

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.03.2020
Pronounced On	11.03.2020

CORAM

THE HONOURABLE Dr.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

O.S.A.No.284 of 2018

1.K.Dharmaraj
2.P.Nagaraj
3.C.Govindaraju
4.T.Ramamoorthi
5.A.Saraswathi

.... Appellants

Vs.

1.Sir M.Ct.Muthaiah Chettiar -
Higher Secondary School Trust
Rep. by its President
No.23, Raja Annamalai Road,
Purasawalkam, Chennai - 600 084.

2.Kamala Muthiah
3.Arthi Meenakshi Muthiah
4.Tarun Ghai
5.Nandini Valli Muthiah
6.Supriya Ananth Reddy

7.Lady M.Ct.Muthiah Chettiar -
Girls Higher Secondary School Trust,
Rep. by its President
No.13/14, Dr.Alagappa Road
Purasawalkam, Chennai - 600 084.

8.Sir M.Ct.M.Centenary School Society
Registered as No.283 of 1992
Rep. by its Secretary
Mrs.Nandhini Valli Muthiah
Old No.63/New No.6, Ormes Road,
Kilpauk, Chennai - 600 010.

... Respondents

Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with under Clause 15 of Letters Patent against the order and decretal order dated 25.10.2017 passed by the learned Single Judge in Application No.4173 of 2017 in C.S.D.No.24437 of 2017.

For Appellants

: Mr.V.Selvaraj
For M/s.D.Jaya Singh

For RR 1, 3, 4, 6, 7 & 8 : M/s.Najeeb Usman Khan

For RR 2 & 5

: M/s.Abitha Banu

JUDGMENT

R.SURESH KUMAR, J.

This intra-Court Appeal was preferred against the fair and decretal order passed by a learned Single Judge of this Court in Application No.4173 of 2017 in C.S. Diary No.24437 of 2017, by order dated 25.10.2017.

2. The relevant facts which are required to be noticed for the disposal of this Appeal are as follows:

(i) That in the year 1930, a Trust Deed was executed by late one Sir.M.Ct.Muthiah Chettiar, who has already established a School in the city of Chennai, the said Trust seems to have owned extensive properties.

(ii) While so, in the year 2013, two Civil Suits were filed before this Court i.e., C.S.No.598 of 2013 and C.S.No.603 of 2013, which, according to the Appellants, were the collusive suits filed by the Respondents 2 to 5 herein to divide the properties of the 1st Respondent Trust.

(iii) However, it is a case of the Respondents that, the said suits were filed for framing a Scheme by thus, a Scheme was settled by this Court by Judgment and Decree dated 27.02.2014 in both the suits viz., C.S.No.598 of 2013 and C.S.No.603 of 2013 and based on such decree, the 1st Respondent Trust is to be maintained by the other Respondent Trustees which runs some Schools, including the 7th and 8th Respondents School.

(iv) In this context, it is the case of the Appellants that, there had been mismanagement in the Trust as the Respondent Trustees being the family members of the original author of the Trust in order to grab the property, filed the aforesaid suits i.e., C.S.No.598 of 2013 and C.S.No.603 of 2013, thereby they grabbed extensive properties of the Trust,

therefore, whatever the orders passed, Schemes settled by the Judgment and Decree of this Court in the said suits would not serve the purpose of protecting the Trust and its properties, therefore, in order to frame a Scheme and also to remove the existing Trustees from the Trusteeship, a comprehensive suit was instituted by the Appellants, who were the Plaintiffs/Applicants before the learned Judge. They claimed to have been the interested parties of the Trust as they are either retired teaching staff or the parent of the Alumni and joined together within the meaning of Section 92 of the Code of Civil Procedure and filed the suit C.S. Diary No.24437 of 2017 where they filed the present Application i.e., A.No.4173 of 2017 seeking for the leave of this Court to institute the said suit.

(v) The learned Judge, who, having heard the application, by the order impugned dated 25.10.2017, rejected the said application on various grounds. Aggrieved over the said order of the learned Judge rejecting the leave application in A.No.4173 of 2017, by order dated 25.10.2017, the Appellants preferred this intra-Court Appeal.

3. We have heard Mr.V.Selvaraj, learned counsel appearing for the Appellants, who would submit that, the decree passed by this Court in the year 2014 in the suits C.S.No.598 of 2013 and C.S.No.603 of 2013 are collusive decrees, pursuant to which, the Respondents 2 to 5 divided the properties belong to the 1st Respondent Trust at their convenience, thereby large extent of properties are misused and there had been complete mismanagement of the Trust as the Respondents 2 to 5 are family members. Therefore, in order to settle the house of the 1st Respondent Trust, the Appellants, who are the erstwhile Teachers worked in the School run by the 1st Respondent as since have been retired, joined together and wanted to file the said suit. He would further submit that, since the Scheme suit under Section 92 C.P.C. has to be laid only after getting the leave from the Court, the necessary application for the said purpose was made in Application No.4173 of 2017, which was erroneously rejected by the learned Judge without plausible reasons, therefore, the said order is liable to be interfered with, he contended.

4. However, M/s.Abitha Banu, learned counsel for Respondents 2 and 5 and Mr.Majeed Usman Khan, learned counsel for Respondents 1, 3, 4, 6, 7 & 8 made submissions that the Appellants, who were the Applicants before the learned Judge, who wanted to file the suit for framing the Scheme, are not the really interested persons on the Trust as they have been disgruntled persons for some action initiated or taken against them by the School Management as these Appellants are the retired Headmaster, Teacher of the School run by the 1st Respondent Trust and one among them claimed to be the parent of an Alumni. They also contended that, therefore, their interest

is personal and not in the interest of the Trust, therefore on the ground of interested persons on the Trust, they cannot be permitted to lay any suit for framing a Scheme under Section 92 C.P.C.

5.The learned counsel would also contend that, if at all the Appellants wanted to bring to the notice of this Court about any alleged mismanagement of the Trust, they can do so by getting impleaded in a suit already filed for this purpose and is pending before this Court. Therefore, according to the learned counsel for the Respondents, the present application, which triggered the present Appeal, seeking leave to file a fresh suit, of course, for the similar or same purpose, would no way be helpful to the Appellants themselves and in fact, it would amount to multiplicity of proceedings, which at any cost, may be avoided.

6.The learned counsel also submitted that, already the Scheme framed and settled by this Court in the aforesaid two Civil Suits are working well, accordingly, the Trust is maintaining the Schools and properties and in this regard, if at all any mismanagement is noticed, even in the said suits, where the decrees were passed and the Schemes settled, applications can be filed for any modification of the working of the Scheme. Since this is also possible which the Appellants have not chosen to invoke, they cannot seek indulgence of this Court to permit them to file a fresh suit for the very same purpose. Therefore, according to the learned counsel for the Respondents, the said application seeking such leave had been rejected by the learned Judge rightly, hence, it does not warrant any interference from this Court.

7.We have heard the learned counsel appearing for both sides and have perused the materials placed before this Court.

8.The issue raised in this Appeal is in very narrow compass to say as to whether the Appellants herein are entitled to get leave under Section 92 of C.P.C. to file the suit in C.S. Diary No.24437 of 2017 to frame a Scheme in respect of 1st Respondent/Trust or not.

9.In this context, we would like to refer the prayer sought for in the Complaint filed by the Appellants in C.S. Diary No.24437 of 2017 which reads thus:

"The plaintiffs therefore pray that this Hon'ble court may be pleased to pass a Judgment and Decree

a) Settling a scheme for the administration of the 1st defendant Trust and i) Sir M.Ct.Muthiah Chettiar Boys Higher Secondary School, No.23, Raja Annamalai Road, Purasawalkam, Chennai- 600 084, ii) Lady M.Ct.Muthiah Chettiar Girls Higher Secondary School, No.13/14, Dr. Alagappa Road, Purasawalkam, Chennai-600 084 and

iii) Shri M.Ct.Muthiah Memorial Matriculation Higher Secondary School, Old No.63/New No.6, Ormes Road, Kilpauk, Chennai - 600 010.

b) For removal of defendants 2 to 6 from the office of Trustees.

c) For accounts and inquiries.

d) Award the cost of this suit and

e) Pass such other or further orders as this Hon'ble court may deem fit and proper in the circumstances of the case and render justice."

10.It is to be noted that, already a civil suit in C.S.No.717 of 2016 was filed by two interested persons viz., P.Sankaranarayanan and K.Palani against the Respondents 1 to 3 herein along with AG & OT and the Secretary to Government of Tamil Nadu, Department of School Education where the following prayer has been sought for.

"It is therefore prayed that this Hon'ble court may be pleased to grant the decree and judgment

a) to remove the existing Trustees for their mal-administration, misfeasance, dereliction of their obligation towards the Trust and acting against the interest of the Sir M.Ct.Muthaiya Chettiar Higher Secondary School Trust to take over the same to administer either through the 4th Defendant or by appointing administer as it deem fit and proper in accordance to the objects of the trust.

b) to frame a scheme by excluding the existing trustees of vested personal interested to appoint and regulate the administration by and through appropriate regulations and suggestions to be formulated by this Hon'ble Court to envisage the continuation of the Sir M.Ct.Muthaiya Chettiar Trust with it's objects and purpose for ever and

c)to assess the actual loss caused by the defendants and siphoning of trust assets and amounts to recover the same to benefit of the trust.

d) to issue the mandatory injunction to restrain and remove the extraneous and business activities of the defendants from the premises of the Trust properties and institution premises and

e)to appoint the necessary teachers staffs and other required employees to facilitate the functions of the institutions belongs to the Trust to achieve its' glory to original position and

f)To award the cost as against the defendants herein and

g)To pass such other order or orders deem fit and proper to the circumstances of this case and thus render justice."

11.This apart, yet another suit also has been filed in C.S.No.87 of 2017 by the 2nd Respondent herein viz., Mrs.Kamala Muthiah against Respondents 1, 3 & 5 to 7. In the said C.S.No.87 of 2017, prayer sought for is to declare that the Plaintiff therein is the Trustee for life and President of the Trust and other consequential relief.

12.It is an admitted fact that, both the suits i.e., C.S.No.87 of 2017 and C.S.No.717 of 2016 are pending before this Court.

13.Only in that context, it was submitted by the learned counsel appearing for the Respondents herein that, though the Appellants are not the interested parties of the Trust and absolutely there is no scope for them to file any suit for Scheme decree against the 1st Respondent Trust and other Trustees, if at all they have any grievance and if they alleged any mismanagement against the present Trustees of the 1st Respondent Trust, they can file necessary application to get impleaded themselves in either of the suits especially in suit C.S.No.717 of 2016 where a similar prayer had been sought for by other two interested persons.

14.We have considered the said submission made by the learned counsel for the Respondents and we deem it appropriate to relegate the Appellants to file necessary application in the pending suits where atleast in C.S.No.717 of 2016 almost a similar prayer as that has been sought for by the present Appellants in their suit has already been sought for.

15.That apart, the learned Judge, in the order impugned, has given reasons exhaustively to conclude that, the present Appellants are not the persons interested within the meaning of Section 92 C.P.C., therefore, on that ground itself, the learned Judge has rejected the application. To appreciate the same, the relevant portion of the order of the learned Judge, which is impugned herein, are quoted below:

"2. The first respondent is Sir M.Ct. Muthaih Chettiar Higher Secondary School Trust, represented by a President and the respondents 2, 3, 4, 5 and 6 are the President and other Office bearers of the first respondent trust and the 7th respondent is the Lady M.Ct. Muthaih Chettiar Girls Higher Secondary School Trust and the 8th respondent is Sir M.Ct.M. Centenary

School Society.

3. The first applicant is a retired Headmaster; the second and third applicants are retired Senior Teachers; the fourth applicant is a retired Assistant Headmaster and the fifth applicant is a parent of an old student.

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8. It had been pointed out by the learned counsel that the applicants are persons interested since the first applicant was a retired Headmaster and second and third applicants were retired Senior Teachers and the fourth applicant was a retired Assistant Headmaster and the fifth applicant was a parent of an old student. The learned counsel further stated that therefore, as persons interested, they are concerned with mismanagement and breach of trust of the first respondent trust and its properties and the schools and consequently has stated that they are entitled to move this application seeking orders of this Court to frame a scheme for the first respondent's trust.

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27. In 2008 (3) CTC 868, Vidyodaya Trust -vs- R. Mohan Prasad and others, the Supreme Court held that "The object of Section 92, CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by Suits filed against them. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of public trusts. Thus there is need for scrutiny. In the Suit against public trusts, if an analysis of the averments contained in the plaint it transpires that the primary object behind the Suit was the vindication of individual or personal rights of some persons an action under the provision does not lie."

28. It is clear that the applicants are engaged in speculative litigation. They could use their experiences as former Headmaster / Assistant Headmaster, Senior Teacher to teach under privileged children as a social cause, impart education in Government Homes for Children in need of care and protection and for children in conflict with laws, juvenile homes or atleast in prisons so that the

convicts may come out empower with education. I am not impressed with their bona fide. They cannot be categorised as 'persons interested'.

29. Seeking permission of the Court to intervene in a Trust primarily with a view to control its properties and bank accounts cannot be permitted and I find no reason to grant the relief sought. Accordingly, the application is dismissed. Consequently, C.S.D.No. 24437 of 2017 stands rejected."

16. Though the learned Judge, by giving plausible reasons, has concluded that, the Appellants herein, who were the Applicants before the learned Judge, are not the persons interested within the meaning of Section 92 C.P.C., in view of the stand taken by the learned counsel appearing for the Respondents herein, while confirming or sustaining the order of the learned Judge, we are inclined to give liberty to the Appellants to file necessary applications in any of the pending suit referred to above, especially in C.S.No.717 of 2016 to implead themselves as party Defendants where they can raise the issue, which they wanted to raise through a fresh suit, which they presently attempted to lay.

17. In view of the aforestated reasons, facts and circumstances, we are of the considered view that, this Appeal deserves to be rejected, accordingly, we dismiss the Appeal, however, with liberty to the Appellants to file appropriate application in the manner known to law in the pending suit/suits for getting impleaded as party Defendants, if they are advised to do so. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

Sgl

To

1. The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to M/s.Abitha Banu, Advocate SR.No.21888

+1cc to Mr.D.Jaya Singh, Advocate SR.No.22393

+1cc to Mr.Najeeb Usman Khan, Advocate SR.No.21521

O.S.A.No.284 of 2018

VBA (CO)

GMV (17/06/2020)