

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.1530 of 2014
and
MP.Nos.1 of 2014 & 1 of 2015

1.Sooriya
2.Chandra

..Petitioners

Vs.

1.Girija
2.Srinivasan
3.Raja Pazhani

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 20.01.2014 passed in IA.No.253 of 2010 in OS.No.18 of 1963 on the file of the Principal Subordinate Judge at Cuddalore.

For Petitioners

: Mr.Sabarish
for Mr.S.K.Rakhunathan

For Respondents

For R1

:M/s.A.Jenifer Shanthi

R2

: Notice served

R3

: Died (steps not taken)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in IA.No.253 of 2010 in OS.No.18 of 1963 on the file of the Principal Subordinate Judge at Cuddalore thereby removing the petitioners herein from their trusteeship in the Deivasigamani Pillai Sadhavarthi Arakkattalai and appointed the respondents 1 and 2 as hereditary trustees.

2. The respondents 1 and 2 filed petition to remove the petitioners from their trusteeship in the Deivasigamani Pillai Sadhavarthi Trust on the ground that they misappropriated trust properties and also sold out the trust properties in favour of third parties. The said petition was allowed by the court below and appointed respondents 1 and 2 as hereditary trustees in the Deivasigamani Pillai Sadhavarthi Trust.

3. The learned counsel for the petitioners contended that the respondents ought to have filed separate suit to remove the petitioners from their trusteeship under Section 92 of CPC. Though scheme decree was passed in O.S.No.18 of 1963 and accordingly trusteeship can be filled only by co-option by the existing trustees by the member of the founder's family and as such there is no question of

appointing any trustee by removing the existing trustees by way of application under Section 151 of CPC. He further submitted that the petitioners filed counter and thereafter could not appear before the court below and did not cross examine PW1. Therefore, they were set exparte and passed orders on the strength of the evidence of PW1. He further submitted that Section 74 of Indian Trusts Act is not applicable to the instant case, since the trust in the subject matter is governed by the terms and conditions of scheme decree passed in OS.No.18 of 1963.

4. The respondents 1 and 2 filed petition under Section 151 of CPC for removing the trustees and also for handing over the accounts including appointing them as new trustees in the Deivasigamani Pillai Sadhavarthi Trust. Originally respondents 1 and 2's grandfather created trust by name Deivasigamani Pillai Sadhavarthi Trust by way of Will dated 22.06.1866. Thereafter scheme was prepared for running the trust and the same is still in force. In O.S.No.18 of 1963, earlier trustees were removed for the reason they misappropriated the trust properties and subsequently grandfather and grandmother of the respondents 1 and 2 were appointed as trustees. After their demise, respondents 1 and 2's father and their aunts, namely the petitioners and the first respondent in the petition were

appointed as trustees as per the scheme decree of the trust. According to the scheme decree, trustees cannot sell the properties belong to the trust. But the petitioners had sold some properties of the trust and also purchased some properties in their names. They also did not maintain accounts properly. Therefore, respondents 1 and 2 were constrained to file petition to remove the petitioners from their trusteeship and appoint them as hereditary trustee. Though, the petitioners herein filed counter and thereafter they did not appear before the court below. The respondents 1 and 2 have examined PW1 and marked exhibits P1 to P5. According to PW1, the petitioners herein have sold out trust properties contrary to the scheme decree of the trust and purchased properties in their names. They also failed to keep proper accounts for the trust properties and other incomes. Admittedly, the scheme decree for the trust is still in force. By way of scheme decree, already there was a suit in OS.No.18 of 1963 in which some of the trustees were already removed and new trustees were appointed. Accordingly, the respondents 1 and 2 filed the present petition for removal of the petitioners from their trusteeship and sought for their appointment as hereditary trustee.

5. It is also curious to note that the respondents 1 and 2 are none other than the son and daughter of the first respondent in the

petition. The petitioners herein are own aunts of the respondents 1 and 2, namely sisters of the first respondent in the petition. Therefore, the court below rightly removed the petitioners from their trusteeship and appointed the respondents 1 and 2 as hereditary trustees in the Deivasigamani Pillai Sadhavarthi Trust. As such this Court finds no irregularity or infirmity in the order passed by the court below.

6. Accordingly, the civil revision petition is dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

19.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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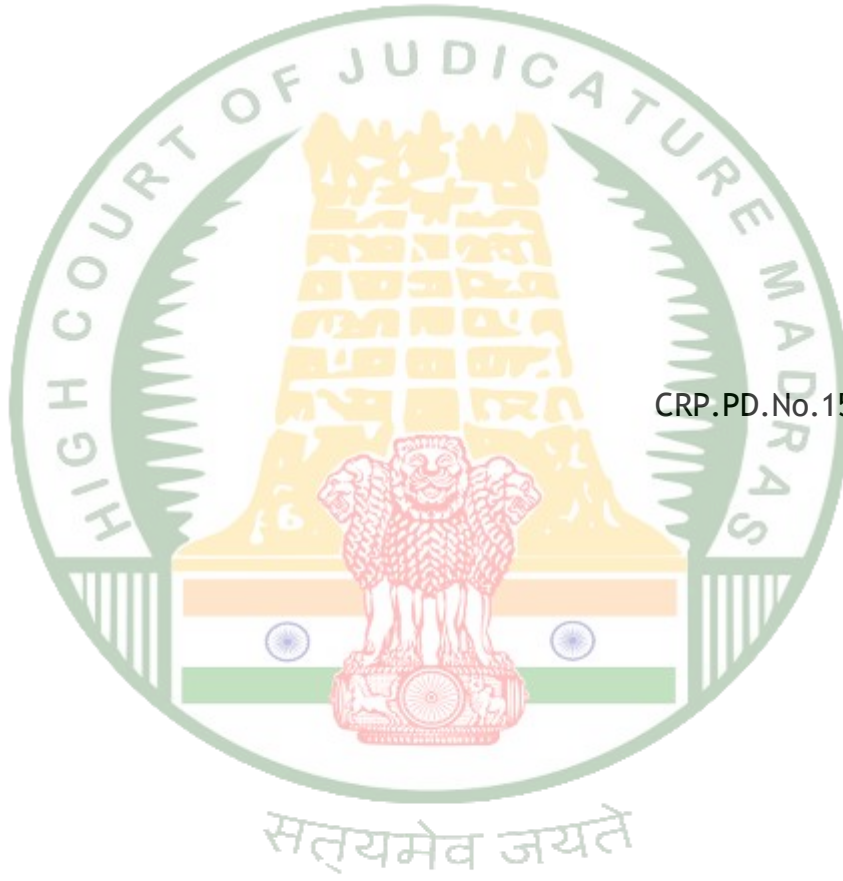
To

The Principal Subordinate Judge
at Cuddalore.

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G.K.ILANTHIRAIYAN,J.

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