



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.07.2021

Delivered on : 23.08.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.R.P. (MD)No.2443 of 2015

1. V. Ananthakumar

2. S. Muthusamy

3. V. Jayakumar

4. S.Baskar

... Petitioners / Respondents
/Plaintiffs

Vs.

1.Vanitha,

... Respondent / Petitioner /
7th Defendant

2. Sugumar

3. Anantharajan

4. Regupathy,

5. Rajeshkanna@rajesh

6. Balamangai Rajesh

... Respondents 2 to6 /
Respondents

(R-2 to R-6 are Impleaded,

Vide Order dated 01.11.2016 made in

CMP (MD) 6527/2016 in CRP (MD) 2443/15)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order, dated 25.06.2015 passed in I.A.No.55 of 2013 in O.S.No.19 of 2012, on the file of the III Additional District Judge, Thanjavur @ Pattukkottai and to restore the suit.

For Petitioners

: Mr.D.R.Murugesan

For R1

: Mr.M.R.S.Prabhu

For R2 to R6

: Mr.V.K.Vijaya Raghavan

ORDER

This Civil Revision Petition is filed against the order, dated 25.06.2015, passed in I.A.No.55 of 2013 in O.S.No.19 of 2012, on the file of the III Additional District Judge, Thanjavur @ Pattukkottai.

2.The revision petitioners herein are the plaintiffs and the first respondent herein is the seventh defendant in the Original Suit.



3.The revision petitioners filed a suit in O.S.No.19 of 2012, for recovery of possession and to declare an exchange deed, dated 07.12.1994 as null and void and for permanent injunction. The seventh defendant/ first respondent herein filed a petition in I.A.No.55 of 2013 to revoke the leave granted to the plaintiffs under Section 92 of the Code of Civil Procedure. That petition was allowed by the trial Court. Against the same, the revision petitioners/ plaintiffs approached this Court by way of this Civil Revision Petition.

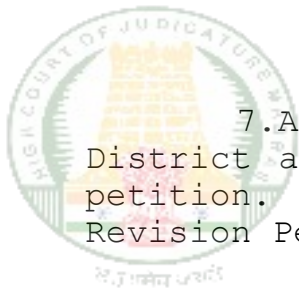
4.Brief substance of the petition in I.A.No.55 of 2015, is as follows:

The petitioner is the seventh defendant in the Original Suit. The respondents / plaintiffs filed the Suit stating that one Subbaraya Mudaliar has created a Trust in the name of "Subbaraya Mudaliar Trust" by means of a registered Trust deed, dated 17.03.1904 and his descendants had alienated the suit property to the sixth defendant, who in turn, has sold the same to one Jayabharathi from whom the petitioner purchased the property. The defendants 8 to 12 have also purchased some portion of the suit property. The respondents / plaintiffs are claiming themselves as beneficiaries, have filed the suit for declaring that the sale transactions are void and not binding on the Trust and for permanent injunction and to restore the suit property to the first defendant Trust, after recovering the possession of the suit property.

5.The respondents are Strangers and they are not interested in the Trust and they have no *locus standi* to file the suit and they are not beneficiaries of the alleged Trust at any point of time. The relief claimed in the plaint does not come within the purview of Section 92 of C.P.C., the *exparte* leave granted by the Principal District Judge, Thanjavur, without considering the reliefs sought for in the claim is incorrect. Hence, the leave granted has to be revoked.

6.Brief substance of the counter in I.A.No.55 of 2013 is as follows:

The petition filed through a power agent is not maintainable. The seventh defendant did not know anything about the existence of the Trust or its object as she is residing in some other village, the relief prayed in the plaint is regarding the Trust. The leave granted under Section 92 (b) of C.P.C., cannot be revoked, the plaintiffs are the beneficiaries of the Trust. In a suit filed under Section 92 of C.P.C, there is no need to issue notice to the defendants. The defendants have no right of audience. The provision under Section 92 of C.P.C., to obtain leave from the Court is to safe guard public Trust from vexatious litigations. The Trust authorities have not filed any petition to revoke the leave and the petition filed by the private individual is not maintainable and the petition is liable to be dismissed.



7. After hearing both sides, the learned III Additional District and Sessions Judge, Thanjavur @ Pattukkottai, allowed the petition. Against the same, the petitioner has preferred this Civil Revision Petition on the following grounds:-

The suit was filed by third parties, who are beneficiaries under the Trust. The Trust is a Public and Charitable Trust founded by one Subbaiya Mudaliyar. His descendants administered the Trust as per the Trust deed. After the demise of Subbaiya Mudaliyar, his family members administered the Trust. Already the Court granted leave for filing the suit and the defendants also filed their written submissions. Only the seventh defendant has filed this petition for revocation of the leave. The seventh defendant was not a Trustee, she was only a subsequent purchaser of the Trust property and she has no *locus standi* to file the petition. Other defendants did not file any such petition, the seventh defendant did not have any independent right over the Trust property.

8. Leave was granted by the Court, on 18.06.2012 and this petition was filed only on 27.03.2013. Only after the examination of witnesses, merits and demerits of the case can be decided. Without conducting a trial, the trial Court cannot come to a conclusion that the Trust is a private Trust. The seventh defendant filed a petition to revoke the leave with regard to the southern half of the property alone, but the trial Court revoked the entire leave.

9. On the side of the revision petitioners, it is stated that the property that belong to the Charitable Trust was misused by way of executing an exchange deed. The original suit was filed to cancel the exchange deed. The Trust was created for providing Food and Water for the Devotees. Originally leave was granted by the Principal District Judge. After the filing of the written submissions, the seventh defendant, who was a subsequent purchaser of the property, has no right to file this petition. The Trust property cannot be claimed as a private property. The property does not belong to a private Trust, but, is a public Trust. The seventh defendant cannot claim any personal right. A judgment of this Court published in **2012 (5) MLJ 1023 [The Sengunthar Charitable Trust and others Vs. R.Manickam and others]** is cited.

10. On the side of the respondents, it is stated that after the revision respondent came to know that leave was granted, she has filed a petition to revoke the leave. The petitioner is the seventh defendant, who is a *bonafide* purchaser and the plaintiffs 1 and 2 are brother and sister and they are no way connected with the Trust. They are not beneficiaries of the Trust. There is no such Trust in existence and there are no Trustees.

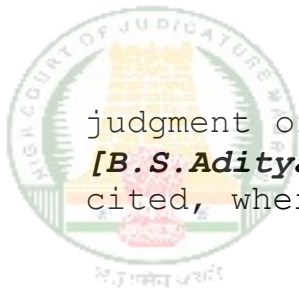
11. On the side of the respondents, it is stated that leave has to be granted only after hearing both sides. In this regard,



she relied upon a judgment of the Hon'ble Supreme Court published in **1991 (1) SCC 48 [R.M.Narayana Chettiar and another Vs. N.Lakshmanan Chettiar and others]**, wherein, it is stated as follows:

17.A plain reading of Section 92 of the Code indicates that leave of the Court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the Court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under Section 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under Section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as statutory requirement to be complied with before leave under Section 92 can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law."

12.On the side of the respondents, it is stated that it is open to the affected parties to take steps to revoke the leave. A
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judgment of the Hon'ble Supreme Court published in **2004 (9) SCC 720 [B.S.Adityan and others Vs. B.Ramachandran Adityan and others]** is cited, wherein, it is stated as follows:

"9..... Grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law or even in the course of suit which may be established that the suit does not fall within the scope of Section 92 C.P.C. In that view of the matter, we do not think, there is any reason for us to interfere with the order made by the High Court."

13.The trial Court has come to a conclusion that the plaintiffs are claiming personal right over the property and thereby, has decided that vindication of personal right takes away the suit under Section 92 C.P.C. A perusal of paragraph No.17 of the plaint reveals that the revision petitioners are claiming themselves only as beneficiaries, who used to take food and water, provided by the Trust. They have not claimed any other right. So, the observation made by the Trial Judge is wrong.

14.The trial Court has observed that the plaintiffs claimed the Trust as a private Trust. A perusal of the plaint reveals that the plaintiffs claim the Trust only as a public Trust. The judgments cited by the seventh defendant reveal that a leave under Section 92 C.P.C. can be granted *exparte*. But, the defendants are at liberty to file a petition to revoke the same. Here, the seventh defendant filed a petition to revoke the leave. Whether the Trust is a Public Trust or a private Trust can be decided only after trial. Case of the revision petitioners cannot be thrown at the threshold. The Court is the custodian of the public Trust. To decide the nature of the Trust and to safe guard the Trust property, trial has to be conducted.

15.In the above circumstances, this Civil Revision Petition is allowed and the order, dated 25.06.2015, passed in I.A.No.55 of 2013 in O.S.No.19 of 2012, on the file of the III Additional District Judge, Thanjavur @ Pattukkottai, is hereby set aside. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Ls

To

1.The III Additional District Judge,
Thanjavur @ Pattukkottai.

2.The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.R.S.PRABHU, Advocate (SR-26966[F] dated 23/08/2021)

+1 CC to M/s.P.THIRUMAHILMARAN, Advocate (SR-27013[F] dated
23/08/2021)

C.R.P (MD) No.2443 of 2015
23.08.2021

DJ(CO)
KB(31.08.2021) 6P 6C