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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	23.02.2022
DELIVERED ON	15.03.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No.2699 of 2010

Kodaikanal International School,
Represented by its Principal. Mr.A.G.F.Fisher,
Kodaikanal International School,
Kodaikanal 624 101 ...Petitioner/Petitioner/Beneficiary

Vs.

1.Indian Evangelical Lutheran Church Trust Association,
Rep. by its President Rev. Isaac Moon.
...R-1/Respondent/Trustee

2.Rev.A.Sundaram,
Secretary & Treasurer,
Indian Evangelical Lutheran Church Trust Association.

3.Bala & Co.,
Represented by its Proprietrix,
Smt.Siva Bala Devi. ...Respondents/R-2 & R-3

PRAYER: Civil Revision Petition under Section 227 of Constitution of India, to set aside the order, dated 25.04.2003 in I.A.No.1500 of 1992 in O.P.No.101 of 1975 on the file of the learned Principal District Judge, Dindigul.

For Petitioner	:Mr.P.V.Balasubramaniam, for Mr.K.Sekar
For R-1	:Mr.R.Sathiamoorthi
For R-2	:No appearance
For R-3	:Mr.AR.L.Sundaresan, Senior Advocate, for Mr.AL.Ganthi Mathi

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 25.04.2003 in I.A.No.1500 of 1992 in O.P.No.101 of 1975 passed by the learned Principal District Judge, Dindigul.



2.The parties are referred to as per the rank mentioned before the Court below.

3.The petitioner herein has filed a petition in I.A.No.1500 of 2002 in O.P.No.101 of 1975, as a Beneficiary, on the file of the learned Principal District Judge, Dindigul. The said petition was dismissed on 25.04.2003 by the Court below. Aggrieved over the same, the petitioner is before this Court.

4.Heard on either side and perused the material documents available on record.

5.The Civil Revision Petition is filed on the ground that the Court below has rendered the impugned order contrary to law. The Court below has also failed to consider that in the administration of the Trust property the employees of the First Respondent had committed illegalities by way of entering into agreement of Sale dated 26.04.1991 which affects the beneficiary rights of the petitioner school. The Court below without any reason has mentioned the 2nd and 3rd respondents in the cause title of the fair and decreetal order, eventhough when they have already given up in the proceedings in I.A.No.1500 of 1992. The impugned order passed by the Court below is liable to be set aside.

6.The respondents/petitioners have filed a petition in O.P.No.101 of 1975 to appoint the third petitioner as a new Trustee of the petition mentioned properties for directing the third petitioner to hold the properties in Trust for the objects mentioned in the petition and for transfer of the properties in Kodaikanal shall be subject to the Agreement entered into between the 2nd and 3rd petitioners.

7.The said petition in O.P.No.101 of 1975 was allowed on 26.11.1975 with following directions.

...

"4.That the 3rd petitioner is directed to hold the properties in trust for the objects viz.

(i).The maintenance of regular church services.

(ii).The extension of Christianity in a manner that is not in contradiction of the faith.

(iii).The extension of education

(iv).the provision of medical facilities for the people of India irrespective of colour, cast or creed.

(v).The carrying out of such...or social welfare in general as the transferee trustees for the time being may from time think fit and proper and are not opposed to the objects of this Trust generally. "

8.The 5th item of the suit schedule properties in O.P.No.101 of 1975 is the subject matter of all the three Civil Revision



Petitions.

9.The petitioner/Kodaikanal School has filed a petition in I.A.No.1500 of 1992 as a beneficiary seeking directions under Section 3 of Charitable and Religious Trusts Act, as follows:

a).that the Lock End property in Kodaikanal mentioned as Serial No.5 in the Schedule 'A' of the decree in O.P.No.101 of 75 cannot be alienated by the Indian Evangelical Lutharan Church Trust Association and it can only administer the same;

b).that the Agreement dated 11.9.75 marked as Annexure "A-1" in the O.P.No.101/75 specifically covenants that the Kodaikanal International School has the beneficiary right to utilise the Loch End Property in Kodaikanal as per the covenant No.9 agreed to by the parties to the agreement;

c).that the Agreement of sale dated 26.4.91 and Power of Attorney dated 3.6.91 executed by the Second respondent in favour of third respondent are null and void;

d)to pass such further or other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

10.The petition in I.A.No.1500 of 1992 in O.P.No.101 of 1975 was dismissed on 25.04.2003 and in the said order, it has stated in paragraph Nos.18 & 24 are extracted hereunder:

....

"18.There is absolutely no dispute regarding the fact that the petition mentioned property along with other properties in Kodaikanal originally owned by Missouri Evangelical Luthern Indian Mission and there is no dispute equally regarding the fact that Missouri Evangelical Luthern church and Indian Evangelical Luthern Church Trust Association had jointly filed O.P.No.101 /75 in the court of the District Judge, Madurai u/s 7 of the Charitable and Religious Trust Act 1920 and Rule 7 of the Original side Rules of Practice, praying for appointment for I.E.L.C. Trust Association as new Trustee of the petition mentioned properties and subsequently the District Judge, Madurai passed orders accordingly decreeing the petition on 26.11.1975.

24.At this stage, the 2nd and 3rd respondent only have amply proved and established their case. The Petitioner's prayer, therefore that the Sale Agreement dated 26.4.91 and the power of attorney dated 3.6.91 executed by the 2nd respondent are



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null and void cannot be accepted and the petitioner also cannot now question the genuineness and validity of the Sale Agreement dated 26.4.91, entered into between the 2nd respondent acting on behalf of the Indian Evangelical Lutheran Church Trust Association and M/s.Sri C.Bala & co., the third respondent herein, since the transaction fails within the scope of the trust agreement only."

Aggrieved by the aforesaid order the revision petitioner has preferred this Civil Revision Petition.

11.The petition in O.P.No.101 of 1975 was disposed in the year 1975 in which this petitioner is not a party. A person having interest in Trust can file a suit as per Section 3 of Charitable and Religious Trusts Act.

12.The ingredients of **Section 3 of Charitable and Religious Trusts Act**, is extracted hereunder:

"3.Power to apply to the Court in respect of trusts of a charitable or religious nature:

Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject matter of the trust is situate to obtain an order embodying all or any of the following directions, namely:-

(1)directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters, and

(2)directing that the accounts of the trust shall be examined and audited:

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition."

13.As per Section 3 of Charitable and Religious Trusts Act, the person who interested in Trust is having only some limited rights. The petitioner has possession to run a school in the 5th item of the properties in O.P.No.101 of 1975.



14.The petitioner has no other right either in the Trust or in the suit schedule properties. Further, the revision petitioner has also not a beneficiary under the Trust. If any object of the Trust, violated a beneficiary alone can question the act.

15.Here, the petitioner has filed the petition to issue direction that the petition mentioned property cannot be alienated by Indian Evangelical Luthern Church and it can administer the same which cannot be objected under Section 3 of Charitable and Religious Trusts Act.

16.The Court has given power to Trustee in O.P.No.101 of 1975 to take fit and proper decision without opposed to the objects of this Trust.

17.The Trustee is decided to sell the property only to raise fund for executing the objects of Church. The revision petitioner has also tried to purchase the property as per averments in the order in I.A.No.1500 of 1992 in O.P.No.101 of 1975.

18.The order in O.P.No.101 of 1975 was not challenged till 1992. Further, no prayer is negatived by the order.

19.So, the learned Principal District Judge, Dindigul, has rightly dismissed the petition in I.A.No.1500 of 1992 in O.P.No.101 of 1975. There is no valid reason to interfere with the order passed by the Court below.

20.Accordingly, this Civil Revision Petition is dismissed by confirming the order, dated 25.04.2003 in I.A.No.1500 of 1992 in O.P.No.101 of 1975 passed by the learned Principal District Judge, Dindigul. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

The Principal District Judge,
Dindigul.

+2 CC to M/s.K.SEKAR, Advocate (SR-12107[F] dated 15/03/2022)

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-12652[F] dated 17/03/2022

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15.03.2022

NSN (CO)
KB (24.03.2022) 6P 5C