



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (PD) No. 2185 of 2017

And

C.M.P.No. 10475 of 2017

T.A.Samy Chettiyar

... Petitioner/Petitioner/Claimant/3rd Party/3rd Party

Vs

T.A.Shaniga Chettiar (died)

Dhaalakshmi Ammal (died)

T.S.Viswanathan (died)

T.S.Ramanathan (died)

1. T.S. Arumugam

2. T.S.Somasundaram

3. T.S.Panchanathan

... Respondents 1 to 3/ Respondents 5 to 7/Decree Holders/Petitioners/Plaintiffs

T.S.Viswanathan (died)

T.R.Thirunavukkarasu (died)

4. Kamalammal

5. Ayyakannu

6. Badmanabha Chetty

7. Somasundara Chetty

8. Saraswathi



9. Vaidheeswaran Chetty

10. Badrinathan Chetty

Meenakshi (died)

11. T.V.Vasudevan

12. P.Gnanasoundari

A.Govindaraji (died)

13. Managing Director, T.N.S.T.C., Salem

... Respondents 4-13/Respondents 10-16 and 18-21/
Judgment Debtor/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and final order passed by the Sub-Court, Tiruppattur, Vellore in R.E.A.No. 49 of 2013 in E.P.No. 63 of 2010 in I.A.No. 507 of 1981 in O.S.No. 23 of 1978 dated 05.06.2017.

For Petitioner : Mr. Ambal Vannan

For RR 1 to 3 : Mr. V.Lakshmi Narayanan

For RR 4, 5, 7,
9 to 13 : No appearance

For 8th Respondent : died

**ORDER**

WEB COPY

This Revision Petition has been filed questioning an order in R.E.A.No. 49 of 2013, which execution application had been filed in E.P.No. 63 of 2010, which Execution Petition had been filed in I.A.No. 507 of 1981, which Interlocutory Application had been filed in a suit of the year 1978 in O.S.No. 23 of 1978, which was on the file of the Sub Court, Thiruppattur in Vellore District.

2. The said suit in O.S.No. 23 of 1978 had been filed by one TA Shanmuga Chettiar against the defendants shown therein, and it must be pointed out that even during the pendency of the suit, some of the defendants had unfortunately expired and legal representatives had to been brought on record, seeking a Judgment and Decree to put the plaintiff in possession of the properties described in 'B' schedule to the plaint and for a further direction against the defendant to give accounts with respect to the receipts and expenses of a particular trust from 27.01.1975 till delivery as sought is granted and for costs of the suit.



3. The trust involved in that particular litigation was a family trust, which had been dedicated for charity to provide accommodation for travellers and for affording facility for performance of marriages and for rearing and maintaining a nandavanam to provide flowers for the use of the temples. The items for which the properties for which the suit was laid and which had been described in schedule 'B' to the plaint had been left in common without being divided among the family members for the purpose of discharging the aforementioned activities/the charity on behalf of the trust.

4. The administration of the trust was originally entrusted to one of the family members and thereafter, since he died in the year 1933 and the individual to whom it was to revert back had also died, the first and second defendants, namely, TG Viswanathan and TR Thirunavukkarasu, who according to the plaintiff were not entitled to administer the trust, however, entered into the management of the trust properties and took advantage of the yields from the usufructs therein. The plaintiff had issued a notice but since there was no proper reply, the suit had been instituted for the reliefs as stated.



5. The first defendant had joined issues with the plaintiff and had filed the written statement. On the basis of the pleadings, the learned Sub Judge had framed substantial number of issues and among them, quite apart from deciding about the rights of the various members of the family to deal with the trust property, one particular issue was whether the first defendant was a trespasser and had lawfully enter into management of the trust and whether the allegations of mismanagement and misappropriation were true. There was yet another issue with respect to the plaintiff also namely, whether he has any right in the suit trust.

6. During the course of trial, the plaintiff examined himself as PW-1 and the first defendant examined himself as PW-2. The plaintiff marked Exs. A-1 to A-19 and the defendants marked Ex.B-1 to B-26. By Judgment dated 05.01.1981, the learned Sub Judge, Thirupathur, had directed rendition of accounts to be provided from 27.01.1975 till date of delivery on possession and directed delivery of possession and also permitted the plaintiff to seek necessary relief to be put in possession. This naturally meant that the plaintiff had to file an Execution Petition to be put in possession.



WEB COPY 7. I.A.No. 507 of 1981, then came to be filed to direct the defendants to produce account books and in the event of discovery for a commissioner to be appointed to determine the misappropriation or mismanagement of the trust properties. An order was passed in I.A.No. 507 of 1981 on 20.12.2005 wherein based on the report of the Advocate Commissioner, it was found that the respondents therein had not obeyed the order of the Court and had not produced the accounts before the Advocate Commissioner and therefore, a further direction was passed to handover the 'B' schedule properties in the plaint to the plaintiff therein.

8. It must be mentioned that the original plaintiff and the first defendant had both died and legal representatives have been brought on record.

9. Thereafter, the impleaded plaintiffs had filed E.P.No. 63 of 2010 to put in execution the said order. In that particular execution petition, R.E.A.No. 49 of 2013 had been filed by the present revision petitioner who was a third party to the entire proceedings, from the suit till the execution petition.



WEB COPY 10. R.E.A.No. 49 of 2013, was filed under Order 21 Rule 97 CPC to obstruct delivery of possession. That particular R.E.A.No. 49 of 2013 came up for consideration before the Sub Court, Thirupathur. By order dated 05.06.2017, the said application was closed as not maintainable. The learned Sub Judge had observed in atleast two places that the said application was not maintainable. Questioning that particular order, the present Revision Petition has been filed.

11. The learned counsel for the revision petitioner stated that the suit revolves around handing over of the properties of the trust and for rendition of accounts and pointed out that the trust had not made a party to the suit. It must be kept in mind that the properties of the trust were the properties of a joint family who while partitioning the properties among themselves had set aside the properties described in 'B' schedule to the plaint to be endowed to a family trust to be used for charity purposes, namely to provide accommodation for travellers and to provide facilities for people who require assistance for marriage and to create nandavanam so that flowers can be forwarded some temples. There was a particular right of succession given in that particular document which created the



trust. It was to be an exclusive family trust. It was not an independent trust as such. It was an obligation on the members of the family to do what was required under the trust. If there had been mismanagement and misappropriation of funds, which was what was alleged in the plaint, then, the plaintiff in his capacity as a member of the family had every right to file a suit seeking accounts and to handover the properties, the yields from which the charities were to be performed. That suit had been filed. That suit had been decreed. That the decree had not been complied had been further confirmed by an order, in which it observed that delivery had not been given. It was further confirmed by an order that account books, though so directed, had not been handed over to the Advocate Commissioner. An Execution Petition had been then filed. It does not lie in the mouth of the revision petitioner to reopen the entire issue and claim that the trust had not been made a party.

12. Parties have entered into the witness box knowing what was the issue agitated during the course of trial. The partition deed was a central issue and they knew about it. Documents have been marked. The partition deed dated 24.10.1892 had been marked as Ex.A-1. It was pursuant to that document that there was a division of properties among



the family members. The properties mentioned in 'B' schedule were set apart to be used in common by the family and placed an obligation to discharge the stated charities.

13. I hold that the Sub Court, Thirupathur, had correctly dismissed the R.E.A.No. 49 of 2013 as not maintainable. The revision petitioner has only one option, namely, to handover possession of 'B' schedule properties to the decree holder / legal representatives of the plaintiff and to produce account books and to render accounts.

14. It is seen from the records that in the year 2016, a learned Single Judge of this Court in CRP (PD).No. 915 of 2014 by order dated 15.11.2016 had directed that E.P.No. 63 of 2010 should be disposed of and closed within two months from the date of receipt of a copy of that particular order. It is now nearly 5 years and more from the date of that particular order.

15. The Executing Court is directed to forthwith dispose of E.P.No. 63 of 2010 and remove any further resistance of the execution of the Decree, if required, even without any application. The bailiff must be



given direction to put in effect the decree. The Sub Judge, Thirupathur, is specifically directed to ensure that the decree is satisfied and compliance report filed in this Court on or before 30.06.2022.

16. This Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.03.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. Sub Court, Tirupattur, Vellore.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.



WEB COPY



11

C.V.KARTHIKEYAN, J.

Vsg

CRP (PD) No. 2185 of 2017
And
C.M.P.No. 10475 of 2017

28.03.2022



WEB COPY

