



trial Court passed a common order in both the I.A. Petitions. Both the petitions are dismissed by the trial Court. Against which, the petitioner has filed this revision petitions.

4. Brief substance of the petition in I.A.Nos.68 and 69 of 2019 is as follows:

The suit properties belong to one Valayapatti Ramanathan Chettiyar's son A.R.M.A. Annamalai Chettiyar. He constituted a trust and registered the same on 02.09.1971 before the Ponamaravathi Sub registrar office. Kasi Chettiyar, son of Annamalai Chettiyar was one of the trustee. He was the secretary and treasurer of the trust. The motive of the trust is to perform daily poojas in Thenmalai Sri Subramaniya Swami Temple and to feed the devotees. Annamalai Chettiyar gifted the suit property to the trust on 27.07.1972. As per the terms of the trust after the demise of Kasi Chettiyar, the plaintiff, who is the son Kasi Chettiyar has to take charge as a trustee. One Meenakshi Achi and Saratha Achi were acting against the interest of the trust and to safeguard the trust, the plaintiff has filed a suit before the learned Principal District Munsif in O.S.No.113 of 2008 and he obtained a decree in his favour on 28.01.2009 and the property was mentioned as the first schedule.

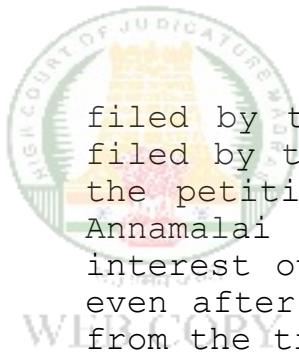
5. The plaintiff filed another suit calling upon the defendants to submit the accounts for the Thenmalai Pasumadam trust against Saratha Achi in O.S.No.53 of 2013 and in that case, Saratha Achi submitted a written statement stating that she left the trust. The son of the founder of the trust, Annamalai Chettiyar and his grandson Annamalai have filed a suit in O.S.No.68 of 2016 for framing a scheme for the trust and in that suit, the plaintiff was the third defendant. The petition property was mentioned as A schedule property.

6. The defendant is no way connected with the trust. He does not even belong to the community. The defendant has no right over the property. Since there was no understanding between the trustees, the defendant is trying to grab the property. On 02.08.2019 when the petitioner visited the property, he came to know that the respondent has encroached upon the property and trying to construct 2,000 square feet hollow blocks construction and he has to be prevented by an order of injunction. The prayer in I.A.No.68 of 2019 is for injunction.

7. To prevent the construction, the appointment of an Advocate Commissioner to visit the suit property and to note down the physical features is necessary and hence, petition in I.A.No.69 of 2019 was filed.

8. Brief substance of the counter in I.A.Nos.68 and 69 of 2019 is as follows:

The property belong to the trust is admitted. The petitioner is not connected to the trust and he is not a trustee. The suit



filed by the petitioner is not maintainable. In the earlier suits filed by the petitioner, he claimed that he was a beneficiary. Now the petitioner is claiming trusteeship. The gift deed executed by Annamalai Chettiyar is admitted. Kasi Chettiyar has no personal interest over the suit property. The petitioner was never a trustee even after the demise of Kasi Chettiyar. Kasi Chettiyar was removed from the trust as he acted against the interest of the trust.

9. That document was filed as the sixth document by the plaintiff. The suit in O.S.No.113 of 2008 was filed only against Meenakshi Achi and Saratha Achi and not against Kasi Chettiyar, since Kasi Chettiyar was not a member of the board of Trustees. The exparte decree will not be binding on the defendant. The defendant is a tenant in the trust property from the year 1997. The defendant is not a party to the suit in O.S.No.68 of 2016.

10. The defendant is a tenant and the tenancy agreement was executed by the founder through a rental agreement dated 01.04.1997. Monthly rent was fixed as Rs.4,000/- and Rs.25,000/- was fixed as advance. The defendant is not a trespasser. The defendant continuous to be in possession by running a tea stall in the name and style of Aiswarya Tea stall and the monthly rent was increased by the board of trustees and the present rent is Rs.10,000/- (Rupees Ten Thousand only) per month. The defendant is having his resident in the main building and he is running a tea stall by putting a temporary structure in the vacant site available on the southern side. The respondent was permitted to put up the temporary structure and the temporary structure was disturbed by the Gaja cyclone. The defendant has taken steps to re-model the structure. The second plaintiff in O.S.No.68 of 2016 filed another suit before the District Munsif, Pudukottai in O.S.No.159 of 2019 and the defendant is taking steps to file a Transfer Original Petition for joint trial. The respondent is having electricity connection and he is paying the electricity charges. The trust or the trustees are not parties to the suit. The petition to be dismissed.

11. On the side of the revision petitioner, it is stated that the trial Court has failed to consider Ex.A1 and has failed to consider that the plaintiff assumed office as trustee only after the demise of Kasi Chettiyar and that the trusteeship is automatic and an appointment order is not necessary. The agreement in Ex.B1 is only for a period of three years. No subsequent tenancy agreement was registered. At the time of filing of O.S.No.113 of 2008 and O.S.No.53 of 2013, father of the petitioner was alive and was a trustee at that time and hence, the petitioner filed a suit in the capacity of a beneficiary. Meenakshi Achi and Saradha Achi were trying to alienate the suit property for their personal benefits. Kasi Chettiyar filed a suit in O.S.No.113 of 2008 and he obtained an order of injunction against the alienation. Saradha Achi did not maintain proper accounts.



12.On the side of the revision petitioner, it is stated that the respondent himself has admitted that the title of the suit property is vested with the trust. He has admitted that he is putting up the construction. No written permission from the trust was mentioned. There was no signature in the first page of the document, which was said to have been executed on 01.04.1997. The document was a fabricated one. The authenticity of the rent agreement itself under question. Ex.B1 was not executed by the Trust. The alleged cash deposit was made only in the Indian Bank in the account of one Muthu who was not connected with the trust. The exhibits regarding the payments to the municipalities were in the name of the trust. No prejudice will be caused to the respondent in appoint of a Court Commissioner. The respondent is not doing any business in the property and as the respondent started construction activities, he has to be prevented and prayed the petition to be allowed.

13.On the side of the petitioner, it is stated that while dismissing the petition, the trial Court has made some observation as if the petitioner has no right over the property. Annamalai Chettiyar had five sons and he created a trust in the year 1971 and entrusted the suit property in the year 1972. The founder trustee is not alive and his wife is one of the trustees. Kasi Chettiyar was the 4th son. The 5th son was also dead and his wife is Saradha Achi. The second and third sons were omitted from the trusteeship. The first trustee Annamalai Chettiyar died and there was no replacement and the other three trustees continued the trust. There was no unity among the trustees. Only two door numbers were mentioned in Ex.B1. The respondent was putting up further constructions without the approval of the municipality. Even if there was a lease agreement, it was valid only for three years. A lease agreement for a period of more than three years has to be registered. There was no necessity for separate appointment of a trustee. On the death of Kasi Chettiyar, automatically the petitioner became a trustee.

14.The petitioner filed two suits in the capacity of beneficiary, since Kasi Chettiyar was alive at that time. As long as the father was alive, the petitioner cannot represent as a trustee. O.S.No.68 of 2016 was filed to frame a scheme. That branch has no locus standi and that a branch of family, which was omitted in the original trustee cannot claim trusteeship. The age of the building has to be ascertained and an appointment of a Court Commissioner is necessary and the respondent should be prevented from putting up further construction.

15.On the side of the respondent, it is stated that the property is a trust property and that the respondent is only a tenant. Both the trustees or the trust were not implead as the parties in the suit. The petitioner has not impleaded his father as a trustee in O.S.No.53 of 2013. The suit for a scheme is also



construction is not new. The respondent is only setting right the old temporary structures.

16. On the side of the petitioner, it is stated that the respondent is only a tenant not a trustee or a family member. He has no right to put up any construction. There is no resolution removing Kasi Chettiyar from trusteeship. Only on the instigation of the left out family of the trust, the respondent is contesting the petition.

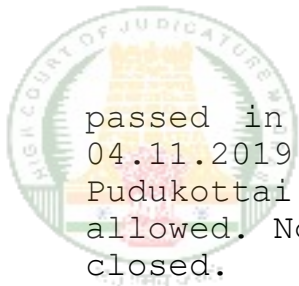
17. 11 documents were marked on the side of the petitioner as Exs.P1 to P11 and 10 documents were marked on the side of the respondent as Exs.B1 to B10. Admittedly the suit property is a trust property and the deed of declaration of trust, was marked as Ex.P1. The gift deed to the trust was marked as Ex.P2. Exs.P3 to P7 were documents regarding the previous litigations pending. Exs.P9 to P10 are documents to prove that the property belong to the trust. From Ex.P2, Ex.P9 to Ex.P11 and from Ex.R7 to Ex.R10, it is clear that the property belonged to the trust.

18. The respondent is claiming to be a tenant and the tenancy agreement dated 01.04.1997 was marked as Ex.R1. The rental receipts were marked as Exs.R2 and R4 and the letters dated 31.01.1998 and 26.01.1998 were marked as Ex.R3. The receipts for payment of amount in bank account was marked as Ex.R5 and Ex.R6. Tax receipts were marked as Exs.R7 and R9. E.B receipt was marked as Ex.R10.

19. Whether the petitioner is a trustee whether the trust and other trustees are necessary parties and whether the tenancy of the respondent is valid are to be decided in the suit, after the completion of the trial.

20. A petition is filed to restrain the respondent from putting up any construction in the suit property and another petition is filed for appointment of Court Commissioner to note down the physical features of suit property. The respondent is denying the right of the petitioner as a trustee. The respondent is only a tenant. Whether the tenant was permitted by the trustees to put up the construction has to be decided by the trial Court. Though the respondent filed 10 documents, none of the documents proved that the respondent was permitted by the trustees to put up the constructions. The respondent has admitted that he is re-modelling the construction and that he is putting up construction adjoining the existing building. The respondent failed to file any document permitting him to put up new construction. Hence, the respondent has to be restrained from putting up any further construction.

21. No prejudice will be caused to the trust in the appointment of a Court Commissioner to visit the suit property to note down the physical features. Hence, the trial Court is directed to appoint a Court Commissioner to visit the suit property to note down the physical features. In the above circumstances, the orders



passed in I.A.Nos.68 and 69 of 2019 in O.S.No.82 of 2019 dated 04.11.2019 on the file of the learned Additional District Judge, Pudukottai is set aside and the civil revision petitions are allowed. No Costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

1.The Additional District Judge, Pudukottai.

C.R.P.(MD)Nos.454 and 456 of 2020

21.07.2020

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