

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) No.1172 of 2020
and C.M.P.Nos.9035 and 6311 of 2020

1. Choolai Arulmighu Pachaianman & Vembuliamman
Thirukoil Seva Trust represented by its
Secretary.
 2. P.C.Saranya
 3. P.C.Abirami
 4. Dr.E.Sakthivell
 5. N.Kumaravel
 6. N.Eswarachandravel
 7. Dr.S.Muthukumaravell
- ... Petitioners

Vs.

1. S.Manikandan
 2. The Joint Sub Registrar,
1103, Poonamallee High Road,
Periamet, Chennai – 600 007.
- ... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order dated 25.09.2019 made in I.A.No.4 of 2019 in O.S.No.1877 of 2019 on the file of the VIII Assistant City Civil Court, Chennai.

For Petitioners : Mr.K.P.Chandrasekaran

For Respondents : Ms.Reeta Chandrasekaran
for M/s.Aiyar and Dolia

ORDER

Challenging an order of dismissal passed by the trial Court in a petition filed for rejection of plaint under Order VII Rule 11 of C.P.C., the defendant is before this Court by way of the present Civil Revision Petition.

2. According to the learned counsel for the petitioner/defendant, the suit is barred by limitation by Section 92 of C.P.C., where, for filing a suit, leave should be obtained from the Court and also he would contend that the suit is barred under Sections 59, 72 and 73 of the Indian Trust Act, 1882. Since the plaintiff has not obtained leave by filing an application before the District Court, the suit is not maintainable and it is barred by law and seeks rejection of plaint.

3. The trial Court, after considering the import of Section 59, 72 and 73 of the Act, has held that the temple is a private temple and the plaintiff

is one among the owners of the temple. The petitioner/defendant Nos.1 to 7 have no right over the property and has no *locus standi* to question the right of the plaintiff and dismissed the petition.

4. A perusal of Section 92 of C.P.C. , which reads as under:-

“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 inquires;

(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 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 cy pres in one or more 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;

(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.”

The above Section clearly contemplates the situation, where there is any dispute with regard to administration of the trust or the matters with regard to removing any trustee or appointing a new trustee or vesting any property in a trustee or with regard to rendition of accounts and other aspects in respect of public charities, permission should be obtained. But, in the instant

case, the property which is in dispute, does not belong to the petitioner/trust or its trustees.

5. On reading of Sections 59, 72 and 73 of the Indian Trust Act, 1882, which are extracted below:-

Section 59. Right to sue for execution of trust. - Where no trustees are appointed or all the trustees die, disclaim or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Section 72. Petition to be discharged from trust. - Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

Section 73. Appointment of new trustees on death, etc. - Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from 1[India], or leaves 1[India] for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed

in his place by --

(a) the person nominated for that purpose by the instrument of trust (if any), or

(b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it. On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

All these three provisions do not have any role to play in the suit.

6. Therefore, as rightly found by the learned trial Judge, I find that the suit is not barred by law and is not liable to be rejected in *limine*, but, it requires elaborate trial. I do not find any infirmity in the order passed by the trial Court and accordingly, the Civil Revision Petition is dismissed. However, a direction is given to the trial Court to dispose of the suit in O.S.No.1877 of 2019 as expeditiously as possible preferably within a period of four (4) months from the date of resumption of physical hearing of the Courts. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14.09.2020

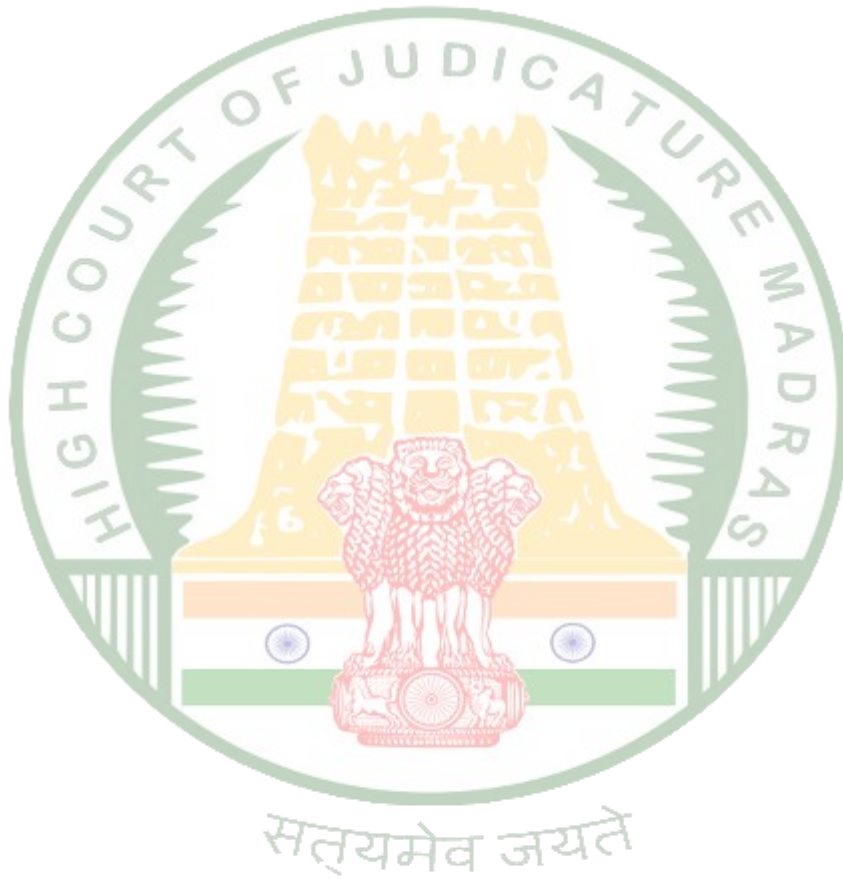
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Speaking Order : Yes/No

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To

The VIII Assistant City Civil Court,
Chennai.

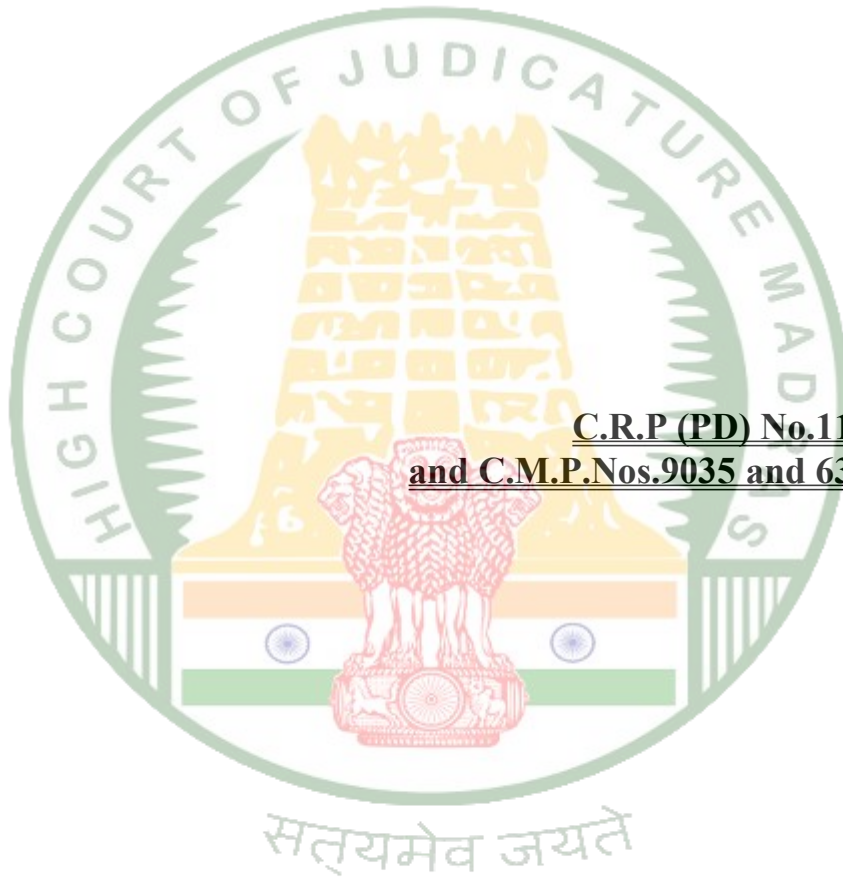


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