aside the sale and recover the suit property. The plaintiff Sangam was originally known as Tamil Nadu Electricity Board Cashiers Union which was established by one Mr.Gopalram on 31.01.1959 and registered under the Trade Unions Act, 1926 under Registration No.2644. The employees of the TNEB in the cadre of cashier are its members. During 1967 the plaintiff Sangam was affiliated with the Tamil Nadu Electricity Workers Federation/7th defendant herein. The plaintiff was also running a paper called "Min-Kasalai". The plaintiff was the General Secretary of the said Union from 10.03.1968. Since the plaintiff wanted to have its own office for doing its day today affairs and circulating the papers, in the year 1972, the plaintiff

purchased a house property bearing Door No.4, Old No.103, New No.26, Karneeswarar Koil Street, Mylapore, Chennai from V.Narayanan and others by way of registered sale deed dated 25.11.1972 vide Document No.2220 of 1972 in the Sub Registrar Office, Mylapore, Chennai, ever since, the said building was under the possession, occupation and enjoyment of the plaintiff Union. The plaintiff Sangam was affiliated to Tamil Nadu Electricity Workers Federation/7th defendant and the 7th defendant wanted to grab the property of the plaintiff and instigated some persons to conduct a central council of the executive committee on 07.09.1974 at Courtallam. In the said meeting the 7th defendant without the knowledge of the plaintiff alleged to have made one R.P.Micheal/2nd defendant herein as the State Incharge of the plaintiff Union. There is no such post available in the plaintiff Union and when there is an elected body of office bearers functioning in the plaintiff Union the nomination of the second defendant as the State Incharge by the Central Council of Executive committee of the plaintiff Union is illegal. Thereafter a resolution seems to have been passed in the said meeting to amalgamate the plaintiff Union with the 7th defendant and also it was resolved to create a Trust in respect of the immovable property at Karneeswarar Koil

Street, Mylapore, Chennai belonging to the plaintiff Union. In the General body only new office bearers can be elected, but the central council of executive committee has no power to appoint/nominate the second defendant as State Incharge of the plaintiff Union. Though a resolution alleged to have been passed by the Central Council of Executive Committee of the plaintiff Union, thereafter, no amalgamation has taken place at any point of time. The 7th defendant did not pass any resolution to the effect that the plaintiff Union was amalgamated with it. It is mandatory lapse and hence, the 7th defendant cannot claim that the cashiers Union had amalgamated with it, in fact, the plaintiff Union is affiliated with the Federation/7th defendant.

3.2 The plaintiff submits that by way of registered deed dated 30.11.1979 bearing Doc.No.2201 of 1980 in the office of the Sub Registrar, Mylapore, Chennai the second defendant claiming to have been appointed as State Incharge of the plaintiff Union by the Central Council of Executive committee has executed a Trust Deed creating a trust called “Gopalram Ninaivu Trust” for running a school in the name of Gopalram Ninanivu school in the memory of the founder of the

cashiers Union. The said deed is without authority, power and title. If any transfer of property is done, it can be done only by the General Body of the plaintiff Union. The 2nd defendant is not authorised by the General Body of the plaintiff Union to transfer its immovable property. The 7th defendant in order to grab the property has violated all the procedures, thus, the deed is created by third parties who has got nothing to do with the plaintiff Union's property is null and void. In the Trust Deed, the following five founder trustees have been appointed viz., Micheal, Radhakrishnan, Subramanian, Muthuswamy and Ganesan/Defendants 2 to 6. The object of the Trust is that the Trustees shall establish a school in the property in the memory of the founder of the cashiers Union. Neither the 7th defendant nor the trustees established and run any school as per the Trust Deed. No student was admitted and obtained any permission from educational authorities, no registers were maintained and no teachers were appointed. In fact, one of the Trustee by name V.Ganesan was residing in the building without paying any rent. There were two other tenants who were running “automobile garage” and “gas welding shop” and from whom the 3rd defendant was receiving a rent of Rs.5,000/-p.m but no accounts were maintained. The 3rd defendant failed

to maintain any accounts for the income from the property of the Trust and misappropriated the funds by taking advantage of the absence of the other trustees who were staying outstations had misused his powers and misappropriated the income from the property and also staying in the house without paying any rent. Thus, the 3rd defendant has misappropriated the funds to the tune of Rs.20,00,000/- and filed false accounts before this Court as if he had received a loan of Rs.2,00,000/- from one G.Padmavathy for running the school and maintaining the building. The said G.Padmavathy is none else than the wife of 3rd defendant/V.Ganesan.

3.3 Further, the plaintiff states that for all these years the Union was continuing as the Cashiers Union. In the year 1981 after the commencement of the card billing system, the name of the post of cashier has been changed by the Tamil Nadu Electricity Board as “Assessor”. Thereafter, the name of the plaintiff Union has also changed its name as “Agila India Minvariya Kanakkeetalar Matrum Panam Vasulippavarkal Sangam” and registered the Union under Reg.No.896-MDS. Nearly 8000 assessment and collection cadre employees of the Tamil Nady

Electricity Board are members in the plaintiff Union and they are the beneficiaries as per the Trust, since the plaintiff Union is representing the employees those who are working as Assessors (Cashiers) cadre. The plaintiff requested the 7th defendant to handover the building to it so as to establish and run a school in the memory of the founder of the plaintiff Union. The 7th defendant with an intention to deprive of the right of the plaintiff Union and to hold the building was dodging by saying one thing or the other. In all the executive committee meeting of the 7th defendant the plaintiff Union represented and raised a query about the building either to run the school or to handover the building to it to run the school by the plaintiff Union. In the executive committee meeting of the 7th defendant held on 04.09.2006, the plaintiff Union raised the issue and the same was not considered in the executive committee meeting. On the other hand, the minutes of the executive committee sent by the 7th defendant it has been mentioned that the Secretary of the Federation has been directed to convene a meeting of the Trustees of the Federation Trust in the presence of the President and Secretary and to inform the activities of the Trust to the Federation. The Federation has not taken any decision and the sale of the property was

not at all discussed in any of the executive committee meeting of the 7th defendant. For the past years general body meeting was not conducted and the defendants 2 and 3 with the active connivance of the 7th defendant Federation has acted against the interest of the Trust.

3.4 On 20.10.2008, the General Secretary of the Plaintiff Union went to the building to take a color photograph of the building to put it in the 2007 Diary of the Union, to the shock and surprise, the building was pulled down. On enquiry, it was found out that the defendants had changed the Trustees V.Radhakrishnan and K.Subramanian who are still alive and Muthuswamy died and illegally appointed M.Krishnamoorthy, V.Ramamoorthy and K.K.Perumalswamy. The founder Trustees V.Radhakrishnan and K.Subramanian, the defendants 3 and 9 are still alive and they have not resigned from the post of the Trustees at any point of time. But the 2nd defendant M.P.Micheal and 3rd defendant V.Ganesan with the active connivance of the 7th defendant have illegally nominated three new trustees, actually when there was only one vacancy. As per clause 6 of the Trust Deed dated 30.11.1979 in case of any vacancy arise amongst the trustees nominated by the Central Council occasioned by

way of death, resignation or incapacity of any trustees or otherwise, the remaining trustees shall make the appointment of a trustees for that vacancy from and out of the Cashiers working in the TNEB and if no such persons is available then the vacancy shall be filled up by the Court of Competent Jurisdiction. In the case on hand V.Radhakrishnan and K.Subramanian are the Trustees appointed by the Central Council are still alive and they are very active and they are not physically incapacitated. While so, there is no necessity arises for appointing new trustees in their place. Further, the new Trustees M.Krishnamoorthy, V.Ramamoorthy and K.K.Perumalswamy are not working as Cashiers or in the newly assigned name of "Assessor" in the Tamil Nadu Electricity Board and they are all retired employees. As per the bye-law only the cashiers (Assessors) who are working in the Tamil Nadu Electricity Board alone should be appointed as Trustees. The new trustees have been appointed only for the purpose of achieving their illegal objects which the existing trustees V.Radhakrishnan and K.Subramanian could not do. Hence, the appointment of new trustees to the trust is also bad and illegal and it is against the mandate of the Trust Deed. The name of the Trustees have not been changed in the Trust Deed. Even now, the Trust Deed contains

only the founder trustees as the Trustees of the 1st defendant Trust. Further as per Section 47 of the Trust Act, a trustee cannot delegate his office or any of his duties to a co-trustee. Under Section 48 of the Trust Act, co-trustee cannot act solely, but the newly appointed trustees have given authority to the 3rd defendant V.Ganesan to sell the suit property and on the strength of the said authority the 3rd defendant V.Ganesan has entered into an agreement with the 10th defendant who is his agent. Hence, the entire suit transaction is against the provisions of the Trust Act.

3.5 The plaintiff Union submits that the trustees seems to have filed an application in O.P.No.92 of 2003 before this Court and obtained an order for permission to sell undivided share in the property on 29.06.2005. The trustees have also executed power of attorney dated 16.09.2005 in favour of T.A.H.Ramaswami, the 10th defendant herein for sale of 53% of the undivided share of the land and also entered into joint venture agreement for putting up building complex in the entire property and handover 47% of the building to the Trust. As per clause 2 of the Trust Deed, the trustees shall establish a school in the said building and the initial cost for establishing such school shall be met from the income

of the property described in the schedule. No school was run by the trustees or by the Federation in the said building. Further, the sale of 53% of share of land will hamper the running of school which is the only object of the Trust for the benefit of cashiers working in the TNEB. To build a complex in the property is opposed to the object of the Trust, under Section 51 of the Trust Act. The trustees may not use or deal with the property for his own profit or for any other purpose unconnected with the Trust. In this case, the trustees have sold the land for the purpose of building complex which is unconnected with the Trust.

3.6 In O.P.No.92 of 2003, the defendants have made the following false averments in their petition :-

(i) The defendants have stated in the petition that the first defendant was running a small school. It is a false statement. No school was run by the Trustees or by anybody. No recognition or permission was obtained from the Educational authorities for running the school. No student was admitted in the School. No teacher was appointed. No registers were maintained. On the other hand, the petitioner has filed documents in the name of

the School which is created for the purpose of obtaining permission from this Court.

(ii)The first defendant had stated that the property situated in Karneeswarar Koil Street was not eminently suitable for running the school, that the Trustees also found that the response from among the members of the Federation/Union for the School as very poor, that there was no response from the locality for the school, since there were number of other schools in the locality. This is a false statement. No school was run by the trustees. Now the defendants are trying to put up a residential building complex. So the purpose for which the permission to sell the property, sought is unconnected with the Trust.

(iii)The first defendant had stated in the petition that there was no sufficient income from the property and the trustees had to pay the Corporation tax of Rs.4,633/- every half year and Metro Water tax of Rs.1,357/- apart from water charges of Rs.900/- every

half year, that the expenses for running the school came to about Rs.2,100/- per month. This is also a false statement. There were two tenants in the building apart from the 3rd defendant who was also residing in the said building. Even in the statement of income and expenditure filed by them would also show that the building was fetching rent. But some nominal amount has been shown as rental income though he was receiving the rent at Rs.5,000/-p.m. from each tenant. These facts have not been stated in the petition.

(iv)The first defendant had further averred that the trustees had raised loan for the payment of tax and other expenses and a sum of Rs.2,00,000/- had to be repaid. These are all false averments. When no school was functioning in the building, the question of incurring monthly expenditure of Rs.2,100/- does not arise.

(v)The first defendant had further submitted in the petition that in the best interest of the Trust and the

beneficiaries, the portion of the property ought to be sold and the proceeds profitably invested for the construction of new building in the remaining portion so that in the new constructed area, the object of trust can be carried out. As per the Trust Deed, the object of the trust is running a school in the memory of the founder of the Cashiers Union viz., Gopalram. But as per the documents filed by the trustees, they have obtained offers for put up a residential building complex. The specifications furnished by the builders would also show the offer for residential portions. So there is no possibility of running the school in the newly constructed building. The trustees cannot change the object of the Trust.

(vi) The first defendant had further stated that clause 4 of the deed dated 30.11.1979 confers on the Trustees power to sell the property with the permission of this Court. This is also a false averment. Clause 4 of the Trust Deed reads as follows :-

“The trustees shall not have the power to sell, mortgage or otherwise transfer the immovable property bearing Old No.4, New No.103, New No.26 Karaneswarar Koil Street, Mylapore, Madras -4 more fully and particularly described in the schedule hereunder except with the permission of the District Judge having jurisdiction over the property.”

Hence, the Principal Judge, City Civil Court, Chennai alone has got jurisdiction to grant permission for sale of the property.

(vii)The Trustees have stated that the trustees having passed the resolution on 26.03.2002, the resolution authorize the 3rd defendant, V.Ganesan to negotiate and enter into agreement for sale of property and to carryout the resolutions of the Trustees. The said authorisation is opposed to the Trust Act. As per Section 47 of the Indian Trust Act, 1882, the trustees cannot delegate their powers.

(viii)The trustees have stated in the petition that as per the offer, the joint promoters were willing to give

47% of undivided share in the total land and for the price of the balance land to construct and give an area of 2505 sq.ft of independent building where the school can be run. This is also a false averment. As per the offers given by the promoters they offered to put up residential portions and specifications would also prove the same. Further, the Trustees had already stated that the school could not be run in the suit property. So it is a false statement made by the trustees. Further as per the offer one of the promoters agreed for putting up building in ground and first floor for 3900 sq.ft. Presently the cost of the building for 3900 sq.ft would be Rs.20,00,000/- maximum. Whereas the trustees have sold the property for Rs.46,53,790/- though the guideline value is Rs.51,70,250/- and the present market value of the land sold i.e., 53% of the land (2900 sq.ft) alone would fetch more than one crore. As per the statement of the trustees entire amount of Rs.46,53,790/- has to be spent for putting up building of 3900 sq.ft. This itself would

prove that the trustees have sold the property for very low price and states that the entire amount has to be spent for putting up 3900sq.ft in ground floor and first floor, the trustees have stated in the petition that the area to be constructed and given by the promoters is only 2505sq.ft. In the sale deed executed by the trustees in favour of the 10th defendant shows that joint venture agreement has been entered into with 10th defendant by the trustees for putting up four flats in the entire land. So the action of the trustees is suspicious and the 3rd defendant through his agent 10th defendant has not only cheated the beneficiaries but also other co-trustees.

(ix)The further statement that from local enquiry it was found that the offers received are the best since the market value of the entire land was about Rs.30,00,000/- only. This is also utter falsehood. Even according to the valuation report filed by the trustees in the said petition, the value of the entire land and building based on the government guideline value was

Rs.48,00,000/-. The market value prevailing then was more than one crore rupees. But the market value of the land sold (2951 sq.ft) alone on the date of sale deed i.e., on 09.03.2006 was more than one crore rupees. Thus the trustees have acted for personal gain. Hence, this false statement is made only to prejudice the mind of this Court. Thus by making false averments the trustees have failed the above OP before this Court and obtained permission for sale of undivided share of land. The plaintiff Union has also filed a petition to revoke the permission granted by this Court.

3.7 Further, on 09.03.2006, the power of attorney holder has sold 53% of the undivided share of the land to and in favour of Kamalesh, represented by power agent S.Girija, the 11th defendant by way of a registered sale deed bearing document No.763/2006 for Rs.46,53,790/-. The undivided land i.e.,53% of the entire land is 2951.04 sq.ft has been sold to a meager sum of Rs.46,53,790/- on 09.03.2006. The market value of the land sold as on 09.03.2006 was Rs.80,00,000/- for the

reasons best known to the alleged trustees have sold it for lessor amount. Thus the trustees have acted against the interest of the trust. Thus they have committed breach of Trust. The purchaser who is an agent of the 3rd defendant has also purchased the property knowing fully well that the property is a Trust property and the trustees have sold the property for the purpose unconnected with the Trust.

3.8 The plaintiff submits that the defendants 2 to 6 have filed a petition before this Court seeking permission to sell the property. Clause 4 of the Trust Deed clearly shows that the trustees shall not have power to sell, mortgage or otherwise transfer the immovable property bearing Old.No.4, New No.103, Now New No.26, Karneswarar Koil Street, Mylapore, Madras-4 more fully and particularly described in the schedule hereunder except with the permission of the District Judge having jurisdiction over the property. Thus, the Principal Judge, City Civil Court, Chennai alone has got jurisdiction to grant permission to sell, mortgage or otherwise transfer the said property as that is the competent District Court having jurisdiction over the suit property as per the Trust Deed. But the defendants with ulterior motive have filed the OP for permission before this Court suppressing all the material facts before this Court and

obtained permission. After obtaining the permission the trustees have not followed the procedure in bringing the property for public auction or competitive sale. The 3rd defendant, who was authorised by other trustees has entered into an agreement with agent, the 10th defendant herein and executed a power of attorney for sale of a meager sale consideration, for below the market value.

3.9 At any point of time, the members of the Federation was not at all informed about the decision to sell the property and to build a complex in the property. No decision was taken in the Annual General Body meeting or in the executive meeting of the federation. The plaintiff Union is in a position to run the school in the memory of its founder in the property. But the office bearers and the alleged Trustees have acted stealthily to deprive the valuable property of the plaintiff Union. When the valuable property of the plaintiff Union is sold, it is the duty of the Federation to inform its members about the sale of the property. But the federation, the 7th defendant did not choose to inform its members about the sale of the property. Hence, the alleged sale is illegal and abinitio void.

3.10 The plaintiff Union is ready and willing to establish and run the school as per the Trust Deed. The facts narrated above would prove the fact that the defendants 2 and 3 have acted against the interest of trust, they have not acted to achieve the object of the Trust Deed, they misused the funds of the trust for all these years, they have sold more than half of the land for their personal gain, they have not followed any of the procedure for selling the trust land, they are not intending to establish and run the school, they have made a false averments and suppressed the material facts before this Court for obtaining permission for putting up residential portions which is opposed to Trust Deed. The permission for sale of undivided share of land granted by this Court is incompetent and not in accordance with the Trust Deed. The trustees cannot change the trust. Further the defendants are taking emergent steps to put up construction in the suit property. If the building is put up and third party interest are invited, the members of the plaintiff Union who are the beneficiaries will be put to very great hardship and irreparable loss. Hence, the suit for declaration declaring that the sale deed dated 09.03.2006 bearing Document No.763/2006 registered at Sub Registrar Office, Mylapore, Chennai executed by the defendants 1 to 6 and 10 in

favour of 11th defendant as null and void.

4.1 The defendants 1, 3 to 6 filed a written statement stating that the averments made in the plaint are all against the truth and stated for the purpose of this case with ulterior motive. Originally, Tamil Nadu Electricity Board Cashiers Union was established in 1959, registered under No.2644 was dismantled and amalgamated by and through the lawful process under the rules and regulations as early as in the year 1974. After dissolving the plaintiff Sangam in the year 1974 there was no functioning or existence of such Sangam either on record or in practice. In such a situation there is no Executive Committee or that of functioning of any office bearer was available in law to meet themselves on 12.11.2006 to pass any resolution. When the Sangam itself is not in existence, there cannot be any General Secretary to initiate any legal action. There cannot be one man function under the rules of society registration or in any other enactment to give any legal significance to file this suit. Further, the person claimed as General Secretary by name T.Ganesan was not the office bearer even in the year 1974 of the Tamil Nadu Electricity Board cashiers Union, when the Sangam itself was dissolved. The said person, who against the majority decision of the

General Body filed a Civil Suit before the Court of law and suffered an earlier order against his claim as the office bearer to the Sangam. Apart from that due to the interference of the said T.Ganesan under the guise of defunct Sangam, earlier suits were filed and got an order restraining him from acting or claiming any right under the banner of the said Sangam. In such event, the inception of the suit itself is bad in law and the same is not maintainable due to the developments and for the reason that the plaintiff Sangam has nothing to do with the suit property. The approach of the plaintiff is nothing but abuse of process of law. The averments with regard to establishment by one Gopalaram on 31.01.1959 and the registration under the Trade Union Act and starting of 7th defendant federation are all may be correct and the said issue has no relevance to the plaint. These defendants have no knowledge about the plaintiff magazine Minkkasalar. The decision taken in the General body of the Tamil Nadu Electricity Board Cashiers Union was responsible to purchase the property. Under these circumstances, the plaintiff Sangam or T.Ganesan cannot claim any credit or personal benefit in this regard. Further, it is not correct to state that the suit property continue to be in occupation of the plaintiff Sangam. The said Sangam was formed much

later particularly after 1979, it is a property purchased for the Trust and administered by the Trust and the said Trust is in continuous possession, occupation and enjoyment of the Trust.

4.2 The allegations in the plaint is misdirected one with malafide intention and there was no necessity for the 7th defendant to grab the property. The grabbing of the said property is not possible for the reason that property is owned by Public Trust and there is no scope for any such unlawful act by the 7th defendant. The fact that the deceased 2nd defendant/R.P.Micheal was elected as General Secretary by defeating T.Ganesan during the year 1974. The said person and other defendants herein taken initiative to separate the property from the hands of the Union to the purpose of the Trust objectives and succeeded. On this developments the said T.Ganesan was going on all out to interfere in the smooth functioning of the Tamil Nadu Electricity Board Cashiers Union and the Trust, thus the said person earned wrath of the members to be single out him for his anti-welfare activities. The said person was sleeping all along from 1974 to till the date of filing the suit knowing well that he has no right over the suit property. In order to avoid the personal interference of the office bearers and to prevent the wrongful gain from

the Trust, the Trust was created and the property was vested with the Trust. There is no unsavory situation in such a development for the person like T.Ganesan to make any allegations except for the reason that his personal interest being deprived. Hence, the plaintiff is no right in making any allegations with regard to creation of public charitable trust and placing the property under the trust to the benefit of deserving persons.

4.3 The allegation about the 2nd defendant was not authorized by the General Body to transfer the immovable property from the Union to the trust is not correct and it was done by following the procedures contemplated and through the participation of proper elected person with endorsement of the AGM. The said T.Ganesan cannot reagitate the matter after a lapse of 36 years. In any stretch of imagination, the said T.Ganesan cannot have any cause of action to lay this suit or anything to make any other complaints to make such allegation stated in the plaint to file this kind of case. Further, the Trust referred in the plaint is in existence from the day of creation and functioning in all respects for the benefit of the beneficiary referred to in the trust. In fact the Trust created for the welfare of the Union members was functioning from 1959 or so

was registered the trust in the year 1979 to give legal and permanent status. There are unfounded allegations made about the misappropriation without any basis or proof in the case and such allegation are made only to prejudice the mind of the Court. These defendants submit that the Trust created on 30.11.1979 bearing document No.2201/1980 in the SRO Mylapore is not without any legal enforcement and the same is based on the earlier decisions. An unofficial Trust was functioning to administer the property and in the event of any future eventuality the purpose should not be put to defeat, hence the proper document was brought out on 30.11.1979. The objectives of the Trust are very clear and created for the benefit of its members. The Gopalram Ninaivu Trust is the memory of the great trade Unionist and his charitable mind. The Trust was functioning from 1979 and no one had come forward to complain about the existence of the Trust and the benefits of the Trust; an order has also been obtained from this Court to give further force to the Trust and its objectives. Later on necessary permission for development was granted with the assistance of promoter taking consideration of the financial crunches within the Trust. It is more unnatural on the part of the alleged general secretary to allege about going to the property only on

20.10.2006 to take colour photographs of the building to put it in the diary of 2007 to come across the shock and surprise as stated in the plaint. There was no practice of releasing any diary from the year 1959 to till date and what prompted to release the diary only in the year 2007 by sleeping over the matter for the past years and all the reasons are obviously cooked for the purpose of filing of this suit.

4.4 On the other hand, the persons behind the plaintiff himself had admitted that there was running of an Elementary School and also using the premises for the purpose of running Souvenir Press for the federation. Apart from that, small income was derived by leasing out the portions to meet the maintenance requirements, thus the plaintiff cannot play ignorance about the past developments. The trustees took possession of the premises and continue the same till further developments are permitted by this Court. The plaintiff has no reason to object or attribute any malfunctioning and change of trustees to the Trust is concerned and has no role in the Trust administration. The trustees are chosen in accordance to the terms of the trust and they were functioning only under the guidelines framed under the Trust Deed for the welfare and benefit of the Trust. It is not the individual decisions or the private transaction for

the plaintiff to make such a complaint. If at all anything is wrong in obtaining the order in O.P.No.92 of 2003, the plaintiff can question the said order before making any allegations against the defendants. This Court found it become necessary and in the interest of the Trust thought it fit to permit the developments placed before this Court and applied its mind and permitted the activity of the Trust, in terms. It is not correct on the part of the plaintiff to level any allegations against the defendants while the Court itself gone into the issue and appreciated the requirements.

4.5 The persons acting behind the plaintiff have been watching the proceeding and more so when the person is well versed with the court proceeding and experienced in filing many cases, were keeping quite for considerable periods, till the matter achieved a level and thereafter stepping into on the wrong ambition deception with the ulterior objection to interfere in the interest of the Trust and the welfare of the persons who are all benefited under the Trust. The person behind the plaintiff died and now another person by name R.Janardhanan got substituted without any basis and the said person have no locus standi to file any suit. The alleged General Secretaryship himself has not established his locus standi

to file this case and it is more appropriate on the part of the incumbent to substitute himself to such a position without any lawful authority. The cause of action alleged in the plaint are all false, frivolous and fictitious, hence, the learned counsel prays for dismissal of the suit with exemplary costs.

5. Based on the pleadings of both the parties, documents filed by both parties and submissions made by both the Counsel the following issues have been framed by this Court on 22.10.2013 :-

1. Whether the Trust created on 30.11.1979 under registered Trust Deed is a Private Trust or Public Trust?
2. Whether this Court is having jurisdiction to try this suit under Section 92 of CPC?
3. Is the suit maintainable by the plaintiff Sangam after its amalgamation with 7th defendant on 07.09.1974?
4. Is the suit maintainable without seeking for declaration that the amalgamation on 07.09.1974 is not valid?
5. Is the suit maintainable without seeking for declaration that the resolution to create a Trust passed on 07.09.1974 is not valid?

6. After the amalgamation has taken place does the plaintiff Sangam still exist and whether T.Ganesan is the General Secretary?
7. Is not the present suit is barred by limitation?
8. Is not the present suit is barred by limitation and the principles of Res Judicata applies in view of the decree in OS.No.1934 of 1975 on the file of the VI Assistant City Civil Court, Chennai?
9. Is not the present suit is hit by principles of Res Judicata in view of decision in OS.No.1494 of 1974 dated 15.01.1978 on the file of the XII Assistant City Civil Court, Chennai?
10. Is not Trustees entitled to angument the Trust by entering into construction agreement?
11. Is not the permission granted by this Court in OP.No.92 of 2003 is valid?
12. Is the plaintiff entitled to make inconsistent pleas such as challenging the creation of the Trust and challenging the acts of the Trustees in obtaining orders?
13. Is the Sale Deed dated 09.03.2006 is against the object of the Trust?
14. Does the plaintiff has Locus Standi to pray for delivery of suit property?
15. Can the plaintiff pray for Scheme for the

- administration and management of the suit property, if the Trust is found as private Trust?
16. Are the Defendants 2 to 6 liable to be removed from the Trusteeship?
17. Are the defendants 2 and 3 liable to pay Rs.4 lakhs and to whom?
18. Is not the suit a vexatious one and liable to be dismissed with exemplary cost?
19. To what relief the parties are entitled?

6. The defendants 1, 3 to 6 alone filed their written statement. Though notice was duly served on the other defendants viz., defendants 2, 7 to 11, they remained absent and not chosen to file their written statement and not appeared either in person or through their respective counsel.

7. After completion of pleadings, during trial, on the side of the plaintiff PW1 was examined and marked Exs.P1 to P33. On the side of the defendants 3rd defendant was examined as DW1 and marked Exs.D1 to D23.

8. Heard the rival submissions made on both sides and perused the

materials available on record.

9.1 The case of the plaintiff Sangam is that originally the Union was registered under the Trade Unions Act vide registration No.2644 on 31.01.1959. In the year 1967, the said Union was affiliated with the Tamil Nadu Electricity Workers Federation/the 7th defendant herein. The said Union purchased the suit property through a registered sale deed 25.11.1972, vide Document No.2220/1972 in the office of the Sub Registrar Office, Mylapore, Chennai. The second defendant alleged to have been elected as a State In charge of the said Union and a resolution was passed to amalgamate the said Union with the 7th defendant. On 31.11.1979, a Trust Deed was registered vide Document No.2201/1980, in which, the defendants 2, 3, 8, 9 and one Muthusamy appointed as trustees. In the year 1981, the name of the post of 'Cashier' was renamed as 'Assessor' by the Tamil Nadu Electricity Board. Therefore, the Union also changed its name as Agila India Minvariya Kanakkeetalar Matrum Panam Vasullippavarkal Sangam and registered as Union under Reg.No.896-MDS. On various dates the plaintiff Sangam requested the 7th defendant to handover the suit property, so as to establish and run a school in the memory of the founder of the plaintiff Sangam, however, the

7th defendant with an intention to deprive off the right of the plaintiff to hold the building was dodging by saying one thing or the other reason and not handed over the suit property.

9.2 In the year 2003 the defendants 2 and 3 illegally appointed the defendants 4 to 6 as new trustees, while the defendants 8 and 9 are still alive and active. Hence, the trustees filed a petition in O.P.No.92 of 2003 before this Court with a false averments. By order dated 29.06.2005, this Court granted permission to sell the undivided share in the suit property, which is nothing but a breach of trust. On 16.09.2005, the trustees have executed power of attorney in favour of the 10th defendant through a registered Document No.199/2005 at Sub Registrar Office, Mylapore, Chennai for sale and put up a building complex in the suit property. Thereafter, on 09.03.2006, the 10th defendant sold 53% of the undivided share in the suit property in favour of the 11th defendant by way of registered Document No.763/2006 at Sub Registrar Office, Mylapore. Subsequently, the Executive Committee of the plaintiff Union, which was held at Trichy passed a resolution authorising the General Secretary to file a suit for recovery of the property. Hence, the plaintiff Sangam filed a suit (i) for declaration to declare the sale deed dated 09.03.2006 bearing

Document No.763/2006 registered at Sub Registrar Office, Mylapore, Chennai-4 executed by the defendants 1 to 6 and 10 and in favour of the 11th defendant as null and void and non-est and against the object of the Trust created by way of Trust Deed dated 30.11.1979; (ii) to direct the defendants to deliver vacant possession of the suit property bearing Old Door No.103, New No.26, Karaneeshwarar Koil Street, Mylapore, Chennai-4 to the trustees who may be appointed by this Court; (iii) framing a scheme for the administration and Management of the suit property and to remove the defendants 2 to 9 from trusteeship of the Tamil Nadu Electricity Workers Federation Trust and appoint new Trustees from the members of the plaintiff Sangam working as Assessors (Cashiers) in the Tamil Nadu Electricity Board and; (iv) to direct the defendants 2 and 3 to pay a sum of Rs.4,00,000/- with interest at 12% p.a. from the date of plaint.

10. Though the defendants 1, 3 to 6 have filed their written statement and other defendants have not filed the written statement.

11.1 In the written statement the defendants stated that originally in the year 1959 the Tamil Nadu Electricity Board Cashiers Union was

established and the same was dismantled and amalgamated in the year 1974. After amalgamation of the plaintiff Sangam there was no functioning or existence of such Sangam either on record or in practice. In such circumstances, there is no Executive Committee or that of functioning of any office bearers were available in law to conduct the meeting and passed the resolution on 12.11.2006. Therefore, Sangam itself is not in existence, there cannot be any valid resolution authorising the General Secretary of the plaintiff Sangam to file necessary legal proceedings to set aside the sale and recovery of the suit property. Further, the person claimed as a General Secretary viz., T.Ganesan was not the office bearer of the Sangam, when the Sangam dissolved in the year 1979 itself. The defendants have no knowledge about the plaintiff magazine Minkkasalar after the period of the year 1974. The decisions of the general body of the Tamil Nadu Electricity Board Cashiers Union was responsible to purchase the property as stated in the plaint. Hence, the plaintiff Sangam was represented by one T.Ganesan cannot claim any credit or personal benefit. The plaintiff Sangam itself was formed after 1974. It is a property purchased for the Trust and is in continuous possession, occupation and enjoyment of the Trust. There was no

necessity for the 7th defendant to grab the property. The grabbing of the said property is not possible for the reason that property is owned by the public trust and there is no scope for any such unlawful act by the 7th defendant. In order to avoid personal interference of the office bearers and to prevent the wrongful gain from the Trust, the Trust was created and the property was vested with it. Hence, the plaintiff has no right in making any allegation with regard to creation of Public Charitable Trust and placing the property under the Trust to benefit to the deserving persons. The 7th defendant Trust referred in the plaint is in existence from the day of creation and functioning in all respect for the benefit of the beneficiary referred in the Trust. Such a kind of activity was not questioned in these proceedings due to the legal prohibition in this regard.

11.2 In fact the Trust was created for the welfare of the Union members, which was functioning from 1959 and to defeat the future eventuality, the Trust was registered on 30.11.1979 through Document No.2201/1980 at Sub Registrar Office, Mylapore, only based on the earlier decisions and there was no legal enforcement. The Trust objects are very clear and the same was done to the benefit of the persons, who are all specified in the said document. The Gopalram Ninaivu Trust is the

memory of the great trade Unionist and his charitable mind. The said Trust is in function from 1979 and no one come forward to complain about the existence and benefits of the Trust till this date. In order to maintain the building and to carry over the objects of the Trust, the trustees took possession of the premises and continue the same till the further developments are permitted by this Court. The plaintiff has no reason to object or attribute any mal functioning and the change of trustees to the Trust is concerned and he has no role in the Trust administration. The person behind the plaintiff who got defeated in 1974 in the allegation and unsuccessful to the case filed by him has no morality to complaint against the others in this regard except there is a malafide intention of the plaintiff.

11.3 Further, the plaintiff very well know that O.P.No.92 of 2003 was filed before this Court and the outcome of the same cannot attribute any malafide against the same. If at all anything is wrong in obtaining the order in O.P.No.92 of 2003, the approach of the Court can be assailed. This Court only after following the due procedures and inviting objections from all the quarters, by giving due publications and notifications proceeded with the enquiry, pass orders. This Court found it necessary

and in the interest of the Trust and for the benefit of the persons involved in the Trust, thought it fit to permit the developments placed before this Court. This Court applied its mind and permitted the activity in the terms laid down as per the order granted in O.P.No.92 of 2003 dated 29.06.2005. It is not correct on the part of the plaintiff to level any allegations against the defendants, while the Court itself gone into the issue and appreciated the requirements. Hence, the order passed by this Court in O.P.No.92 of 2003 is valid in law and the suit filed by the plaintiff has no merit and the same is liable to be rejected.

12.1 The learned counsel for the plaintiff would submit that originally the suit property was purchased by the Tamil Nadu Electricity Board (Cashiers) Union, which was established by one Gopalram in the year 1959 and the same was registered under the Trade Unions Act, 1926 vide Document No.2644. One T.Ganesan is the General Secretary of the plaintiff Union from the year 1968. Since the plaintiff wanted to have its own office for doing its day to day affairs, purchased the suit property bearing Old Door No.4, New No.103, Karaneeswarar Koil Street, Mylapore, Chennai from one Narayanan and others by way of a registered sale deed dated 25.11.1972 bearing document No.2220/1972

at Sub Registrar Office, Mylapore, Chennai; ever since, the said building was under the possession, occupation and enjoyment of the plaintiff. He would further submit that the plaintiff Sangam is affiliated with the Tamil Nadu Electricity Workers Federation/the 7th defendant herein. In order to grab the property, the 7th defendant without the knowledge of the plaintiff, alleged to have elected one R.P.Michael, the second defendant herein as the State Incharge of the plaintiff Sangam and they have conducted Central Council of the Executive Committee on 07.09.1974 at Kuttralam and passed the resolution and resolved that the plaintiff Sangam was amalgamated with the 7th defendant and also resolved to create a Trust in respect of the immovable property namely the suit property belonging to the plaintiff Sangam. When the elected office bearers are in charge of the office, the general body only can elect the new office bearers. But, the Central Council of Executive Committee has no power to appoint/nominate the second defendant as State In charge of the plaintiff Sangam, which is illegal. The 7th defendant did not pass any resolution to the effect that the Tamil Nadu Electricity Board Cashiers Sangam was amalgamated with it. It is a mandatory lapse and hence, the 7th defendant cannot claim that the Cashiers Sangam had amalgamated with it. Even

today, the plaintiff Sangam is affiliated with the 7th defendant Federation. Further, if any transfer of the property has to be done, it can be done only by the general body of the plaintiff, but, the second defendant is not authorised to transfer its immovable property. However, in order to grab the property, the 7th defendant violated all the procedures. Therefore, the Trust Deed created by the third parties, who has got nothing to do with the property of the plaintiff Sangam and the same is null and void. Further, the defendants acted against the interest of the Trust.

12.2 The learned counsel further submitted that in the year 1981 at the commencement of the Card Billing System, the name of the post of Cashier was changed as Assessor. Therefore, the plaintiff also changed its name as Agila India Minvariya Kanakkeetalar Matrum Panam Vasulippavarkal Sangam and the assessment and collection cadre employees of the Sangam are the beneficiaries as per the Trust. The plaintiff Sangam requested the 7th defendant to hand over the building, so as to establish and run a school, however, the 7th defendant with an intention to deprive off the right of the plaintiff was holding the building. Hence, the plaintiff raised their points either to run the school or to handover the building to it to run the school by the Sangam from its

funds in the Executive Committee meeting held on 04.09.1974, but, the same was not considered. Though the Trust was managed by the trustees and was controlled by the 7th defendant Federation, the Federation has not taken any decision and the sale of property was not at all discussed in any one of the Executive Committee meetings of the 7th defendant. The defendants 2 and 3 with the active connivance of the 7th defendant Federation has acted against the interest of the Trust. As per clause 6 of the Trust Deed dated 30.11.1979 in case of any vacancy arise amongst the trustees nominated by the Central Counsel occasioned by way of death, resignation or incapacity of any trustee or otherwise the remaining trustees shall make the appointment of a trustee for that vacancy from and out of the Cashiers working in the Tamil Nadu Electricity Board and if no such persons is available and in such an event, only the vacancy shall be filled up by the Court of competent jurisdiction. Further the new Trustees M.Krishnamoorthy, V.Ramamoorthy and K.K.Perumalswamy are not working as Cashiers or Assessor in the Tamil Nadu Electricity Board and they are all retired employees. But, the new trustees have been appointed only for the purpose of achieving their illegal objects. The newly appointed trustees had given authority to the third defendant to

sell the suit property, whereas, the third defendant had entered into the agreement with the 10th defendant. Therefore, the entire sale transaction is against the provisions of the Trust Act.

12.3 The learned counsel would further submit that the 7th defendant filed O.P.No.92 of 2003 with false allegations and mislead the Court and obtained the order, therefore, the said order will not bind the plaintiff Sangam and the defendants are acting against the Trust. The object of the Trust is to run a school in the memory of the founder of the Cashier Union viz., Gopalram. But, as per the documents filed by the Trustees, they have obtained offers for residential building complex. The specifications furnished by the builders would also show the offer for residential portions. So, there is no possibility of running the school in the newly constructed building. The trustees cannot change the object of the Trust. The Trustees shall not have the power to sell, mortgage or otherwise transfer the immovable property viz., suit property. The Principal Judge, City Civil Court, Chennai alone has got jurisdiction to grant permission for sale of the property. The Trustees passed the resolution and authorised the 3rd defendant to negotiate and enter into the agreement for sale of the property and to carry out the resolutions of the

Trustees. The said authorisation is opposed to the Trust Act. As per Section 47 of the Indian Trust Act, the trustees cannot delegate their powers and sale in favour of the 10th and 11th defendants are not valid and since the Trustees have acted against the interest of the Trust, they have committed breach of Trust. The purchaser, who is an agent of the 3rd defendant, was knowing fully well that the property is a Trust property and the trustees have sold the property for the purpose of unconnected with the Trust. The members of the Federation was not at all informed at any point of time and no decision was taken in the Annual General Body meeting or in the Executive Committee meeting of the Federation. The plaintiff Union is in a position to run the school in the memory of its founder of the property. They have also made representations to the Federation in all the meetings. But the office bearers and the alleged trustees have acted stealthily to deprive of the valuable property of the plaintiff Sangam. The alleged sale is illegal and abinitio void. The defendants 2 and 3 have sold more than half of the land for their personal gain and they have not followed any of the procedures for selling the trust land and they are not intending to establish and run the school and they have made false averments and suppressed the material facts before this

Court for obtaining permission for putting up residential portions which is opposed to Trust Deed. Therefore, the 7th defendant acted against the interest of the first defendant Trust and therefore, the sale made by the Trust is not valid and therefore the plaintiff filed a suit for declaration that the sale deed is null and void and frame the scheme in order to administer the Trust in a better manner.

13.1 The learned counsel for the defendants would submit that originally the Tamil Nadu Electricity Board Cashier Union was established in the year 1959 under the Trust Unions Act and they purchased the suit property in the year 1972. Subsequently, the Union changed its name as Sangam and amalgamated with the 7th defendant Federation and they have passed the resolution and the Tamil Nadu Electricity Workers Federation Trust, the 7th defendant herein in which the plaintiff Sangam is affiliated and the meeting held on Central Council of the Executive Committee on 07.09.1974 at Kutralam and without knowledge of the Sangam one R.P.Michael the 2nd defendant herein was elected as the State In charge of the plaintiff Sangam and also passed resolution and in the said meeting the plaintiff Sangam was amalgamated with 7th defendant Federation and it was also resolved to create a Trust in

respect of the immovable property viz., suit property belonging to the plaintiff Sangam and the amalgamation also taken place in 1974 was temporary and for a period of six months. The plaintiff Sangam have not denied the general body meeting was held on 07.09.1974 at Kutralam. In the said meeting one R.P.Michael, General Secretary of the plaintiff Sangam and was also amalgamated with the 7th defendant on 07.09.1974. Though the plaintiff Sangam was temporarily amalgamated on 01.09.1974, after six months the said meeting was held on 07.09.1974 for permanent amalgamation, in which, the President signed the same.

13.2 The learned counsel for the defendants would further submit that once the plaintiff Sangam amalgamated with the 7th defendant after that the plaintiff Sangam was not in existence and therefore, in view of the non-existence of the Sangam, they cannot form the new Union and change its name as Agila India Minvariya Kanakkeettaalar Matrum Panam Vasulippavarkal Sangam. Therefore, on the date of establishment of the Sangam in the year 1981 the Tamil Nadu Electricity Board Cashiers Union was not in existence and it was amalgamated with the 7th defendant on 07.09.1974 and therefore, after the death no authority to change or establish the Union in the name of Agila India Minvariya

Kanakkeettaalar Matrum Panam Vasulippavarkal Sangam. The General Secretary of the plaintiff Union one T.Ganesan was defeated by one R.P.Michael and he has participated in the meeting held on 07.09.1974. In the said meeting the 7th respondent passed the resolution with regard to the amalgamation of the plaintiff Union with the 7th defendant and also created the first respondent Trust. Further, the Trust is a Public Charitable Trust and the defendants have also filed a petition in O.P.No.92 of 2003 before this Court and this Court also recognised them and permitted to sell the property for the interest of the Trust. In order to maintain the building and carry over the objects of the Trust, the defendants sold the property. The trustees are in possession of the building and continue the same till the further developments are permitted by this Court. The first defendant Trust was registered under the Document No.2201/1980 on 30.11.1979 is not without any legal enforcement and the same is based on the earlier decisions. The plaintiff has stated that the existence of Trust itself is not known to them and why they had not made any objections in creation of the Trust for the past 30 years. Though they have denied the amalgamation, however, the documents clearly shows that the amalgamation had taken place.

Admittedly, the defendants are in possession of the property and to administer the Trust, they have filed O.P.No.92 of 2003 before this Court and obtained permission and sold 50% undivided share of the suit property in favour of the 11th defendant by way of registered document. The defendants sold the suit property only for the development of the Trust. The plaintiff Sangam itself admitted that the 7th defendant created the Trust in the year 1979, but, the same was not being intimated to them. In the written statement, the defendants have clearly stated that grabbing of the property is not possible, since the property is owned by the Public Charitable Trust and there is no scope for unlawful act by the defendants. In paragraph 4 of the written statement the defendants clearly stated that the plaintiff has no right in making any allegation with regard to the creation of the Public Charitable Trust and placing the property under the Trust to benefit the deserving persons. Further the 2nd defendant is not authorised person and the same was challenged in the earlier suit. Further, the Trust referred in the plaint is in existence from the day of creation and functioning in all respects for the benefit of the beneficiary referred in the Trust. The Trust Deed was marked as Ex.P.3 and it is clearly stated that

"the Tamil Nadu Electricity Board Cashiers Union affiliated with the 7th defendant Federation based on the resolution passed in the Central Council of Executive Committee meeting held on 07.09.1974 and further resolved the creation of the Trust in respect of the immovable property viz., suit property. The object of the Trust is that the Trustees shall establish a school in the suit property in the memory of the founder of the Cashiers Union. Hence, the above suit property was purchased by the Union in the name of the General Secretary in their official capacity and the said immovable property was used for the benefit of the cashiers who came from out station of Madras and the settlor was elected as State Incharge by the Central Executive committee for carrying out the work of amalgamation of the Tamil Nadu Electricity Board Cashiers Union with the Tamil Nadu Workers Federation".

13.3 Further in clause 2 of the Trust Deed itself it is clearly stated that the trustees shall establish a school in the said building and initial cost of establishing such school shall be met from the income of the property, which was described in the schedule. Further in Clause 4 it is stated that the trustees shall not have a power to sell, mortgage or transfer the Trust property in the schedule herein except with the permission of

the District Judge having jurisdiction of the property. Therefore, Ex.P3 Trust Deed itself clearly shows that originally plaintiff Sangam was amalgamated with the 7th defendant and also a resolution had taken place and the property was transferred to the first defendant Trust, which is a Public Charitable Trust. Hence, the suit is not maintainable and the suit is liable to be dismissed.

14. Issue No.1:

Whether the Trust created on 30.11.1979 under registered Trust Deed is a Private Trust or Public Trust?

(i) The plaintiff Union has stated in paragraph 4 of the plaint that the plaintiff Union is affiliated with the Tamil Nadu Electricity Workers Federation, the defendants wanted to grab the property and instigated some persons and conducted Central Council Executive Committee Meeting on 07.09.1974. In the said meeting the 7th defendant without the knowledge of the plaintiff alleged to have elected one R.P.Michael, the second defendant herein as a State Incharge of Plaintiff Union and passed a resolution to amalgamate the plaintiff Union with the 7th defendant and also create a Trust in respect of the immovable property

viz., suit property. The plaintiff clearly stated that the plaintiff Union was affiliated with the Federation and that there is a resolution for amalgamation. Further, they have stated in paragraph 5 of the plaint with regard to the creation of the Trust Deed and also transfer of the property in favour of the Federation. The first defendant filed O.P.No.92 of 2003 before this Court.

(ii) The defendants filed the written statement and had stated that grabbing of the property is not possible for the reason that the Trust is owned by the Public Charitable Trust and there is no scope for unlawful act by the defendants. In paragraph 4 of the written statement the defendants clearly stated that the plaintiff has no right in making any allegation with regard to the creation of the Public Charitable Trust and placing the property under the Trust to benefit to the deserving persons. Further, the Trust referred in the plaint is in existence from the day of creation and functioning in all respects for the benefit of the beneficiary referred in the Trust. The Trust Deed was marked as Ex.P.3, wherein the objects of the Trust are clearly established, which has been already discussed in the forgoing paragraphs of this judgment. Therefore, Ex.P3 Trust Deed itself clearly shows that originally plaintiff Sangam was

amalgamated with the 7th defendant and also a resolution had taken place and the property was transferred to the first defendant Trust, which is a Public Charitable Trust.

(iii) The representative of the plaintiff Union P.W.1 deposed during the cross examination that the Tamil Nadu Electricity Board Cashiers Union had not amalgamated with the 7th defendant Federation because there is no need for passing such resolution. Further amalgamation in the 1974 was temporary for a period of six months and he has not filed any resolution to show that the amalgamation is only for a period of six months. Further P.W.1 admitted that the 7th defendant without knowledge of the plaintiff alleged to have elected one R.P.Michael as State In charge of the plaintiff Union. Therefore, the plaintiff had no knowledge about the amalgamation and they have not produced any document to show against Ex.P3 Trust Deed i.e resolution dated 07.09.1974 had not taken place at Kutralam. Therefore, once the document Ex.P3 shows that the plaintiff Union amalgamated with the 7th defendant Federation, it is for them to prove that the resolution dated 07.09.1974 had not taken place. The plaintiff Sangam also not challenged the Ex.P3 Trust Deed. The plaintiff Sangam and defendants stated that

there is a Trust and the defendants have clearly stated in their written statement that the Trust is a Public Charitable Trust and they have also filed O.P.No.92 of 2003 before this Court for selling a portion of the property for development and administration of the Trust and the same was allowed by this Court. Therefore, the Trust is only a Public Charitable Trust. Hence, the issue is answered accordingly.

15. Issue No.2:

Whether this Court is having jurisdiction to try this suit under Section 92 of CPC?

(i) The suit filed by the plaintiff under Section 92 of Civil Procedure Code seeking framing of the scheme for administration and management of the suit property. The defendants filed the written statement and has stated that the suit is not maintainable. It is the case of the plaintiff that originally plaintiff Sangam was named as Tamil Nadu Electricity Board Cashiers Union, which was established by one Gopalaram in the year 1959 under registered Trade Unions Act. Subsequently, the Union purchased the property in the year 1981 and also changed the name of the plaintiff Sangam. Further, based on the resolution of the Executive Committee, the 2nd defendant transferred the

property in the name of the 7th defendant and created a Trust Deed Ex.P3. However, the defendants acted against the Trust Deed Ex.P3 and sold the property without any authority. Therefore, the plaintiff challenged (i) the sale executed by the defendants 1 to 6 in favour of the 10th defendant, and in turn ; (ii) the sale made in favour of the 11th defendant and also (iii) for framing a scheme for the administration and Management of the suit property.

(ii) Though the defendants have stated that on the date of formation of the plaintiff Sangam in the year 1981 the old Union i.e. Tamil Nadu Electricity Board Cashiers Union was not in existence, since it was amalgamated with the 7th defendant from 07.09.1974 onwards and thereafter, the 7th defendant created the first defendant Trust and also created a Trust Deed Ex.P3. From the date of Ex.P3, the suit property is under the management of the first defendant Trust and therefore, the plaintiff Sangam has no *locus standi* to file the suit under Section 92 of Civil Procedure Code to frame the scheme. Though the suit is not filed under Section 92 C.P.C, it is filed under Order VII Rule 1 of C.P.C r/w IV Rule 1 of O.S.Rules.

(iii) Section 92 of Civil Procedure Code reads as follows :

"92. Public charities .-(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- [(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein

referred to except in conformity with the provisions of that sub-section.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied in one or more of the following circumstances, namely:-

(a) where the original purposes of the trust, in whole or in part,-

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]

(iii) Since the defendants admitted that the property is Trust property, the plaintiff Union filed a suit for framing scheme for administration of the Trust and removal of trustees 2 to 6 and therefore, this Court has got the jurisdiction. This issue is answered accordingly.

16. Issue No.3 :

Is the suit maintainable by the plaintiff Sangam after its amalgamation with 7th defendants on 07.09.1974?

(i) The plaintiff filed the suit and stated that original Union viz., Tamil Nadu Electricity Board Cashiers Union was not amalgamated with the 7th defendant. Further, in the year 1981, the plaintiff Union changed its name as plaintiff Sangam. The defendants have stated that the plaintiff Union was amalgamated with the 7th defendant and they have taken all the suit property to administer the same. Further, the plaintiff has stated that the resolution dated 07.09.1974 is not acted upon and the amalgamation had not taken place still the plaintiff Union is in existence and the suit property belongs to the plaintiff Union. Therefore, they have filed the suit for challenging the sale deed and also for framing of scheme and for removal of the Trustees.

(ii) The defendants had very clearly stated in their written statement that the General Secretary of the plaintiff Union viz. T.Ganesan was defeated in the election held on 06.01.1974 and one R.P.Michael the second defendant herein was elected as General Secretary. The plaintiff Union was amalgamated with the 7th defendant Federation and they have also passed a resolution that the suit property will be transferred in the name of the 7th defendant, as such accordingly, the same was transferred. Subsequently, the 7th defendant created a Trust Deed under Ex.P3 on 30.11.1979. From that date onwards, the suit property was under the administration and management of the first defendant.

(iii) Even in the cross examination, the plaintiff has deposed that the plaintiff Sangam has not filed Bye-laws of the Trust and the plaintiff Sangam has not yet been amalgamated with 7th defendant Federation. The general body has resolved to elect P.W.1 as a member as well as the President of the Union, but he has not filed any resolution of the General Body and there is no document to show that the general body was empowered to elect the retired person as the general secretary of the Cashiers Union. He would admit that resolution No.2 dated 07.09.1974 at Kuttralam is related to the approval of income and its existence from

1973; and resolution No.3 is the approval of the amalgamation of the Tamil Nadu Electricity Board Cashiers Union with the 7th defendant Federation for a period of six months from 01.01.1974.

(iv) Ex.D2 minutes book at page no.64 it is mentioned that a meeting of the Executive Committee was held at Kutralam on 07.01.1974 and R.P.Michael, State Incharge had presided over the meeting. At page No.165 of Ex.D2 resolution No.1 related to the election of R.P.Michael. At page Nos.164 and 165 of Ex.D2, the concerned persons who have signed in the said meeting including P.W.1. The said R.P.Michael admitted that the resolution No.9(A) at Page No. 161 of Ex.D2 is recorded and in view of the resolution of the General Body, the Tamil Nadu Electricity Board Cashiers Union shall be amalgamated with the Tamil Nadu Workers Federation namely the 7th defendants herein and movable and immovable properties of the Union shall be treated as the Cashiers property. Now the 7th defendant Federation is in existence. In view of the resolution of 1974, the 7th defendant Federation is functioning with all Unions, but the Tamil Nadu Electricity Board Cashiers Union is functioning. Even though the resolution has been passed to amalgamate the Tamil Nadu Electricity Board Cashiers Union with the Tamil Nadu

Electricity Workers Federation, amalgamation did not take place. Further he would depose that there is no resolution to the effect that the plaintiff Union had not amalgamated with the 7th defendant because there is no need for passing such resolution. Further he admitted that as per Ex.D2 minutes book on 07.09.1974 the Central Council of the Executive Committee meeting was conducted at Kutralam and one K.Subramaniam presided over the meeting and the resolution was passed and the same has been recorded. The amalgamation with the 7th defendant was temporary for a period of six months. P.W.1 has not produced any resolution to show that the amalgamation was only for a period of six months.

(v) In para 4 of his proof affidavit filed by P.W.1, it is stated that the 7th defendant without knowledge of the plaintiff alleged to have elected one R.P.Michael as State Incharge of the Federation. Further he has admitted that the meeting was held on 07.09.1974 at Kurtralam and admitted that R.P.Michael was selected and admitted the resolution passed in that meeting. Though P.W.1 has denied the signatures, P.W.1 and R.P.Michael also attended the meeting.

(vi) Further P.W.1 deposed that the plaintiff is affiliated and not amalgamated with the 7th defendant Federation. He admitted that a resolution has been passed to amalgamate the plaintiff Union with the 7th defendant and also resolved to create a Trust in respect of the immovable property i.e. suit property belongs to the plaintiff Union; only in respect of the immovable property of the plaintiff Union it was challenged before the Court of law. Though there was a resolution for amalgamation with the 7th defendant and also a resolution to create a Trust in respect of the suit property, no specific plea had been made by the plaintiff Union to challenge the said resolutions. He has stated that the resolution is alleged to have been passed by the Central Council of Executive Committee of the plaintiff Union in the year 1974, but, thereafter, no amalgamation had taken place at any point of time and the 7th defendant did not pass any resolution in respect of the Tamil Nadu Electricity Board Cashiers Union. He has not produced any document in contrary to resolution dated 07.09.1974 and he has also admitted that he has not challenged the resolution and also not denied the meeting held on 07.09.1974 and further, not challenged the Trust Deed Ex.P.3. Therefore, he has not produced any documentary evidence to substantiate his contention. Even

after the resolution, the suit property was continued to be in the possession and enjoyment of the plaintiff Union and the amalgamation has not taken place.

(vii) Further, the plaintiff himself admitted that the suit properties are under the management of the first respondent Trust. The plaintiff has not challenged the resolution dated 07.09.1974 and the Trust Deed dated 30.11.1979 and he has also not proved that as per the resolution the amalgamation has not taken place.

(viii) Per contra, D.W.1 has deposed in his cross examination that R.P.Michael was elected as General Secretary of the plaintiff Union, after amalgamation he represented as State Incharge of the Tamil Nadu Electricity Cashiers Union on 07.09.1974. The former General Secretary of the plaintiff Sangam T.Ganesan was defeated in the election and the plaintiff Sangam was temporarily amalgamated with the Tamil Nadu Workers Federation and R.P.Michael was elected as State Incharge of the Sangam. The Sangam was amalgamated with the Federation on 07.09.1974 permanently. The General Secretary of the plaintiff Sangam participated in the meeting held on 07.09.1974 at Kutralam. The

defendants 8 and 9 viz., Radhakrishnan and Subramaniam the then trustees left the Sangam and they joined in some other Union, hence, R.P.Michael, State Incharge was authorised to elect the new trustees. Further, the School was not affiliated either by the Central Board or the State Board, because there was no necessity for such affiliation. Ex.P3 Trust Deed clearly shows that the plaintiff Sangam was originally amalgamated with the 7th defendant Federation and subsequently Ex.P3 Trust Deed came into existence. Therefore, Ex.D2 and Ex.P3 clearly show that plaintiff Sangam after amalgamation with the 7th defendant cannot file the present suit before this Court. Therefore, the suit filed by the plaintiff is not maintainable. The present plaintiff Sangam was not in existence the original Union itself amalgamated with the 7th defendant. Therefore, subsequently the change of the name of the Sangam itself is not valid and the same will not bind the federation. Hence, the plaintiff Sangam has no right to file the suit and the same is not maintainable. Issue No.3 is answered accordingly.

17.Issue No.4:

Is the suit maintainable without seeking for declaration that the amalgamation on 07.09.1974 is not

valid ?

A reading of the prayer itself shows that the plaintiff is not seeking any relief for declaration that the amalgamation on 07.09.1974 is not valid. Though the plaintiff has not admitted that amalgamation has not taken place, Ex.P3 Trust Deed itself clearly shows that after amalgamation, all the properties were transferred in the name of the Trust. Exs.P7 to 23 clearly show that the suit property stands in the name of the Trust and therefore, the plaintiff has not proved contra to that. Therefore, without challenging the amalgamation dated 07.09.1974, the suit is not maintainable. Issue No.4 is answered accordingly.

18.Issue No.5:

Is the suit maintainable without seeking for declaration that the resolution to create a Trust passed on 07.09.1974 is not valid?

The plaintiff himself admitted that the Central Council Executive Committee meeting was held on 07.09.1974 at Kutralam and resolutions were also passed. Exs.D2 and D3 clearly show that the meeting had taken place and minutes of the meeting were marked in the minutes book. Therefore, the minutes clearly show that the plaintiff Union was amalgamated with the 7th defendant. Therefore, the plaintiff Union

without seeking relief for declaration that the resolution passed on 07.09.1974 to create Trust is not valid, the present suit is filed. Ex.P3 Trust Deed has come into existence, the first defendant Federation has come into existence on 30.11.1979. Therefore, the plaintiffs prayer without seeking for declaration that the resolution to create Trust on 07.09.1974 is not valid and sustainable. Issue No.5 is answered accordingly.

19.Issue No.6:

After the amalgamation has taken place does the plaintiff Sangam still exist and whether T.Ganesan is the General Secretary?

(i) The plaintiff has stated in paragraph 7 of the plaint that the plaintiff Union was continued as the Cashier Union, subsequently, in the year 1981 at the commencement of the Card Billing System, the name of the post of Cashier has been changed by the Tamil Nadu Electricity Board as Assessor. Therefore, the plaintiff Union also changed its name as Agila India Minvariya Kanakkeetalar Matrum Panam Vasulippavarkal Sangam. Since the Sangam is representing the

employees, those who are working as Assessors, they are the beneficiaries as per the Trust. The plaintiff Union requested the 7th defendant to handover the building, so as to establish and run a school in the memory of the founder of the Union, but, the same was not considered by the 7th defendant. In the meanwhile, the Executive Committee convened a meeting and informed the activities of the Trust to the Federation. Though the Trust has to be managed by the Trustees and it was controlled by the 7th defendant Federation, the Federation has not taken any decision and the sale of the property was not at all discussed in any of the Executive Committee Meeting of the 7th defendant. Further, no General Body meeting was held for all these years. So the defendants 2 and 3 with the active connivance of the 7th defendant are acting against the interest of the Trust.

(ii) During the cross examination, the plaintiff deposed that the resolution No.2 related to approval of income and expenditure and resolution 3 related to approval of amalgamation of the Tamil Nadu Electricity Cashiers Union with the Tamil Nadu Workers Federation for a period of six months from 01.01.1974. Ex.D2 the minutes book in page No.169 it is mentioned that on 07.09.1974 the meeting of the Electricity

Board was held at Kuttralam and Michael, State incharge presided over the meeting. Further he has deposed that Tamil Nadu Electricity Board Cashiers Union was functioning, though the resolution was passed to amalgamate the Union with the Federation. Therefore, the amalgamation did not take place. Further, there is no resolution to the effect that the Tamil Nadu Electricity Cashiers Union is not amalgamated with the 7th defendant because there is no necessity to pass such a resolution. He has further stated that the amalgamation with the 7th defendant is only for a period of six months, therefore, P.W.1 had clearly admitted that the temporary amalgamation has taken place and also admitted that he has not passed any resolution for permanent amalgamation.

(iii) Per contra, D.W.1 has clearly stated that the defendants filed the document viz., resolution of the Central Body and R.P.Michael was elected as State incharge of the Union and on 07.09.1974 in the Central Council of the Executive Committee meeting held at Kuttralam. The Executive Committee has power to appoint or nominate the 2nd defendant in the plaintiff Union. The main object of the trust is to run a nursery school. D.W1 was present at the said meeting held on 07.09.1974. The General Secretary of the plaintiff Sangam as on 07.09.1974 was

R.P.Micheal. The former General Secretary T.Ganesan was defeated in the said election and the plaintiff Sangam was temporarily amalgamated with the 7th Defendant Federation. After amalgamation, the said Michel was the State Incharge of the Tamil Nadu Electricity Workers Federation from 04.02.1974 and the Sangam was permanently amalgamated with the Federation on 07.09.1974. Further he had deposed that he did not remember whether the then President and General Secretary have participated in the General Body meeting held on 07.09.1974.

(iv) D.W.1 further deposed that the school was not affiliated to either Central Board or State Board and there was no necessity for such affiliation. Further the property tax and water taxes are being paid treating the property as non-residential. The school building was constructed by availing loan of Rs.2 lakhs from one G.Padmavathy, who is the wife of D.W1. There was only one tenant in the open space of the school premises and he is paying a sum of Rs.2,500/- by way of rent before demolition of the building. Further the nursery school is not being run now and the building is under construction. No consideration was received for the joint venture by the Trust. After consideration, the

nursery school is going to run. The Union was permanently amalgamated with the 7th defendant and K.Subramaniam, President of the Union signed the resolution of the meeting held on 07.09.1974. During the course of temporary amalgamation from 01.01.1974, the office of the President and the General Secretary were functioning. The General Secretary T.Ganesan was defeated in the election held on 6.1.1974. Only to replace T.Ganesan one R.P.Michael, was elected as State Incharge of the Union. Therefore, Ex.P3 clearly shows that based on the resolution dated 07.09.1974, registration of the Trust Deed also taken place on 30.11.1979. Ex.P3 Trust Deed also reduced into writing. Ex.D7 to D23 clearly show that the Trustees are in the hands of the first defendant Trust and since the original Union was amalgamated with the 7th defendant in the year 1974 itself, the original Union was not in existence after 1974 and hence, the plaintiff Sangam cannot be in existence and only to replace T.Ganesan, R.P.Michael was elected as State Incharge, however, the resolution and the minutes book show that Ganesan himself presided over the meeting. Therefore, Issue No.6 is answered infavour of the defendants and against the plaintiff.

20.Issue No.7:

Is not the present suit is barred by limitation?

As already referred in Issue No.1 the Trust is Public Charitable Trust, therefore, the property belongs to the Public Charitable Trust. Therefore, the Limitation Act will not be applicable to the Trust or the Trust property. Issue No.7 is answered accordingly.

21.Issue No.8:

Is not the present suit is barred by principles of Res Judicata applies in view of the decree in OS.No.1934 of 1975 on the file of the VI Assistant City Civil Court, Chennai?

As already referred above, since the first defendant is a Public Charitable Trust and the Limitation Act is not applicable to the Trust property. As far as res judicata is concerned, in the year 1975, R.P.Michael, the second defendant herein filed a suit in O.S.No.1935 of 1975 before the VI Assistant Judge, City Civil Court against T.Ganesan, wherein it is held that the defendant therein, has no right to represent or act as the General Secretary of the Union and the defendants be and is thereby restrained by way of permanent injunction from acting or representing or collecting any fund or donation and from or donation and

from conduct or convening any meeting in any systems as the General Secretary of the Tamil Nadu Electricity Board, Cashier's Union bearing Registration No.2644/M and that the defendants to pay plaintiff a sum of Rs.131/50 being the cost of the suit. Ex.D4 is the certified copy of the judgment in O.S.No.1934 of 1975. Therefore, T.Ganesan was not the General Secretary of the Union. Therefore, Ex.D4 clearly shows that the issue involved in this suit was already decided in O.S.No.1935 of 1975. The issue is answered accordingly.

22.Issue No.9:

Is not the present suit is hit by principles of Res Judicata in view of decision in OS.No.1494 of 1974 dated 15.01.1978 on the file of the XII Assistant City Civil Court, Chennai?

(i) One T.A.Premaharan filed another suit in O.S.No.1494 of 1974 against one K.Subramanian and 3 others seeking for declaration that the Tamil Nadu Electricity Board Cashiers Union should not be amalgamated with the Tamil Nadu Electricity Workers Federation without the approval of the General Body of the Cashiers Union and without complying with the provisions of Section 24 of the Trade Unions Act, 1926 and for issue

of a permanent injunction restraining the defendants 1 to 3 from amalgamating the Cashiers Union and restraining the 4th defendants from interfering with the affairs of the Tamil Nadu Electricity Board Cashiers Union as State Incharge. The said suit was dismissed on 15.2.1978 by the XII Assistant Judge, City Civil Court, Chennai. Ex.D5 is the certified copy of the judgment in O.S.No.1494 of 1974. Therefore, Ex.D5 clearly shows that the issue involved in this suit was already decided.

(ii) In the earlier suits, the main issue as to whether the plaintiff Union before change of its name in the year 1981 amalgamated with the 7th defendant on 07.09.1974 or not. In one suit filed against the T.Ganesan it was decided that he is not the Secretary of the plaintiff Union. Another suit was dismissed holding that the plaintiff Union should not be amalgamated with the 7th defendant. All the issues involved in both suits

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are not one and the same. Some of the issues involved have already decided in the other two suits. However, the present suit is for framing scheme, therefore, strictly speaking present suit is not barred by rejudication. This issue is answered accordingly.

23.Issue No.10:

Is not Trustees entitled to angument the Trust by entering into construction agreement?

As already held, the 7th defendant Federation and the first defendant are representing the Public Charitable Trust and the trustees are entitled to angument the trust by entering into the construction agreement. Further, the defendant filed O.P.No.92 of 2003 before this Court and also got permission to sell the property. Thereafter, they entered into joint venture agreement and therefore, the trustees are entitled to angument the construction. Issue No.10 is answered accordingly.

24.Issue No.11 :

Is not the permission granted by this Court in O.P.No.92 of 2003 is valid?

(i) It is mentioned in the paragraph 9 of the plaint that the Trustees filed an application in O.P.No.92 of 2003 before this Court and obtained an order of permission to sell undivided share in the property. The Trustees have also executed the Power of Attorney dated 16.9.2005 in favour of T.A.H.Ramaswami, the 10th defendant herein for sale of 53% of the undivided share of the land and also entered into joint venture agreement for putting up building complex in the entire property and handover 47% of the building to the Trust. As per clause 2 of the Trust Deed, the trustees shall establish a School in the said building and the initial cost of establishing such school shall be met from the income of the property described in the schedule. No school was run by the Trustees or by the Federation in the said building. Further the sale of 53% of share of land will hamper the running of school which is the only object of the Trust for the benefit of cashiers working in the Tamil Nadu Electricity Board. Hence, building a complex in the property is opposed to the object of the Trust. Under Section 51 of the Trust Act, trustees may not use or deal with the property for his own profit or for any other purpose unconnected with the Trust. In this case the trustees have sold the land for the purpose to construct complex which is unconnected with the trust.

(ii) The defendants have stated in the petition that the first defendant was running a small school. It is a false statement. No school was run by the Trustees or by anybody and no recognition or permission was obtained from the Educational authorities for running the school. Further no student was admitted in the School. No teacher was appointed. No registers were maintained. On the other hand, the petitioner has filed the documents in the name of the School which is created for the purpose of obtaining permission from this Court.

(iii) The first defendant had further stated in the petition that in the best interests of the Trust and the beneficiaries, the portion of the property ought to be sold and the proceeds profitably invested for the construction of new building in the remaining portion so that in the newly constructed area, the objects of Trust can be carried out. As per the Trust Deed, the object of the Trust is running a school in the memory of the founder of the Cashier Union viz., Gopalram. But as per the documents filed by the Trustees, they have obtained offers to construct a residential building complex. The specifications furnished by the builders would also show the offer for residential portions. So there is no possibility of running the school in the newly constructed building. The Trustees cannot

change the object of the Trust.

(iv) The first defendant has further stated that Clause 4 of the deed dated 30.11.1979 confers on the Trustees power to sell the property with the permission of this Court. This is also a false averment. Clause 4 of the Trust Deed reads as follows :

The Trustees shall not have the power to sell, mortgage or otherwise transfer the immovable property bearing Old No.4, New No.103, Karaneswarar Koil Street, Mylapore, Chennai -4 described in the schedule. Hence, the Principal Judge, City Civil Court, Chennai alone got jurisdiction to grant permission for sale of the property.

(v) The plaintiff has stated that the defendants with an ulterior motive have filed the O.P.No.92 of 2003 for seeking permission before this Court, suppressing all the material facts and obtained permission. After the permission, the trustees have not followed the procedure in bringing the property for public auction or competitive sale. The 3rd defendant who has been authorised by other trustees has entered into an agreement with the 10th defendant herein and executed a power of attorney for sale of a meager sale consideration, far below the market

rate. The Trustees have not acted in the interest of the Trust or the beneficiaries and they suppressed material facts and obtained permission from this Court.

(vi) Whereas the defendants have stated in the paragraph 6 of the written statement that admittedly, the first defendant filed O.P.No.92 of 2003 and this Court also passed order, which is marked as Ex.P9. On reading of Ex.P9, it would reveal that this Court considered the entire facts and passed the order. Even though the plaintiff aware of the order of this Court in O.P.No.92 of 2003 dated 29.06.2005, they have not challenged the order and also not filed any application to revoke the permission and hence, this Court finds that permission granted in O.P.No.92 of 2003 is valid. Issue No.11 is answered accordingly.

25.Issue No.12:

Is the plaintiff entitled to make inconsistent pleas such as challenging the creation of the Trust and challenging the acts of the Trustees in obtaining orders?

The defendants have already stated that the plaintiff has not challenged the resolution dated 07.09.1974. Further T.A.Premaharan

and another filed suit in O.S.No.1494 of 1974 against one K.Subramanian and 3 others with regard to amalgamation with 7th defendant and the same was dismissed by judgment and decree dated 15.02.1978. The 7th defendant has also created a first defendant Trust under Ex.P3. The plaintiff Union also not challenged the Trust created by the 7th defendant and the plaintiff has raised inconsistent pleas. Once the temporary amalgamation came into existence, but, subsequently permanent amalgamation had not taken place, they have not produced any document to substantiate their plea. Even the earlier suit was dismissed and therefore, the plaintiff is not entitled to take inconsistent pleas. Issue No.12 is answered accordingly.

26.Issue No.13:

Is the Sale Deed dated 09.03.2006 is against the object of the Trust?

(i) The plaintiff has stated that the object of the Trust is that the Trustees shall establish a school in the property in the memory of the founder of the Cashiers Union. However, neither the 7th defendant nor the trustees established any school as per the Trust Deed. Further, the

trustees misappropriated the income derived from the property. The plaintiff Union participated in all the Executive Committee meetings of the 7th defendant and represented to the trustees either to run the school or to handover the building to the Union. Subsequently, the defendants 2 and 3 with the connivance of the 7th defendant nominated three new trustees as against the mandate of the Trust Deed. Further as per Section 47 of the Trust Act, the trustees cannot delegate their office or any of their duties to the co-trustees. Under Section 48 of the Trust Act, co-trustees cannot act individually. But, the new trustees delegate their powers to the third defendant to sell the suit property and that the third defendant entered into agreement with the 10th defendant. Thereafter, the trustees filed O.P.No.92 of 2003 before this Court and made false averments and suppressed the material facts and obtained permission to sell undivided share in the suit property. Thereafter, the 10th defendant sold 53% of undivided share in the suit property infavour of the 11th defendant by way of registered Document bearing No.763/2006 at Sub Registrar Office, Mylapore for lesser amount. Therefore, the trustees have acted against the interest of the Trust.

(ii) Ex.P3 Trust Deed clearly shows that for establishment of the

school the defendants filed O.P.No.92 of 2003 and this Court considered the facts and permitted the defendants to sell the property. After obtaining permission, the defendants sold property, which is not against the Trust Deed.

(iii) The first defendant also admitted in the cross examination that since the construction is not completed, they are not running the school. Exs.D7 to D23 clearly show that the nursery school was running and due to dismantling of the building, now the school is not running, after completion of the construction, they are ready to start the school. Therefore, under these circumstances, this Court finds that the sale deed dated 09.03.2006 is not against the object of the Trust.

27.Issue No.14:

Does the plaintiff has Locus Standi to pray for delivery of suit property?

(i) As already held, the suit properties are Trust properties. T.Ganesan is not the General Secretary and he cannot act as General Secretary and further the plaintiff Union is not in existence after 1974, after creation of the Trust. Therefore, on combined reading of the Exs.D3

and D4, the plaintiff has no *locus standi* to file the suit and for delivery of the suit property and for relief of scheme decree.

(ii) In the light of the above the plaintiff Union is not entitled to the prayer and relief sought for in the suit, since the plaintiff Sangam is not in existence. As already held that the Trust is a Public Charitable Trust and the property is the Trust property. Ex.P3 Trust Deed clearly shows that it is a Public Charitable Trust and this Court also accepted the same. The plaintiff Union pleaded that the trustees acted against the interest of the Trust and also sold 53% of undivided share of property. Further the construction of the building is the main object of the Trust. For which, the defendants have stated that it is not a object of the Trust, since the building was in a dilapidated condition, no sufficient income fetched from the property to run the school, the first defendant approached this Court and filed O.P.No.92 of 2003 to grant permission to sell the suit property and to meet out the expenditure. This Court also considered the same and permitted the defendants to sell the property. (iii) Exs.D7 to 23 clearly show that there was a nursery school since there was no need for any approval and they have also stated that since it is a private school,

there is no necessity to get permission. The plaintiff Union has not established that the defendants acted against the interest of the Trust. More particularly this Court in O.P.No.92 of 2003 permitted the defendants to sell the property and construct the building. Based on which, the property was sold only in the public auction after observing all the procedures and publication and therefore, the plaintiff has no *locus standi* to pray for delivery of the suit property. The issue is answered accordingly.

28.Issue No.15:

Can the plaintiff pray for Scheme for the administration and management of the suit property, if the Trust is found as private Trust?

The plaintiff has not established that the defendants acted against the interest of the Trust, therefore, no need to frame the scheme to remove the trustees viz., the defendants 2 to 6 from the Trust. This issue is answered accordingly.

29.Issue No.16:

Are the Defendants 2 to 6 are liable to be removed from the Trusteeship?

As already held that the plaintiff has no *locus standi* to file the suit and also held that the plaintiff has not established that the defendants 2 to 6 acted against the interest of the Trust. The plaintiff Sangam has not fulfilled the requirements of Section 92 of Civil Procedure Code. Therefore, the defendants 2 to 6 are not liable to be removed from the Trust. This issue is answered accordingly.

30.Issue No.17:

Are the defendants 2 and 3 are liable to pay Rs.4 lakhs and to whom?

Since the plaintiff Sangam has not established that the defendants 2 to 6 acted against the interest of the Trust and not substantiated their claim against defendants 2 and 3, the defendants are not liable to pay any amount. This issue is answered accordingly.

31.Issue No.18:

Is not the suit a vexatious one and liable to be dismissed with exemplary cost?

Though in the earlier suit in O.S.No.1934 of 1975 filed against

T.Ganesan which has already been decided by the City Civil Court, Chennai, the present suit is filed. Further, the said T.Ganesan was dismissed from service, even prior to his retirement. Therefore, he is not the member of the Sangam. During the pendency of the suit the said Ganesan died and therefore, under these circumstances though this Court deems it fit to dismiss the suit, but without any costs. Issue is answered accordingly.

32. It is settled proposition of law that the plaintiff Sangam has to prove its case on its own pleadings and evidence it cannot take advantage of any loop holes left by the defendants. The plaintiff Sangam has not established that the plaintiff Sangam was not amalgamated with the 7th defendant Federation and Ex.P3 Trust Deed was not acted upon and the trustees has acted against the interest of the Trust. Since the sale was made only after obtaining prior permission from this Court, the sale deed dated 09.03.2006 is valid and the plaintiff Sangam has not established that the defendants acted against the interest of the Trust. The plaintiff Sangam is not entitle for any relief as sought for in this Suit.

33. In view of the foregoing reasonings, the suit is liable to be

dismissed. Accordingly, this Civil Suit is dismissed. However, there shall be no order as to costs.

23.12.2020

Index : Yes/No
Internet : Yes/No
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List of Witness examined on the side of the plaintiff

R. Janardhanam - PW1

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1	P1	Resolution passed by the plaintiff Union	12.11.2006
2	P2	Sale deed in favour of plaintiff Union	25.11.1972
3	P3	Trust Deed	30.11.1979
4	P4	Minutes of the Executive committee of 7 th defendant	04.09.2006
5	P5	Letter sent by 3 rd defendant with resolution	09.03.1988
6	P6	Letter sent by 3 rd defendant with resolution	20.02.2000
7	P7	Resolution of the trustees	26.03.2002
8	P8	Petition in OP.No.92 of 2003	19.07.2002
9	P9	Order in OP.No.92 of 2003	29.06.2005
10	P10	Sale deed executed by Trustees	09.03.2006
11	P11	Income and Expenditure Account	31.05.1996
12	P12	Income and Expenditure Account	31.05.1997
13	P13	Income and Expenditure Account	31.05.1998
14	P14	Income and Expenditure Account	31.05.1999
15	P15	Income and Expenditure Account	31.05.2000
16	P16	Offer submitted by Krithika Associates	24.04.2002
17	P17	Offer submitted by Southers Peninsula Construction Pvt Ltd	
18	P18	Offer submitted by Kirshna	21.05.2002

		Enterprises	
19	P19	Valuation certificate issued by Civil Engineer	
20	P20	Minutes of the Executive Committee of 7 th defendant	08.06.2003
21	P21	Minutes of the Executive Committee of 7 th defendant	06.07.2003
22	P22	Minutes of the Executive Committee of 7 th defendant	30.07.2003
23	P23	Minutes of the Executive Committee of 7 th defendant	07.09.2003
24	P24	Minutes of the Executive Committee of 7 th defendant	09.11.2003
25	P25	Minutes of the Executive Committee of 7 th defendant	22.02.2004
26	P26	Minutes of the Executive Committee of 7 th defendant	07.06.2004
27	P27	Minutes of the Executive Committee of 7 th defendant	13.09.2004
28	P28	Minutes of the Executive Committee of 7 th defendant	16.05.2005
29	P29	Minutes of the Executive Committee of 7 th defendant	05.06.2006
30	P30	Certificate of Registration	28.02.1975
31	P31	Encumbrance certificate	23.10.2006
32	P32	Certificate of Registration	30.09.1978
33	P33	Petition to revoke the permission	

List of Witness examined on the side of the defendants

1. Ganesan - DW1

List of documents marked on the side of the defendants

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1	D1	Rules of Tamil Nadu Electricity Board Cashiers Union, Madras	
2	D2	Minutes book of Tamil Nadu Electricity Cashier's Union	
3	D3	Minutes book of South Arcot Electricity system cashiers Union	
4	D4	Certified copy of the suit register extract in OS.No.1934 of 1975, VII Assistant Judge, City Civil Court, Madras.	
5	D5	Certified copy of the decree in OS.No.1494 of 1974, dated 15.02.1978 City Civil Court, Madras.	15.02.1978
6	D6	Photocopy of the judgement in OS.No.1494 of 1974 dated 15.02.1978, City Civil Court, Madras.	15.02.1978
7	D7	Attendance Register	June 1990 to April 1991
8	D8	Property Tax demand notice for the period 2/1981-82	15.05.1982
9	D9	Fees receipt book for 1998-1999	
10	D10	Salary Disbursement Register	June 1998 to April 1999
11	D11	Water and Sewerage Tax and Water Charge Card	June 1998 to April 1999

12	D12	Water and Sewerage Tax and Water Charge Card	17.03.1994
13	D13	Property Tax collection receipts	28.03.1995
14	D14	Electricity cards in the name of the Tamil Nadu Electricity Board workers Federation Trust, Mylapore (series)	
15	D15	Bank Passbook of Gopalram Ninaivu Trust with Bank of India, Madhavaperumalpuram Branch	
16	D16	Income and Expenditure account of Gopalram memorial Nursery School, Madras-4, for the year ending 31.05.1981 to 31.05.2000.	
17	D17	Property tax demand card issued by Corporation of Madras to Tamil Nadu Electricity Board workers Federation Trust Madras-4.	
18	D18	Property Tax demand card issued by Corporation of Chennai to Tamil Nadu Electricity Board Workers Federation Trust, Mylapore, Chennai	
19	D19	Water and Sewerage Tax and Water Charge card (series)	
20	D20	Minutes Book	
21	D21	Pages 5 of Ex.D20	
22	D22	Page 65 of Ex.D20	
23	D23	The Resolution at Page 69 of Ex.D20	

23.12.2020

(P.V.J.)

P. VELMURUGAN, J.



CS.No.905 of 2006

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