

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.09.2021

Delivered on : 28.09.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No. 1809 of 2021
and C.M.P. No. 14025 of 2021

P.Annadurai

... Petitioner

Versus

1.Pachamuthu Educational Trust

Represented by its Chairman P.Baskar,
D.No.12, Kaliappagoundar Street,
Mathikonepalayam,
Dharmapuri Taluk,
Dharmapuri Taluk,
Dharmapuri District.

2.P.Baskar

3.R.Sasikala

4.Sangeethkumar

5.Aranganathan

6.Priya

7.D.Elanchezian

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decretal order dated 12.02.2021 made in I.A. No.4 of 2021 in I.A. No.1 of 2020 in O.S. No.129 of 2020 on the file of the Principal District Judge, Dharmapuri.

For Petitioner : Mr. V.Sakkarapani
For Respondents : Mr. S.N.Manokaran

O R D E R

This petition is filed challenging the order passed in I.A. No.4 of 2021 in I.A. No.1 of 2020 in O.S. No.129 of 2020, on the file of the learned Principal District Judge, Dharmapuri.

2. The suit in O.S. No.129 of 2020 was filed by the petitioner against the respondents seeking the relief of declaration that defendants 2 to 6 have created forged, false document styled as letter of resignation dated 15.04.2018; declare that the resolution said to have passed by the defendants 2 to 5 dated 20.04.2018, is void, baseless, shame and nominal, arbitrary, capricious and not binding on the plaintiff; declaring that the codicil bearing registration No.7/BK4/2018, said to have been executed by the second defendant as the chairman of the first defendant is void, baseless, shame and nominal, arbitrary, capricious and not binding on the plaintiff; declaring that the resolutions passed by the defendants 2 to 6 in respect of the first defendant trust on and after 15.04.2018, in the absence of plaintiff are all void, baseless, shame and nominal, arbitrary, capricious and not binding on the plaintiff and the first defendant; declaring that the trustee / Secretary of the first defendant entitle to

continue to function as Secretary / Trustee and consequently for injunction reliefs.

3. In order to dispose this Civil Revision Petition, it is necessary to find out the background and necessity of filing the application in I.A. No.4 of 2021. The case of the petitioner is that the second respondent / second defendant is his brother, third respondent is his wife and fourth and fifth respondents are the sons of the second respondent and sixth respondent is the daughter-in-law of the second respondent. First respondent is the trust established by late Pachiappa Gounder, the father of the petitioner. Pachiappa Gounder, due to his hard work, amassed wealth and the petitioner and second respondent have assisted Pachiappa Gounder, in his businesses and accumulation of properties. Pachiappa Gounder founded Pachamuthu educational trust. The first respondent was its Chairman and the petitioner was Secretary. It is registered as public trust. The object of the trust is to establish and promote educational institutions for advancement of education in arts, science, literature, humanity and all other useful subjects; to establish worship centres, community halls, hospitals, charitable dispensaries and child welfare centres, community halls, etc.; to provide medical relief and aid to the humanity and for promotion of research for medical science and other laudable objects. The trust was going

well with establishment of several educational institutions. Subsequently, the second respondent inducted his wife and sons as trustees in the trust. The second respondent has better educational qualification and wide contacts. Taking advantage of his position and induction of his wife, children, daughter-in-law as trustees, they started to create forged documents against the petitioner and tried to expel the petitioner from the trust. They were colluding together to grab the trust properties as their family properties, thus defeating the object of the trust founded by Pachiappa Gounder. As a Secretary, the petitioner is entitled to ask for accounts and participate in the day to day affairs of the trust. However, the respondents 2 to 6 have created documents behind the back of the petitioner, created a false resignation letter as if it was submitted by the petitioner and passed resolution on the basis of forged resignation letter dated 15.04.2018, preventing the petitioner from functioning as Secretary / Trustee, and trying to encumber and alienate the trust properties. This necessitated the filing of the suit in O.S. No.129 of 2020. The petitioner has also filed I.A. No.1 of 2020 under Section 92 and 151 CPC, seeking permission to file a suit. Then realising that at least two persons should joint together to file a suit in respect of a public trust, the petitioner filed I.A. No.4 of 2021, for impleading the proposed party as second plaintiff in the suit. This petition was contested by the respondents. The learned Principal District Judge, Dharmapuri, on

considering the rival submissions, dismissed the petition. Against the said dismissal order, this Civil Revision Petition is preferred.

4. Learned counsel for the petitioner submitted that due to mistake and oversight, the suit was filed by the petitioner alone. Then on realising the mistake, the petitioner filed I.A. No.4 of 2021, for impleading the proposed party as second plaintiff. The mistake of not filing the suit by two plaintiffs is neither wilful nor wanton, but only an oversight by mistake. This is only a technical defect and it is sought to be cured at the earliest possible opportunity. However, without considering the merit of petitioner's case, the learned Judge, has wrongly dismissed the petition shutting the door at the inception to the plaintiff to seek remedy. Therefore, the learned counsel for the petitioner prayed for setting aside the order of learned Principal District Judge, Dharmapuri, and for permitting the impleadment of the proposed party.

5. Learned counsel for the respondents opposed the submissions of the learned counsel for the petitioner. It is his submission that the defect in not filing the suit by two persons is not a curable effect. It cannot be rectified by way of filing an impleading petition. The allegations made in the plaint are not true but they are false allegations made only to harass the respondents. The suit

was filed only for settling the private dispute and not in the interest of the public. Therefore, the very suit is not maintainable. When the very suit is not maintainable, the suit filed with defect cannot be cured by allowing the impleading petition. The learned trial Judge, has rightly dismissed the petition and therefore the learned counsel for the respondent prayed for confirming the order of the learned Principal District Judge, Dharmapuri and dismissal of this petition.

6. In support of his submissions, learned counsel appearing for the respondents relied on the judgment of the Hon'ble Supreme Court in the case of *Vidyodaya Trust Vs. Mohan Prasad R and others*, reported in 2008 (4) SCC 115 for the proposition that the relief claimed under Section 92 CPC, should be in a representative capacity for litigation of public right and the suit cannot be filed for settling private or personal dispute. He also relied on a ruling of this Court in the case of *R.Kannan Adityan Vs. B.S.Adityan & Others*, reported in AIR 2007 (NOC) 2120 (MAD.) for the same proposition. It is submitted that this Court, in its order dated 18.06.2012, in A.No.2378 of 2011, held that the the suit filed by a sole plaintiff is not maintainable in a trust matter.

7. Considered the rival submissions and perused the records. From the narration of facts, it is seen that there is no dispute with regard to the fact that the first respondent Pachamuthu Educational Trust is an educational trust. The terms of the trust dated 24.11.2004, makes it abundantly clear that this is a public trust and its object is to serve the interest of public by establishing educational institution, worship centres, hospitals and dispensaries, child welfare centres, community halls, etc. The trust has also provision for accepting gifts or voluntary contributions, install charity boxes, collect donations to augment the trust fund, for their use of achieving the object of the trust. The suit was not filed by any third party private individual but by the petitioner who is the son of founder of the trust and Secretary / Trustee of the trust. The allegations against the respondents 2 to 6 is that they are trying to convert the trust properties as their personal properties. It is alleged that the respondents 2 to 6 have created resignation letter dated 15.04.2018, forging the signature of the petitioner and passed certain resolutions, created codicil and restraining the petitioner from performing his duty as Secretary / Trustee of the trust.

8. Prima facie, it may appear that the suit was filed only for advancing the interest of the petitioner. The allegations of the petitioner is that the respondents 2 to 6 are trying to convert the trust properties into their own

properties. The object of the trust should not be gaining certain tax reliefs for the individual benefits of the persons in the management of the trust. Rendering public service should be is the ultimate aim of the trust. One may entertain a doubt, with regard to the genuineness of the allegations, if the allegations are made by certain private individual not connected with the trust. When the allegations against the respondents 2 to 6 are made by an insider, the Secretary / Trustee of the trust, the Court cannot just ignore the allegations and throw the case out of consideration at the inception stage.

9. The filing of the suit by the petitioner alone is technically not correct. Section 92 CPC mandates that in case of any alleged breach of any express or constructive trust created for public purpose of charitable or religious in nature, the Advocate General or two or more persons having interest in the trust and having obtained the leave of the Court, may institute the suit. The precondition is that either the Advocate General or two or more persons having interest in the trust should obtain the leave of the Court for instituting this suit. There is no doubt as a Secretary / Trustee, the petitioner has interest in the trust, an interest to ensure that the laudable object of the trust is implemented. One false step taken by the petitioner is that instead of filing a suit by himself and another interested person, the suit was instituted by him alone. Now this technical

defect is sought to be remedied by filing I.A. No.4 of 2021, under Order 1 Rule 10 CPC, for impleading the proposed party as second plaintiff.

10. There is a mention in the affidavit that the proposed plaintiff was the one who guided the petitioner, his father and the second respondent from the inception of formation of trust and then for organising the activities of the trust. He was appointed as an Administrative Officer in the trust. He is also affected by the activities of the respondents 2 to 6. He is an interested person to implement the object of the trust. Therefore, he has to be impleaded as the second plaintiff in the suit. As already stated, this petition was dismissed on the ground that the proposed party was not examined and there is no averment in the plaint with regard to his interest in the trust.

11. Under Order 1 Rule 10 CPC, the Court may, at any stage of the suit, if satisfied that the suit has been instituted by a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms the Court thinks just. As discussed above, when there are serious allegations against the respondents 2 to 6 that they are trying to divert the trust properties, good will as their personal properties, and preventing the petitioner from performing as

Secretary / Trustee, the allegations in the plaint are to be necessarily taken up for consideration by the Court. The reason is that the first respondent trust is a public trust and it was created for the public purpose of establishing educational institutions and medical institutions to serve the public among other objectives. The petitioner must be given an opportunity to establish the allegations against the respondents 2 to 6. If that opportunity is denied on technical ground, the ultimate loser would be the public. The respondents 2 to 6 will have the necessary opportunity to deny the allegations as false and establish their case in the course of trial.

12. As indicated earlier, the Court may at any stage of the suit order impleading of the plaintiff, if it is necessary for the determination of the real matter in dispute. Any suit relating to public trust, requires two persons having interest in the trust to institute the suit. There is no doubt that the petitioner and the proposed party, in their capacity as Secretary/trustee and administrative officer respectively, are the persons having interest in the trust. Therefore, the technical defect of filing the suit by the petitioner can be cured by allowing impleading petition to implead the proposed party as the second plaintiff in the suit. However, the learned Principal District Judge, Dharmapuri, without considering the broader perspective of the interest of trust, dismissed the

petition. Since the technical defect of not filing the suit by two persons is sought to be remediate at the earliest possible opportunity, this Court finds the aforesaid rulings relied on by the learned counsel for the respondents are not applicable to the facts of this case.

13. For the reasons aforesaid, this Court is of the considered view that the order passed by the learned Principal District Judge, Dharmapuri, in I.A. No.4 of 2021 in I.A. No.1 of 2020 in O.S. No.129 of 2020, dated 12.02.2021, is not correct and in accordance with law and therefore it needs interference. In this view of the matter, the fair and decreetal order passed by the learned Principal District Judge, Dharmapuri, in I.A. No.4 of 2021 in I.A. No.1 of 2020 in O.S. No.129 of 2020, dated 12.02.2021, is hereby set aside and this Civil Revision Petition is allowed, by allowing the impleading petition filed in I.A. No.4 of 2021. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes / No

Speaking order / Non speaking order

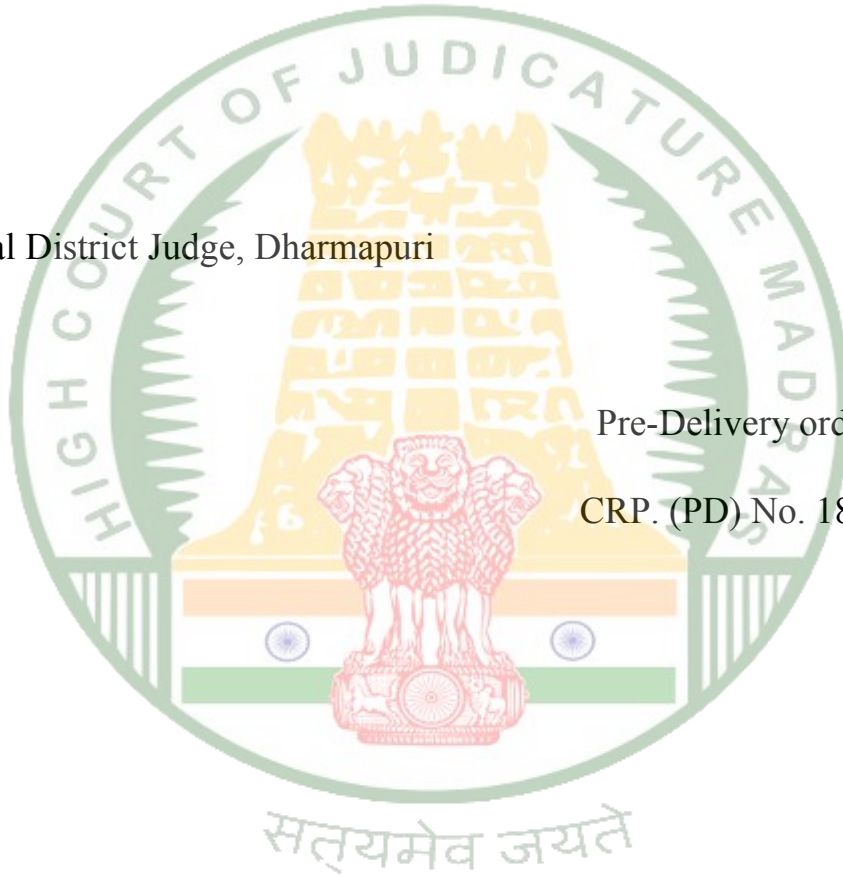
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G.CHANDRASEKHARAN. J.,

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To:

The Principal District Judge, Dharmapuri



Pre-Delivery order made in
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