

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2020

Delivered on : 09.09.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No.158 of 2017

1.N.Mahadevan

2.N.Allimuthu

... Plaintiffs

Vs

1.Kankipatti Kanniah Chetty Charitable Trust,
Represented by its Trustees,
No.53 & 55, Eluthukaran Street,
Kaladipet, Chennai - 600 019.

2.G.Nagarajan

3.G.Subashini

4.P.Parthasarathy

5.P.Lakshminarayanan

... Defendants

Prayer: Suit filed under Order VII Rule 1 read with Order IV Rule 1 of the Original Side Rules and Section 92 of the Code of Civil Procedure praying to frame scheme for the Kankipatti Kanniah Chetty Charitable Trust, now

functioning at No.53 & 55, Eluthukaran Street, Kaladipet, Chennai - 600 019.

For Plaintiffs : Mr.S.Bhuvaneswaran

For Defendants : No Appearance

JUDGEMENT

The above suit has been filed under Section 92 of the Code of Civil Procedure seeking the following reliefs:

"a) Directing to frame scheme:

b) Appoint the plaintiffs as Joint Trustees of the said Kankipatti Kanniah Chetty Charitable Trust, now functioning at No.53 and 55, Eluthukaran Street, Kaladipet, Madras - 19 as deemed fit by this Hon'ble Court;

c) Directing to remove the Defendant 2 to 5 have ceased to be the joint trustees of the Kankipatti Kanniah Chetty Charitable Trust, now functioning at No.53 & 55, Eluthukaran Street, Kaladipet, Madras - 19;

d) Directing the defendants to render true and proper accounts in respect of the Trust known as Kankipatti Kanniah Chetty Charitable Trust, now functioning at No.53 and 55, Eluthukaran Street, Kaladipet, Madras - 19 and its properties more fully described in the schedules hereunder commencing from 01.04.1976 to till date.

2. The plaintiffs would contend that the 1st plaintiff is a retired Dock Superintendent in the Chennai Port and Dock Labour Board, President of the Employees Progressive Union and Social Worker. The 2nd plaintiff is working in the Chennai Port Trust and assisting the 1st plaintiff in his social work. This is the qualification that has been put forward by the plaintiffs for filing the above scheme suit.

3. The plaintiffs have approached this Court seeking the reliefs mentioned above on the ground that the properties in question belonged to one Pasumarthi T.Krishnaswamy Chetty who has executed a Will dated 21.08.1925, in and by which he had appointed his wife Pasumarthi

Venkatamma alias Sri Rangacharamma and three others as Executors and Trustees to administer his properties as well as the Estate belonging to Kankipatti Kanniah Chetty, herein after called the 1st defendant Trust, leaving directions to collect the income from the properties and apply it for the charities mentioned in the Will. The properties belonging to Kankipatti Kanniah Chetty has been described as schedule B in the Will and it was only these properties that were set apart for charity.

4. The plaintiffs would go on to state that the 1st defendant Trust had been created by one Kankipatti Kanniah Chetty. The properties described in the B - schedule to the suit had been endowed to the Trust. The Testator had directed the Executors of his Will to continue the charities from out of the income of the 1st defendant Trust. The Executors had probated the Will of late T.Krishnaswamy by filing O.P.No.183 of 1927 on the file of this Court.

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5. Over a period of time Sri Rangacharamma became the sole trustee as the other trustees had passed away. By efflux of time, the properties of

the trust became dilapidated due to poor up keep and maintenance and the income derived therefrom became very meagre and the charities as set out in the Will of T.Krishnaswamy could not be performed and the 1st defendant Trust could not liquidate the debts due to T.Krishnaswamy.

7. In view of the above situation Sri Rangacharamma had entered into an agreement with one Bysani Krishnaiah Chetty and she appointed him as sole trustee of the 1st defendant Trust and transferred all her rights to him. The said Bysani Krishnaiah Chetty discharged the debts due to her husband, T.Krishnaswamy Chetty from the Trust. The parties reduced their agreement into writing vide Transfer deed dated 03.02.1930 in and by which the said Bysani Krishnaiah Chetty became the sole Trustee.

8. The said Bysani Krishnaiah Chetty administered the Trust till the year 1938 and thereafter he transferred the Trusteeship in favour of his son Bysani Rangaiah Chetty under a deed of transfer dated 04.05.1938. He had improved the Trust and was discharging the duties imposed on him with regard to the 1st defendant Trust. In turn, the said Bysani Rangaiah

Chetty had transferred his rights as Trustee to his wife, Bysani Sundaramma by deed dated 05.02.1955. All these deeds have clearly set out that the terms of the Will of the deceased T.Krishnaswamy Chetty had to be complied with in letter and spirit.

9. Thereafter, on the death of Bysani Sundaramma, the 3rd defendant and Lakshmi Bai became the trustees of the 1st defendant Trust. The 3rd defendant, with a view to enjoy the properties for her personal gains had, even during the lifetime of her mother, kept her sister Lakshmi Bai away from the management of the 1st defendant Trust. In furtherance of this design, she had got a settlement deed dated 15.11.1976 executed by her mother in her favour. The plaintiffs would submit that this document is not valid in the eye of law as it was obtained by fraud, undue influence and coercion.

10. Lakshmi Bai challenged the genuineness and validity of the settlement by filing a suit and ultimately, she had succeeded before this Court in a Second Appeal by Judgement and Decree dated 20.01.1987 (*No*

details of the proceedings have been provided).

11. While the proceedings were pending, the 3rd defendant had taken possession of the schedule mentioned properties on the strength of settlement deed in her favour and she started collecting rents from the tenants in the schedule mentioned property. No accounts were maintained and added to this the 3rd defendant was personally enjoying a portion of the property which was capable of yielding considerable income in the form of rental. Though the rents were collected by her, she did not take any steps for the maintenance and up keep of the schedule mentioned properties or for performing the charities.

12. Meanwhile, the legal heirs of the said Lakshmi Bai have filed filed C.S.No.685 of 1997 for the appointment of new trustees on account of mismanagement by the 3rd defendant. This Court in the said suit had directed that both the parties should jointly perform Utsavams and Kattalias which has been performed by the 1st defendant Trust and also to effect the improvement in the properties of the Trust described in the

schedule to the plaint. This Court had directed the Trustees to collect the rents from the tenants and operate a bank Account in the name of the Trust, jointly perform the Utsavams and Kattalias from out of the rental collections. This Court had also permitted the Trustees to jointly occupy the A Schedule property. Further, the 3rd defendant was directed to reimburse the sum of Rs.1,20,000/- spent by her when there was no amounts available with the 1st defendant Trust. The Trustees were also required to effect improvement to the Trust properties and the 4th defendant was directed to render accounts.

13. It is the case of the plaintiffs that the trustees were not evincing any interest in the management of the Trust properties and were also not executing the desire of the Testator. For these reasons, the plaintiffs have issued a legal notice to the defendants dated 06.01.2008 about their mismanagement. The notice was received by the defendants but there was no reply. Yet another legal notice dated 14.12.2009 was issued by the plaintiffs reiterating the contents of their earlier notice, however once again there is no response.

14. The plaintiffs would further state that in the year 2010 the trustees had sold a portion of the property measuring two grounds through their Power Agent on 05.07.2010. Therefore, the 1st plaintiff had intimated the sale to the official Trustee of the Tamilnadu by his notice dated 17.11.2011. The Official Trustee was requested to take appropriate action. However, the Official Trustee who had received the notice had also not responded to this letter. The purchaser of the property without obtaining the permission of this Court has purchased the property belonging to a Public Trust. It is on these basis that the suit has come to be filed.

15. The defendants who have been served have not entered appearance either in person or through pleader. Therefore, they were set ex parte and the suit was posted as an Undefendant Board proceeding. The 1st plaintiff has adduced evidence for self and on behalf of the 2nd plaintiff. A proof affidavit has been filed reiterating the contents in the plaint and following documents have been filed by the plaintiffs in proof of their case.

Sl.No.		Description of documents
1	Ex.P.1	The photocopy of the last Will of P.T.Krishnaswamy Chetty dated 21.08.1925 (Document is incomplete).
2	Ex.P.2	The photocopy of probate granted in O.P.No.183 of 1927 dated 21.02.1928 (Incomplete Document).
3	Ex.P.3	The photocopy of Transfer of Trust from Bysani Rangayya Chetty to Bysani Sundaramma dated 05.02.1955.
4	Ex.P.4	The photocopy of this Court's order in A.No.4376/2006 in C.S.No.685 / 1997 dated 01.11.2006.
5	Ex.P.5	The office copy of Notice issued by plaintiff through counsel to Trustees of the Trust dated 06.01.2008.
6	Ex.P.6	The office copy of notice issued by plaintiff through counsel to Trustees of the Trust dated 14.12.2009.
7	Ex.P.7	The certified copy of sale deed between Trustees and Sunraj Nadar dated 05.07.2010.
8	Ex.P.8	The office copy of legal notice sent by plaintiff's counsel to official Trustees of Tamil Nadu dated 17.01.2011.
9	Ex.P.9	The reply sent by official Trustees of Tamil Nadu dated 04.02.2011.
10	Ex.P.10	The copy of rejoinder sent by 1st plaintiff dated 07.03.2011 to official trustees.
11	Ex.P.11	The certified copy of sale agreement vide document No.340 of 2013 dated 19.06.2013.
12	Ex.P.12	The certified copy of sale agreement vide document No.338 of 2013 dated 19.06.2013.
13	Ex.P.13	The office copy of Legal notice sent by 1st plaintiff to Sunraj Nadar dated 25.09.2013
14	Ex.P.14	The certified copy of settlement deed executed by Sunraj Nadar in favour of Ms.Nila Sunraj Nadar dated 21.04.2014.

15. Ex.P.1 to Ex.P.4 are only photocopies. Though Ex.P.1, Ex.P.2 and Ex.P.4 are the documents relating to proceedings filed before this Court, the plaintiffs have not chosen to file the certified copies. The learned counsel for the plaintiffs has marked the same stating that the originals of Ex.P.1 to Ex.P.4 are available only with the trustees. Ex.P.1 and Ex.P.2 are incomplete documents.

16. The learned counsel appearing for the plaintiffs would submit that the plaintiffs who are social workers and who are living adjacent to the suit property has in the interest of preserving the Trust property and carrying out the charities filed this suit. When a specific question was put to the learned counsel as to the locus standi of the plaintiffs to institute the above suit, the learned counsel for the plaintiffs would submit that they were social workers and their only interest is to ensure that the dedication made by the original Testator is complied with in letter and spirit.

17. He would further contend that the trustees have allowed the properties to fall in disrepair, thereby, bringing down its value. He would further contend that defendants have not carried out any of the Utsavams and Katalias as per the original dedication which has been reiterated in the transfer deeds. He would also submit that the Trust property has been sold without seeking permission of this Court and Ex.P.7, Ex.P.11 and Ex.P.12 would prove the same. He would therefore contend that the recitals in the document would clearly indicate that the trustees have suppressed the fact that the property in question belongs to the 1st defendant Trust. By reason of their failure to manage the Trust property and perform the Kattalais prescribed by the Testator they have rendered themselves unfit to hold the office as trustees. Further they have also fettered away the properties of the Trust by practising fraud. In these circumstances, the suit should be decreed as prayed for.

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18. Heard the counsels and perused the pleading and exhibits filed.

19. Since Ex.P.1 photo copy of the Will of Pasumarthi T.Krishnaswamy Chetty dated 21.08.1925 and the photo copy of the probate granted in O.P.No.183 of 1927 dated 21.02.1928 were incomplete this Court had directed the Registry to put up the documents. Though the photo copy of the probate order was not enclosed a copy of the Will has been forwarded for my scrutiny. A perusal of the same would indicate that the suit schedule properties belonged to the Estate of Kankipatti Kanniah Chetty. The Testator Pasumarthi T.Krishnaswamy Chetty in his Will dated 21.08.1925 has issued directions to his wife to perform the charities listed therein from out of the net income derived from out of items 1 and 2 mentioned in schedule B to the Will which are the present suit schedule properties. The Testator has stated that the income from this property, after meeting expenses for repairs and public outgoings have to be spent on the charities which are detailed herein below:

“1.One Uthsavam in the annual Uthsavam of Sri Manavalamahamuni at Poonamallee.

2.One Mandapadi in the annual Brahmautsavam at Thirumushi.

3.One Utsavam in the annual Navarathri Kolu of Thayaruru

(goddess) in Sri Ranganayakulu temple at Madras.

4. One Rupee and eight annas to be spent for each month on one Dhosai (Rise flower cake) every day on the occasion of Thirumalaivadai in Koorathalwar Samathi at Kooram near Conjeevaram.

5. Fifteen Thathyodanam thaligas (i.e. Curd mixed with rice) on the occasion of the annual car festival of Sri Prabalavurvaswami at Kaladipet.

6. Four Rupees for each year towards Manoram at Melkottai on the day of Vyramudi.

7. Twenty five Rupees per year on the occasion of the feast of Thirumangaialwar to goddess Andalamma at Sriperumbudur.”

20. Therefore, the very language of the bequest would clearly indicate that the properties in question has been totally dedicated for the charities. Ex.P.3 would indicate that under a deed of transfer dated 02.02.1931 registered as Doc. No.217 of 1931 Pasumarthi Venkamma @ Sri Ranganacharamma, the wife of the original Testator, Pasumarthi T.Krishnaswamy had transferred all her rights in the estate of Kankipati

Kanniah Chetty's charity to Bysani Krishnayya Chetty and had appointed him as the sole trustee to administer the properties of the Trust, collect income and perform the charities. The document would also indicate that while taking over the charities Bysani Krishnayya Chetty had paid a sum of Rs.1,650/- to Pasumarthy Venkamma @ Sri Ranganacharamma towards full satisfaction of the debt due to her husband Pasumarthi T.Krishnaswamy mentioned in Ex.P.1, Will.

21. After taking over the charity Bysani Krishnayya Chetty was carrying on the activities of the Trust, later, on account of his work he wanted to be discharged from the trusteeship and therefore he transferred the trusteeship to his son Bysani Rangayya Chetty under a deed of transfer dated 04.05.1938 registered as Doc. No.923 of 1938. Thereafter, the said Bysani Rangayya Chetty had transferred his interest in the trust to his wife Bysani Sundaramma under Ex.P.3 deed.

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22. The terms of the transfer clearly stipulates that the property would vest with the transferee, namely, Bysani Sundaramma subject to the

terms and provisions of the Will dated 21.08.1925. Therefore, it is clearly evident that the transfer was effected on condition that the charities stipulated in Ex.P.1, Will is undertaken and carried out by the Transferee. On the demise of Bysani Sundaramma, the 3rd defendant and Lakshmi Bai became the trustees of the 1st defendant Trust. The 3rd defendant appears to have taken complete control and charge of the properties' income without giving any income to the said Lakshmi Bai and in furtherance thereof she had also got settlement deed dated 15.11.1976 executed in her favour by her mother. This was the subject matter of challenge by Lakshmi Bai, who ultimately succeeded before this Court in the Second Appeal. Thereafter, the sons of Lakshmi Bai had instituted a suit in C.S.No.685 of 1997 against their mother, aunt and others for declaring compromise decree dated 27.02.1991 entered in C.S.No.832 of 1989 as null and void inoperative in law and that the defendant ceased to be the joint trustees of the Kankipatti Kannaiah Chetty Trust or in the alternative to frame a scheme or appoint the plaintiffs as Joint Trustee of the said Kankipatti Kannaiah Chetty Trust and for the injunction restraining the defendant dealing with the affairs of the Trust.

23. Ex.P.4 would indicate that the parties have compromised the dispute and had entered into a compromise memo which was taken on record and a decree passed in terms thereof. The reference has to be made to clause 2, 3, 5 and 8 of the said decree which is extracted herein below:

“2.That both parties hereto shall collect the rents from all tenants from the month of April 1991, jointly and shall operate one bank account jointly in the name of the Trust.

3.That both parties hereto do perform jointly all Utsavams and Kattalais that are now continued to be performed by the Trust.

5.That the plaintiffs and the defendants herein do occupy portions in No.53 and 55 Eluthukaran Street, Kaladipet, Madras-19, respectively and that such occupation shall be only for their personnel occupation and for their family member.

8.That the 2nd defendant herein do render account in respect of the Trust known as at Kankipatti Kanniah Chetty Trust now functioning at No.53 and 55 Eluthukaran Street, Kaladipet, Chennai – 19 and its properties morefully setout in the schedule A, B, C hereunder commencing

from 1.4.1976 till this day if it has not been rendered.”

24. A reading of the decree would clearly show that the parties have been directed to conduct Utsavams and Kattalais from out of the rent collected by them from the properties. Further, Door No.53 and 55, Eluthukaran Street was directed to be maintained for the personal occupation of the family members alone. They were also directed to render accounts in respect of the above property as well as the property mentioned in Schedule A, B and C. In effect, they were directed to preserve the properties.

25. Ex.P.11, Ex.P.12 and Ex.P.14 would clearly show that the defendants have in total contravention of the dedication as well as the orders of this Court in C.S.No.685 of 1997 alienated the properties to third parties and it is clearly evident that the obligations under the Will have not been complied with. The defendants 2 to 5 are guilty of mismanagement as well as usurping the properties that belong to the Trust. Alienations have been done without reference to the Court and further the documents

do not even refer to the properties as Trust properties which is a clear case of fraud. Since defendants 2 to 5 claiming under Bysani Sundaramma appear to be her only legal heirs, this Court is appointing the Official Trustee to take over the management of the first defendant particularly since the properties of the Trust which have been fraudulently alienated should be recovered. The Court is therefore framing the scheme for the management of the first defendant's Trust. The defendants 2 to 5 by their act of functioning contrary to the desire of the Testator have rendered themselves unfit to hold the post of Trustees and are removed from the post of Joint Trustees of the first defendant Trust. The Official Trustee shall take steps to recover the properties of the Trust illegally alienated by defendants 2 to 5. The scheme for the management of the first defendant Trust shall be as follows:

I. Name of the Trust: Kankipatti Kannaiah Chetty Charities, No.53 and 55 Eluthukaran Street, Kaladipet, Chennai - 19.

II. Trustee: The Official Trustee shall be the Trustee in respect of the first defendant Trust and shall administer the same.

III. Objects of the Trust: The list of charities provided in the Will dated 21.08.1925 of Pasumarthi T.Krishnaswamy detailed below:

“1.One Uthsavam in the annual Uthsavam of Sri Manavalamahamuni at Poonamallee.

2.One Mandapadi in the annual Brahmautsavam at Thirumushi.

3.One Utsavam in the annual Navarathri Kolu of Thayaru (goddess) in Sri Ranganayakulu temple at Madras.

4.One Rupee and eight annas to be spent for each month on one Dhosai (Rise flower cake) every day on the occasion of Thirumalaivadai in Koorathalwar Samathi at Kooram near Conjeevaram.

5.Fifteen Thathyodanam thaligas (i.e. Curd mixed with rice) on the occasion of the annual car festival of Sri Prabalavurvaswami at Kaladipet.

6.Four Rupees for each year towards Manoram at Melkottai on the day of Vyramudi.

7.Twenty five Rupees per year on the occasion of the feast of Thirumangaialwar to goddess Andalamma at Sriperumbudur.”

27. The suit is therefore decreed with reference to the prayers (a),
(c) and (d) and rejected with reference to (b).

09.09.2020

Internet : Yes/No
Index :Yes/No
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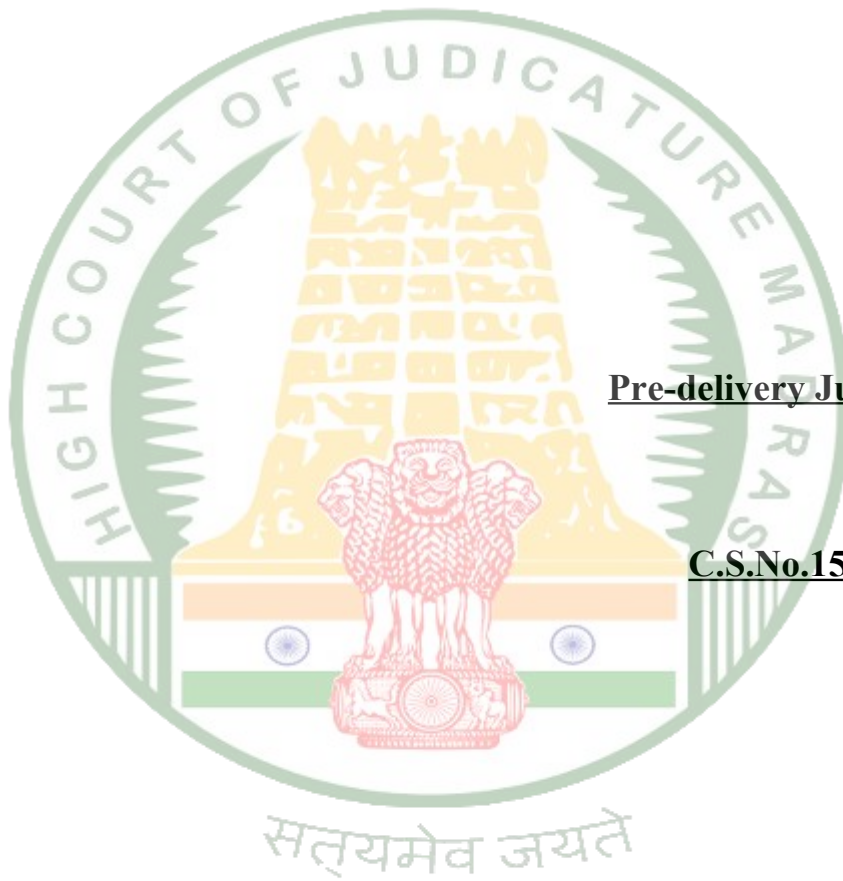


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Pre-delivery Judgement

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