



CRP No.637 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

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

CRP.No.637 of 2019
and CMP.No.4243 of 2019

1.J.Balachandran
2.Uma Maheswari

..Petitioners

Vs.

1.J.Rajagopalan
2.M.Velu
3.S.Padmini

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final order dated 30.08.2018 made in I.A.No.79 of 2013 in O.S.No.14 of 2013 passed by the Principal District Judge, Thiruvavur and allow this civil revision petition.

For Petitioners : Mr.S.Parthasarathy, Senior Counsel

For Respondents

For R1 & 2 : Mr.V.Ramamurthy

For R3 : Notice served

ORDER

The civil revision petition has been filed as against the fair and final order dated 06.04.2015 passed in I.A.No.73 of 2014 in O.S.No.406 of 2012 on the



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file of the District Munsif Court, Tiruppur, thereby dismissing the petition filed under Order VII Rule 11 of CPC to reject the plaint.

2. The civil revision petition has been filed as against the fair and decreetal order dated 06.04.2015 passed in I.A.No.73 of 2014 in O.S.No.406 of 2012 on the file of the District Munsif Court, Tiruppur, thereby allowing the petition filed under Section 92(1) and 151 of C.P.C, to permit the respondents to file this suit as persons interested in the scheme as well as the estates.

3. The respondents 1 and 2 filed a suit to amend and alter the Scheme framed by this Court in O.S.Nos.1 to 3 of 1907 so far it related to clause 3, 4, 8, 9, 19 to 25 and to remove the petitioners herein from the post of trustees of Kottur Rengasamy Mudaliar Trust (hereinafter called as KRM trust). It is further prayed that to appoint an independent committee to investigate into the management administration of the Trust from 1991 by taking inventory of the properties belonging to the trust and recover all the properties that were illegally and unauthorizedly sold by the petitioners. They also filed an application to grant leave to file the suit. It was allowed and aggrieved by the same, the present civil revision petition.



4. Mr.S.Parthasarathy, the learned Senior Counsel appearing for the petitioners would submit that the present suit is not filed for individual or personal interest and as such, the respondents 1 and 2 failed to fulfil the essential condition for filing suit under Section 92 of C.P.C. The first respondent is none other the Trustee of KRM Trust. Therefore, it is not maintainable and in fact, the said trust is not made as a party in the suit proceedings for setting the scheme. The Court below misconcluded the fact that while dismissing the CRP.No.2841 of 2011, this Court observed the argument made by the revision petitioner as conclusive finding and allowed the petition filed by the respondents 1 and 2 herein.

5. As per the original scheme framed by this Court, there was a clear provision under clause 27, which gives liberty to the parties concerned to approach the scheme Court for further direction in future. If at all the respondents 1 and 2 wanted to amend or modify the clauses in the scheme decree, they shall resort to clause 27 of the existing scheme decree and not by way of separate suit under Section 92 of C.P.C. If a provision for modification of the scheme rules is given in the scheme decree itself, then such modification shall be done on such provision as enshrined in the scheme and not by taking recourse to the cumbrous procedure of a suit under Section 92 of C.P.C.



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6. Per contra, the learned counsel for the respondents would submit that admittedly, the first respondent is one of the trustee of the KRM estate. As per the scheme, the KRM estate is a public relations and charitable institution, the appointment of trustee is not in accordance with clause 3 of the scheme. The first petitioner has appointed his wife namely the second respondent herein, which is against the norms of the scheme. Therefore, they filed a suit to remove the petitioners from the post of trustees of KRM trust and to appoint an independent committee to investigate into the management administration of the trust by taking inventory of the properties belonging to the Trust and to recover all the properties illegally and unauthorisedly sold by them. Therefore, the suit is very much maintainable and the Court below rightly granted leave to file a suit and it does not warrant any interference by this Court.

7. Heard, the learned Senior Counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

8. The first petitioner and the respondents 1 and 2 are the trustees of KRM Trust. The first respondent is the Managing Trustee of the said trust. The scheme decree was passed by the scheme Court namely the District Court,



Tanjore. Thereafter, the trustees filed several appeals for modification of the scheme and the Hon'ble Division Bench of this Court modified the scheme and liberty was given to the parties to apply before the District Court, Tanjore, for further direction in future.

9. While being so, the first respondent herein filed an application before the scheme Court to enquire into the facts of commission and omission, it was dismissed by this Court. Aggrieved by the same, they filed civil revision petition before this Court in CRP.No.3723 of 2000, in which this Court, observed and directed the parties to approach the District Court as and when it was necessary. If a trustee was found guilty of misconduct, definitely the Scheme Judge has power to remove the trustee. If a particular object of the Trust became incapable of performance, the Trustees can approach the Scheme Judge for directions. The Scheme Judge can pass orders as are necessary to advance the object of the Trust.

10. Thereafter, this Court, issued some directions to the Scheme Court and disposed of the civil revision petition. Therefore, the Scheme Court only has got jurisdiction to entertain with regard to any misconduct, removal of trustees, appointment of any committee and questioning any irregularities arising from



the functioning of the Trust. Therefore, the petitioners herein filed an I.A.No.46 of 2011 in O.S.Nos.1 to 3 of 1907 before the District Court, Tanjore, (Scheme Court) to recognise the first petitioner herein as Chairman of the Trustee of the Trust for a period of three years as per the earlier agreement entered into between the Manager and other trustees. It was allowed and aggrieved by the same, the first respondent herein challenged before this Court in CRP.No.2841 of 2011. This Court, by an order dated 23.02.2012, recorded the submissions made by either side and concluded that the appointment of Chairman Trustee by the trustees will not amount to variations of the scheme as stated supra. As per clause '8' of the scheme, the Trustees are permitted to elect the Chairman Trustees. As per agreement made between the Trustees, each trustees shall be permitted to act as Chairman Trustee for the period of three years and the application was filed by the first petitioner to appoint herself as Chairman Trustee as per the agreement already entered into between the parties. Therefore, this Court dismissed the civil revision petition filed by the first respondent herein. Again, the respondents 1 and 2 herein filed a fresh suit for the following reliefs;

“ a) Granting leave to the Plaintiffs to file this suit.

b) To amend and alter the Scheme framed by this



Court in O.S.Nos.1 and 3 of 1907 so for it relate to clause 3, 4, 8, 9, 19 to 25.

c) To remove the first and second defendant from the post of trustees of KRM Trust.

d) To appoint an independent committee to investigate into the management administration of the Trust from 1991 by taking inventory of the properties belonging to the trust and recover all the properties illegal and unauthorized sold by defendant 1 and 2.

e) To increase the number of trustees of KRM Trust by 9 Trustees by appointing 5 eminent persons belong to Thondamandala Mudaliar Community in Tanjore and Tiruvarur District.

f) Appointing a receiver to take over the management of the estate till final orders are passed and

g) Granting such further orders as are deemed necessary in the circumstances of the case.”

11. Admittedly, the first petitioner and the respondents are trustees of KRM Trust, Mannargudi. The second respondent is neither a trustee nor has any connection with the KRM Trust, Mannargudi. The appointment of the petitioners as trustees were already confirmed by this Court. In order to claim leave under Section 92 of C.P.C, it should be proved that they are the representatives of the body of persons interested in the Trust. The first



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respondent, being one of the trustees, cannot claim if a representative of the body of the beneficiaries respond of his ill feelings with the Court proceedings.

He cannot join with the second respondent who is a third party to file a suit against the other trustees. Further, they cannot maintain a separate suit since they ought to have approached the Scheme Court for any relief.

12. In view of the above, the order dated 30.08.2018 passed in I.A.No.79 of 2013 in O.S.No.14 of 2013 passed by the Principal District Judge, Thiruvavarur, is hereby set aside. Accordingly, the civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2022

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

The Principal District Judge,
Thiruvavarur.



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