



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Fourteenth day of September Two Thousand Twenty One

PRESENT

THE HON`BLE MS.JUSTICE P.T.ASHA

CMP.No.12071 of 2019 in

AS.SR.No.64338 of 2019

1 K.R.NATARAJ

[PETITIONERS]

2 GOVINDHARAJAN

Vs

1 KARUPPA GOUNDER

[RESPONDENTS]

2 K.R.SUBRAMANIAM

3 K.B.RAMMOHAN

4 N. SRINIVASAN

B.VISWESWARAN (DIED)

5 B. GOPALAKRISHNAN

6 K.B.VENKATESAN

7 SMT.HEMALATHA

8 K.R.MANICKAM

9 B. SRINIVASAN

10 S.M. SIVASAMY

11 JAYAMANI

12 MANI GOWDER @ MASTHI GOWDER

13 THANNEER PANDAL CHARITABLE TRUST,
REP BY ITS TRUSTEE K.R. MANICKAM,
S/O. K. RAMANATHA CHETTIAR, 16 MARKET STREET,
KEMBANAICKENPALAYAM, SATHYAMANGALAM

14 GANESAN



15 V. LAKSHMIKANTHAN

16 SHANMUGAM @ KARUPPUASMY

17 MRS. PADMALOSHANI

18 RAJASEKARA KASIPATHY

19 MRS. SUBHASHINI

20 MRS. BADHRI

21 MRS. UMAMAHESWARI

[RR17 to 21 brought on record as Lrs of the deceased RR 8 & 13 vide order of court date 24.01.2020 Made in CMP.No.240 of 2020 in Assr.No.64338 of 2019(SMSJ)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order granting leave 2nd appellant to file the 1st Appeal preferred against the decree dated 05-02-2018 and judgment dated 04-01-2018 made in OS.202/2012 on the file of the learned Principal District Judge Court at Erode(in CMP.No.12071 of 2019)

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.VIJAYAN, Advocate for the petitioners and of MR.M.GURUPRASAD, Advocate for 13 and 18 Respondents the court made the following order:-

This application is filed by the 3rd parties seeking leave to challenge the judgment and decree in O.S.No.202 of 2012 on the file of the learned Principal District Judge, Erode. The suit which is a scheme suit was filed, seeking the relief as follows:-

"A. The decree and judgment passed by the lower Court is against law and weight of evidence and probabilities of the case.

B. The Plaintiffs stated in the para 5 of the Plaint that the Trust is created for the Public Charitable Purpose. The Plaintiffs are interest persons by the Trust. But the judgment failed to note that whether this interested persons were granted leave by the learned District Judge for filing the Suit against the Trustees and other stated defendants as mandated by Section 92 of C.P.C.

C. Some 20 people of public filed I.A.No.515 of 2015 to implead themselves as defendants in the suit was



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dismissed by the learned District Judge. This I.A.No.515 of 2015 was stoutly resisted by the Collusive parties Plaintiffs and defendants. The machination hatched by the parties to the suit is clearly exposed.

D. In the Trust O.P.No.29 of 2015 the Petitioners who are now 9th and 10th defendants prayed for the appointment of 3 more new trustees and they also filed a commission petition to expose the Plaintiffs construction in the Trust property. This fact was clearly stated in the written statement filed by the defendants 9th and 10th. But for the reason well known to the defendants, they didn't prosecute the case properly. The encroached portion by the 1st Plaintiff is shown in photograph page of the Typeset.

E. Having found there is no actual contest by the defendants and also the defendants were not to come forward to substantiate their contention found in the pleadings the lower Court ought to have dismissed the suit as it is collusive one.

F. The contesting defendants are also side with the 8th respondent Manickam Chettiar and true facts are not before the lower Court to decide the right of the proposed trustees in managing the trust properties."

2. Therefore, the suit was primarily filed to remove defendants 1 to 6 from the Trust. The decree that is now passed in the above suit is read as follows:-

"(i) Whenever a vacancy arises the managing trustee or any other trustee on becoming aware of the said fact of vacancy shall bring it to the board on the next monthly meeting of the Board. The vacancy shall be filled in within two months thereafter.

(ii) Whenever a Trustee shall during the continuance of this office cease to possess the qualifications necessary for holding the office of trustee or becomes disqualified to hold the office of trustee, the Managing Trustee or any other Trustee on becoming aware of the fact shall bring it to the notice of the Board and the Board after notice to the Trustee concerned and after such enquiry as may be necessary declare that a vacancy has occurred stating the grounds of such declaration and thereupon elect a Trustee in his place under the provisions herein contained.

(iii) Whenever a Trustee is guilty of breach of trust on gross neglect and breach of duty, the Board shall have power after due and proper notice of the charge to the



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Trustee concerned and after giving him an opportunity to answer the charges against him, investigate into the matter and after enquiry record its findings on the said charges giving reasons for its conclusions. If it finds that by a resolution passed by a majority of not less than six of whom two will be Life Trustees, he has been guilty of breach of trust or gross neglect and breach of duty involving loss or damage to the charities, then on such a finding being recorded, the trustee concerned shall vacate and shall be deemed to have vacated his office as trustee. The Trustee to be removed will leave at once. Neither the Trust nor the Board nor any of the Trustees shall be liable to any Trustee or Trustees in respect of acts done bonafide in pursuance of these provisions and any person elected to the office of the

Trustee shall be deemed to contract with the Trust and with each of his Co-Trustees to waive all rights of action in respect of acts done bonafide by the Board or any Trustee in this behalf."

3.The main grievance of the petitioner herein is that the entire suit is a collusive one and the argument appears to have some force. From a reading of the decree, the defendants 1 to 6 have been removed from the Board of Trust. Thereafter, defendants 3, 5 and 6 have been renominated as life Trustees and serious allegations have been made against the sixth defendant. It is also seen that the defendants have not challenged the decree and therefore, leave is granted as prayed for.

-sd/-

14/09/2021

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT JUDGE,
ERODE.

Order
in
CMP.No.12071 of 2019 in
AS.SR.No.64338 of 2019
Date :14/09/2021

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