

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 13TH DAY OF OCTOBER 2020

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A.No.2149 of 2020
in
C.S.No.551 of 2014
and
O.P.No.264 of 2013

C.S.No.551 of 2014:

S.Rajagopal Raju Trust (Regd.No.2331 of 2007)

Represented by its Treasurer/Trustee

(*)K.Ravikumar,

having office at No.3,

Soorammal Street,

Egmore-Chennai-600 008

..Plaintiff

(*) Amended as per order dated 05/08/2020 in A.No.685/2020

Vs

1.N.Muthu Krishnan,
S/o.Narayanasamy,
No.4/250, J.J.Nagar,
Mugappair West, Chennai-600 037.

2. Mr.M.Jaikar,
S/o.Late Baskar Raju,
No.22/17, North Thirumalai Nagar,
1st Street, Villivakkam, Chennai-600 049.

3. Miss.Lokitha Jaikar,
D/o.M.Jaikar,
No.22/17, North Thirumalai Nagar,
1st Street,
Villivakkam, Chennai-600 049.

4. Mrs.Santhi alias Santhi Ramachandran,
W/o.Ramachandran,
D/o.Late Mr.L.Bakthavatsalaraja,
Plot No.1, K.K.Nagar,
Srinivasapuram, Guduvancherry Post,
Chengalpet Taluk,
Kancheepuram District-603 202.

5. Mrs.Devi Bai,
W/o.Late Mr.L.Bakthavatsalaraja,
Plot No.1, K.K.Nagar,
Srinivasapuram,
Guduvancherry Post,
Chengalpet Taluk,
Kancheepuram District-603 202.

6. Mr.L.Sudhakar,
S/o.Late Lakshmipathy,
New Door No.13/6, (Old Nos.40 and 31)
Veerasamy Street,
Muthialpet, V.O.C.Nagar,
George Town, Chennai-600 001

7. Mr.A.Logudoss,
S/o.Anandamudaliar,
Old Door No.5A, New Door No.23,
Palaniyappan Street,
Ayanavaram, Chennai-600 023.

..Defendants

O.P.No. 264 of 2013

In the matter of Indian
Trust Act, 1882
AND
In the matter of
Rajagopal Raju Trust

N.Muthukrishnan
Son of Narayanasamy,
aged about 53 years,
residing at No.4/250, J.J.Nagar,
Mugapair West, Chennai-600 037.

..Petitioners

-VS-

1. Rajagopal Raju
Trust by its Trustee,
Private Trust,
Office at No.1, Suramangalam Street,
Egmore, Chennai-600 008.

2. Lokaiah Raju
residing at No.1,
Suramangalam Street,
Egmore, Chennai-600 008.

3. Lakshmi Narayana Raju
residing at No.1,
Suramangalam Street,
Egmore, Chennai-600 008.

..Respondents

C.S.No.551 of 2014 in A.No.2149 of 2020:-

N.Muthu Krishnan,
S/o.Narayanasamy,
No.4/250, J.J.Nagar,
Mugappair West, Chennai-600 037.

..Applicant/1st Defendant

-Vs.-

1.S.Rajagopal Raju Trust (Regd.No.2331 of 2007)

Rep. by its Treasurer/Trustee

K.Ravikumar,

Residing at No.3,
Soorammal Street,

Egmore, Chennai-600 008

..Respondent/Plaintiff

2. Mr.M.Jaikar,
S/o.Late Baskar Raju,
No.22/17, North Thirumalai Nagar,
1st Street, Villivakkam, Chennai-600 049.

3. Miss.Lokitha Jaikar,
D/o.M.Jaikar,
No.13/10, Rajiv Gandhi Nagar,
South Mada Street Extn.,
Villivakkam, Chennai-600 049.

4. Mrs.Santhi Alias Santhi Ramachandran,
W/o.Ramachandran,
D/o.Late Mr.L.Bakthavatsalaraja,
Plot No.1, K.K.Nagar,
Srinivasapuram, Guduvancherry Post,
Chengalpet Taluk,
Kancheepuram District-603 202.

5. Mrs.Devi Bai,
W/o.Late Mr.L.Bakthavatsalaraja,
Plot No.1, K.K.Nagar,
Srinivasapuram, Guduvancherry Post,
Chengalpet Taluk,
Kancheepuram District-603 202.

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New Door No.13/6, (Old Nos.40 and 31)
Veerasamy Street,
Muthialpet, V.O.C.Nagar,
George Town, Chennai-600 001

7. Mr.A.Logudoss,
S/o.Anandamudaliar,
Old Door No.5A, New Door No.23,
Palaniyappan Street,
Ayanavaram, Chennai-600 023.

..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to reject the
plaint along with the claims of the 4th defendant, Shanti Ramachandran with
a suitable direction on the continued execution of the tasks stated in the Will
dated 18.03.1901.

This Application coming on this day before this Court for hearing, the court made the following order:

This application has been filed to reject the plaint along with the claims of the 4th defendant with a suitable direction on the continued execution of the tasks stated in the will dated 18.03.1901.

2. The main contention of the learned counsel appearing for the first defendant is that rejection of the plaint was made on the ground that the Will was executed by the Trust in the year 1901 and it cannot be proved after 119 years. All the attesting witnesses as per the endorsement of Sub Registrar in Page No.10 of the typed set are filed and it is very difficult to prove the Will and cause of action is also not properly averred in the plaint.

3. Learned counsel appearing for the first defendant would further submit that the trust created is a bogus one and plaintiff's trust has been created without any authority.

4. On entire perusal of the facts for rejection of the application, it indicates that as if challenging the veracity and evidence on the probability of the case, none of the ground was raised under Order 7 Rule 11 of CPC.

Whether the Will is likely to be proved in the Court of law and whether the

trust deed is the result of bogus transaction, cannot be decided in the instant application. This Court cannot go into the merits of the case under Order 7 Rule 11 of CPC and cannot make a roving enquiry. It has to be proved only in the light of the evidence adduced by the parties after framing necessary issues.

5. In such a view of the matter, this Court is of the *prima facie* view that cause of action has to be gathered from the averments made in the plaint and not from the defendants, pleadings nor from the documents. It is premature to hear the instant application and contention that the entire suit is liable to be dismissed, at this stage and moreover, no evidence is available to prove the will.

6. With the above observation, instant application is dismissed.

Sd./-N.S.K.J
13.10.2020

//Certified to be true copy//
Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

JJ 22/10/2020