IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 19TH DAY OF FEBRUARY 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

A.No.3296 of 2020
in
C.S. No.678 of 2019

1.Sathrasala Sharath Babu,
Trustee,
Sathrasala Venkatachellum Chetty Charities,
No.110, Pondy Bazaar,
Ranga Complex,
T.Nagar,
Chennai – 600 017.

2.Sathrasala Shaminath
Trustee,
Sathrasala Venkatachellum Chetty Charities,
No.110, Pondy Bazaar,
Ranga Complex,
T.Nagar,
Chennai – 600 017. ... Plaintiff

-Versus-

1.Sathrasala Venkatachellum Chetty Charities,
Rep. By its Secretary,
Mr.Sathrasala Sugunakar,
New No.11, Old No.4,
Kasichetty Lane, III Floor,
Sowcarpet,
Chennai 600 079.

2.Mr.Sathrasala Sugunakar
Trustee,
Sathrasala Venkatachellum Chetty Charities,
New No.11, Old No.4,
Kasichetty Lane, III Floor
Sowcarpet, Chennai 600 079.

3.Mr.Manmohan,
President – Trustee
Sathrasala Venkatachellum Chetty Charities,
No.8/56, Bhaktavachalam Colony,
1st Street, Vadapalani,
Chennai – 600 026.

4.Mr.Kannudu,
Trustee,
Sathrasala Venkatachellum Chetty Charities,
No.114/14, Seven Wells Street,
Chennai – 600 001.

5.Mr.Seshadri,
Trustee,
Sathrasala Venkatachellum Chetty Charities,
No.74/55, 1st Street, 1st Floor,
Chinnamettu Palayam, Tiruvottiyur Post,
Kaladipet,
Chennai – 600 019.

6.Mr.Arun Kumar,
Trustee,
Sathrasala Venkatachellum Charities,
No.84/51, Sannathi Street,
Kaladipet,
Chennai – 600 019.

7.Mr.E.Sudarsan,
Trustee,
Sathrasala Venkatachellum Chetty's Charities,
No.62/33, 1st Floor,
Venkata Rama Iyer Street,
Kondithope,
Chennai – 600 079. ... Defendants

A.No.3296 of 2020:

1.Sathrasala Venkatachellum Chetty Charities,
Rep. By its Secretary,
Mr.Sathrasala Sugunakar,
New No.11, Old No.4,
Kasi Chetty Lane, III Floor,
Sowcarpet,
Chennai 600 079.

2.Mr.Sathrasala Sugunakar
Trustee,
Sathrasala Venkatachellum Chetty Charities,
New No.11, Old No.4,
Kasi Chetty Lane, III Floor
Sowcarpet,
Chennai 600 079.

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Trustee,
Sathrasala Venkatachellum Chetty's Charities,
No.62/33, 1st Floor,
Venkata Rama Iyer Street,
Kondithope,
Chennai – 600 079. ... Applicants/Defendants

Versus

1.Sathrasala Sharath Babu,
Trustee,
Sathrasala Venkatachellum Chetty Charities,
No.110, Pondy Bazaar,
Ranga Complex,
T.Nagar,
Chennai – 600 017.

2.Sathrasala Shaminath
Trustee,
Sathrasala Venkatachellum Chetty Charities,
No.110, Pondy Bazaar,
Ranga Complex,
T.Nagar,
Chennai – 600 017. ...Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to reject the plaint C.S.No.678 of 2019 with high cost.

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

This application has been filed by the defendants in C.S.No.678 of 2019, under Order XIV Rule 8 of Original Side Rules read with Order VII Rule 11 and Section 151 of CPC, for rejecting the plaint.

2. Heard Mr.Sathish Kumar, learned counsel for the applicants/defendants and Mr.G.Rm.Palaniappan, learned counsel for the respondents/plaintiffs.

3. The learned counsel appearing for the applicants/defendants would contend that the petition mentioned suit has been filed by the respondents/plaintiffs, for the following reliefs.

> "a) Framing of the scheme for the proper conduct of the affairs of the first defendant Trust.
>
> b) Direction directing the removal of the second and seventh defendants from the post of Trustees of the first defendant Trust.
>
> c) Directing the defendants to render true and proper accounts in respect of the first defendant Trust from the year 2016 till actual date of rendition of accounts.
>
> d) For a permanent injunction restraining the defendants 2 and 7 from discharging / acting as Managing Trustees / Trustees in the first defendant Trust.
>
> e) to pay the costs of this suit."

4. Learned counsel for the applicants/defendants further submitted that in respect to framing of scheme, it is necessary to get leave from this Court under Section 92 of CPC. But in this suit, till now, the said leave has not been granted. Further, the petition mentioned Trust, is not a public trust. While at the time, the plaintiff was engaged in conducting RCOP proceedings, he himself admitted that the Trust pertains to the suit is a private Trust and hence, he is estopped to contend that the suit mentioned Trust is a public Trust. Therefore, in view of the said reason alone, the plaint now filed by the plaintiffs has to be rejected in limine.

5. The learned counsel appearing for the applicants/defendants would further add that subsequent to the filing of the suit under Section 92 of CPC alleging that the Trust is a public Trust, the 1st plaintiff has filed his counter dated 21.10.2019 in VII Small Causes Court reiterating the fact that the 1st respondent Trust is only a private Trust and not a public Trust. In fact, the 1st respondent Trust is a private Trust with the status of "Association of Persons", to escape from the eyes of Income Tax Act. Apart from that, in a meeting held on 21.09.2019, the 1st respondent/1stplaintiff has been removed from the Trusteeship for all these deceitful acts against the interest

of the Trust. Therefore, in this score also the plaintiffs are not having any locus standi to file the suit and therefore, the plaint in respect to the suit has to be rejected and accordingly, he prayed for allowing this application.

6. Denying the allegations levelled by the applicants/defendants, the respondents/plaintiffs have filed their counter affidavit wherein, they have stated that Sathrasala Venkatachellum Chetty Charities, has been formed by their great grand father and great great grand father, respectively. In the Trust deed, it was mentioned that all the income derived from the Trust properties shall be used for the religious and charitable purpose. Out of the income accrued from the Trust property, the following charitable activities shall be carried on by the 1st applicant Trust, morefully described in Schedule-B and C of the Trust deed. The Schedule B of the Trust deed reads as follows:

> a) Mudaliandan Monthly thirunatchathram at Sri Parthasarathy Temple, at Triplicane at Rs.2-2-0 annually (Rs.25-0-0).
>
> b) Annual Sathumurai of Mudaliandan at Sri Parthasarathy Temple, Triplicane annually (Rs.50-0-0)
>
> (In any event, the said (a) and (b) expenses shall not exceed Rs.80/-).
>
> c) Nithya Karpoora Harathi for Thirumalai Thirupathi Sri Venkateswara Swamy annually (Rs.24-0-0)
>
> d) Vehaparayana Tennachariar Vedapatasala at Srirangam annually at (Rs.24-0-0)

e) Aragimpu at Sriperumpudur Odayar Sannadhi on Arudhramasa – Thirunatchathiram annually (Rs.18-0-0)

f) Vysya Thathiyaradhana conducted by Arya Vysya during Chithirai Festival at Sriperumpudur annually (Rs.5-0-0)

g) Vysya Thathiyaradhana at Poonamallee during Sri Numbi Ootchavam annually (Rs.3-0-0)

h) Vysya Thathiyaradhana at Tirupathi annually (Rs.2-0-0)

i) Vysya Thathiyaradhana for Radhasapthami at Tirupathi annualy (Rs.1-0-0)

j) Brahmin Thathiaradhana at Srivilliputhur annually (Rs.1-0-0)

k) 60 measures of rice shall be given to the person who performs Sriramanavami Festival at Bhajankoodam in Mambalam for Thathiaradhana (Rs.12-0-0).

l) Pushpa Kainkaryam at Thirukatchinambi Temple at Poonamallee annually (Rs.3-0-0).

The following are the charitable activities described in Schedule 'C' of the Trust Deed.

a) Three persons to be fed every day in any Ananda Samajam to be decided by the Board every year annually (Rs.150-0-0)

b) Hundred persons, Vysyas and Brahmins alternatively be fed at the said Ramanujakutam on the following occasions at Annual ceremonies of my father S.Venkatakrishnama Chetty my mother S.Kanakavalli Thyuramma myself S.Venkatachalam Chetty, my first wife S.Rnakavalli Thayurama, my second wife S.Knavalli Thayaramma, my daughter

P.Alamelumangathayaramma, not exceeding annually (Rs.50-0-0)

c) Cremation expenses for poor Arya Vysias from Rs.7/- to Rs.15/- for corpus annually (Rs.120-0-0)

(As there will be no time for the decision of all the Trustees in the payment of the expenses for the cremation of the corpse, any one of the Trustees if he thinks fit recommended payment of the same secretary shall thereupon pay it, if sufficient funds remain on and out of the amount allotted for the year to that head).

7. The learned counsel for the respondents/plaintiffs would further add that being the Charitable Trust, the same has to come within the scope of Section 92 of CPC. Only due to the misappropriation made by the applicants/defendants, the plaintiffs herein were forced to file a suit with an intention to safe guard the welfare of the Trust.

8. The termination of the Trusteeship comes into effect only on 21.09.2019 and the notice of his termination is to be displayed at the notice board of the office of the Trust. But herein, in respect to the termination of Trusteeship, no notice was issued either to the 1st plaintiff or to the 2nd plaintiff, who is none other than the son of 1st plaintiff, prior to the meeting alleged to be held on 21.09.2019.

9. Further, the learned counsel for the respondents/plaintiffs contended that when at the time the plaintiff filed vakalat to prosecute the RCOP cases, he was not permitted to sign by creating scenes, as if he is incapable to represent the Trust. Only in order to escape from the clutches of law, particularly from the charge of misappropriation of funds, the applicants/defendants have filed this application. In otherwise, the applicants 2 to 7/defendants are all acting fraudulently against the interest of the 1st applicant Trust. Therefore, in view of the same, application filed by the applicants/defendants, is not maintainable and liable for dismissal.

10. Submission made by the learned counsel appearing on either side are considered.

11. Initially, on a thorough reading of the order sheet maintained in this case, it appears that though the suit has been filed for the relief of framing of scheme in a public Trust, the application filed under Section 92 of CPC for granting leave, is kept pending without assigning any case number till now. It is the settled position, once leave is granted after hearing of the parties, the question of rejecting the plaint under Order VII

Rule 11 of CPC do not arise. In fact, the application for rejection of plaint should have been made prior to leave having been granted. Therefore, the present application is well within the four corners of law.

12. Secondly, the learned counsel appearing for the applicants/defendants would contend that the Trust pertaining to the suit is a private Trust and therefore the question of filing application under Section 92 of CPC, does not arise. Now in this regard, initially we have to decide whether the suit filed by the plaintiffs/respondents is maintainable in law.

13. Now, coming to the said point, in the case of **Deoki Nandan Vs. Murlidhar**, reported in ***AIR 1957 SC 133***, our Hon'ble Apex Court has held the difference between the public Trust and private Trust as follows:

> “The distinction between a private and a public endowment is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof.”

So, it is necessary to see whether the beneficiaries of this Trust are the general public or a specific individuals.

14. Initially, on going through the proposed Trust deed, it appears that the beneficiaries are the public. In fact as per the deed, the income derived

from the Trust property has to be spent for the charitable purpose. So, the construction of deed itself clearly shows that the beneficiaries are public. Therefore, it cannot be said that the Trust pertains to the suit is a private one. Whether the previous stand taken by the respondents/plaintiffs, is found correct or not, has to be decided only during the time of trial. More than that, in the case of **Soumitra Kumar Sen Vs. Shyamal Kumar Sen and others,** reported in **2018 (5) SCC 644**, it was held by our Hon'ble Apex Court as follows:

> "while considering application for rejection of plaint, averments in plaint must be considered and not what is stated in written statement".

15. Therefore, by applying the ratio laid down in the above said judgment to the case in our hand, herein also this Court has to dispose this application only by considering the averments found in the plaint. In otherwise, the defence now having by the applicants/defendants, is not at all to be looked into at this stage.

16. Hence, in view of the fact that the plaintiffs filed the suit by saying that the Trust pertains to the suit is a public Trust, the same has to be necessarily accepted at this time. Accordingly, the 1st ground raised by the learned counsel appearing for the applicants/defendants is not having any

merits.

17. Secondly, the contention raised by the applicants/defendants is that prior to the filing of the suit, the plaintiffs were terminated from the Trusteeships and therefore, they are not having any locus standi to file the suit. In this regard, it is necessary to see Section 92 of CPC, which reads as follows:

> "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- "

18. Therefore, in view of the above, for filing the suit in respect to the Trust, two or more persons having interest in the Trust is sufficient. In

otherwise, we cannot expect only the Trustee of the Trust has to file these type of suits. So, in this aspect also, the ground raised by the applicants/defendants for allowing this application, is not having any much force. The averments found in the plaint would clearly show that the plaintiffs are always having interest in the welfare of the Trust. Therefore, it is not necessary for them to prove that they are also the Trustees. Even assuming the fact that at the time of filing the plaint, the plaintiffs were not a Trustee, that alone is not sufficient to hold that the suit as not maintainable.

19. Therefore, in the light of the discussions stated supra, this Court is of the considered opinion that this application in A.No.3296 of 2020, lacks merits and accordingly, the same is dismissed.

20. List the Civil Suit on 12.03.2021.

Sd/-R.P.A.J
19.02.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

JJ 01/03/2021 COURT OFFICER(O.S.)

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