



C.R.P.No.2757 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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Sri Thiyyagaraja Thanneer Pandal Dharmam

By its Sole Trustee K.Thillai Vinayagam

S/o.Karthikeya Mudhaliyar,

Sithi Vinayagar Kovil Street,

Madapuram, Thiruvarur.

... Petitioner

VS

Nil

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 19.04.2022 made in Trust Original Petition No.08 of 2020 on the file of the learned Principal District Judge, Thiruvarur and permit the petitioner herein to sell out the Schedule mentioned property to an intending purchaser for a mutually agreed price at the market price and to deposit a sum of Rs.1,00,000/- from out of sale price in any approved securities or Nationalized Bank so as to fetch an amount of interest at Rs.7,000/- per annum to be used for charity obligation as per the trust deed dated 16.05.1943.

For Petitioner : Mr.B.Ramamoorthy



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the petitioner/Trust seeking permission of the Court to sell the petition mentioned property of the Trust to any intending purchaser for a mutually agreed price at the market rate and to deposit a sum of Rs.1,00,000/- from out of the sale price in any approved securities or Nationalized Bank so as to fetch an amount of interest at Rs.7,000/- per annum to be used for charity obligation as per the Trust Deed dated 16.05.1943 and to grant other reliefs.

2. According to the petitioner, the property in question is situated at Thiruvarur Municipal limits and originally there was a old country tiled building with the annexed shops in the petition mentioned property. It was originally owned by T.N.Sabapathi Mudaliyar, a renowned business man and Philanthropist of yester years. It was contended by the petitioner that in order to quench the thirst of the pilgrims who are visiting Lord Thiyagaraja Temple at Thiruvarur during Punguni Uthiram Festival, he had set apart his properties for serving buttermilk to the pilgrims for three Tamil months of Punguni,



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Chithirai, Vaikasi of every year at an annual cost of not more than Forty Rupees. He created a Thanneer Panthal Dharmam through a Registered Trust Deed dated 16.05.1943 and he had nominated his second son viz.,Karthikeya Mudaliar to perform the charity.

3. As per the Trust deed, he had permitted the trustee to enjoy the properties by leasing out the same to third parties and utilise the income derived there from for performing Dharmam and pay tax to Municipality. It was also averred by the petitioner that Karthikeya Mudaliyar was authorised to do Dharmam till his life and after him, his eldest son K.Thillai Vinayagam was authorised to continue the Dharmam. It was also mentioned that after Thillai Vinayagam, his eldest son has to continue the Dharmam in succession.

4. According to the petitioner, Karthikeya Mudaliyar managed the trust as per the intention of the author of the trust and after his demise, his eldest son viz., K.Thillai Vinayagam assumed the management of the trust properties and he has been doing Thanneer Panthal Dharmam.



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5. It was specifically contended by the petitioner old tiled building that originally stood in the petition mentioned properties got ruined and it remains as a vacant site as on now. It was contended by the petitioner that he has no capacity to put up new building in the vacant site to put the same into a meaningful use. Therefore, the petitioner has come up with this petition seeking permission of the Court to sell the petition mentioned property which remains as a vacant site and out of portion of the sale proceeds to do the Dharmam by depositing the portion of sale proceeds in a fixed deposit.

6. Before the Lower Court, the petitioner was examined as PW.1 and Ex.P1 to Ex.P8 were marked on his behalf.

7. The Court below on consideration of the oral and documentary evidences, dismissed the petition filed by the revision petitioner on the ground that he failed to implead the elder son of founder of the trust viz., Dhakshinamoorthy and his legal heirs who are entitled to question the petitioner in this regard. Therefore, the Court below opined that the present petition is bad for non-joinder of necessary parties.



8. On the merits of the case also by taking into consideration the rent control proceedings initiated by the petitioner against the erstwhile tenants, the Court below observed that the petitioner obtained eviction orders against erstwhile tenants by giving an undertaking that he would put up new building in the petition mentioned property.

9. The learned Judge proceeded to hold having obtained possession of the old shop building by giving an undertaking to put up new building, it is not open to him to say now that he is not in a position to put up new building.

10. The learned counsel for the petitioner contended that the petitioner is a sole trustee and by virtue of his age, he is not in a position to put up new construction as on today. It is also stated that the cost of the construction materials have gone up several folds and hence, the petitioner is not in a position to put up new construction. The learned counsel also stated that an Advocate Commissioner was appointed by the Court below to ascertain the present status of the petition mentioned property and he filed a report stating that the petition mentioned property remains as a vacant site as on today.



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11. The learned counsel submitted that the vacant site will not fetch any income and when he has no capacity to put up new building the object of the trust will be better served by permitting the petitioner to sell the petition mentioned property and deposit the sale profits in a fixed deposit so that the charity shall be continued out of the interest earned by the bank deposit.

12. I have given my anxious consideration to the submission made by the learned counsel for the petitioner. The petitioner has not shown any of the respondents in the petition filed by him. The Court below in the impugned order specifically observed that the petitioner failed to implead the eldest son of the founder of the trust viz., Dhakshinamoorthy and his legal heirs and hence, the petition is bad for non-joinder of necessary parties. When a petition is dismissed on a technical ground of non-joinder of necessary parties, it is always open to the petitioner to cure the defects by impleading necessary parties and file fresh application for the same relief.

13. The learned counsel for the petitioner submitted that the findings rendered by the Court below on the merits of the claim would bar the



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petitioner from filing another petition seeking permission of the Court to sell the petition mentioned property.

14. In the impugned order, the Court below also noted that as per the report filed by the Advocate Commissioner appointed by it, the petition mentioned property is lying as a vacant land at present. In that case, certainly the property may not earn a good income.

15. In these circumstances, the claim made by the petitioner seeking permission to sell the petition mentioned property requires consideration on merits. However, in the petition filed by the revision petitioner seeking permission of the Court to sell the petition mentioned property he has not mentioned the present market value in the locality, guideline value maintained by the Registration Department and sale consideration likely to be fetched by the petition mentioned property etc. He simply sought for permission to sell the property without giving material details mentioned above. He also undertook to deposit only Rs.1,00,000/- out of the total sale consideration. The petitioner has not stated how the remaining portion of the



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sale consideration would be utilised. When a property of the trust is sought to be sold it is expected the sale consideration is deposited in the bank and out of the interest earned, the trustee should be permitted to do Dharmam. The petitioner has not shown any willingness to deposit the entire sale proceeds in the bank deposits.

16. In these circumstances, I cannot find fault with the order passed by the Court below in dismissing the petition filed by the revision petitioner seeking permission of the Court to sell the petition mentioned property. However, it is made clear that it is open to the revision petitioner to file fresh application seeking permission of the Court to sell the property by impleading all the necessary parties and also by giving material details regarding market value, guideline value and total sale consideration likely to be fetched by the sale of petition mentioned property. It is also made clear that if any such application is filed by the revision petitioner, the same shall be considered by the Court below on its own merit without being influenced by any of the observations made by this Court.



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17. With these observations, the Civil Revision Petition is dismissed.

No costs.

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Index : Yes / No

Speaking Order : Yes / No

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To

The Principal District Judge,
Thiruvarur.



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S.SOUNTHAR, J.

dm

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