

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	23.02.2022
DELIVERED ON	15.03.2022

WEB COPY

CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.R.P. (MD) No.788 of 2016****and****C.M.P. (MD) No.3973 of 2016**

The Principal,
Kodaikanal International School,
Seven Roads, Kodaikanal Town,
Dindigul District.

...Petitioner/Revision Petitioner

Vs.

1.Sri Bala & CO.,
Represented by its Proprietrix,
R.Sivabaladevi.

2.Indian Evangelical Lutheran Church Trust,
Association represented its
Secretary and Treasurers.

...Respondents/Respondents

PRAYER: Civil Revision Petition under Section 227 of Constitution of India, to set aside the order dated 23.03.2016 passed in I.A.No.3 of 2013 in O.S.No.49 of 2007 on the file of the learned Additional District Judge, Dindigul, and allow the Civil Revision Petition.

For Petitioner	:Mr.P.V.Balasubramaniam, for Mr.I.Suthakaran
For R-1	:Mr.AR.L.Sundaresan, Senior Advocate, for Mr.AL.Ganthi Mathi
For R-2	: Mr.R.Sathiamoorthi

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 23.03.2016 in I.A.No.3 of 2013 in O.S.No.49 of 2007 passed by the learned Additional 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.3 of 2013 in O.S.No.49 of 2007 on the file of the learned Additional District Judge, Dindigul.



2013 in O.S.No.49 of 2007, as a third party, on the file of the learned Additional District Judge, Dindigul, under Order 1 Rule 10 (2) of Civil Procedure Code to implead him as 2nd defendant in the suit in O.S.No.49 of 2007. The said petition was dismissed on 23.03.2016 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 failed to note that the suit property is a trust property and the petitioner is a beneficiary of the trust property. The Court below has failed to note that the necessary and proper party is to be impleaded in a suit so as to effectually and completely adjudicated upon and settle all the questions involved in the suit. The Court below without considering the point in issue held that the controversy involved in this suit can be decided even in the absence of the petitioner, which is erroneous as the suit is a trust property and beneficiary is the necessary party as held by the Hon'ble Supreme Court of India. The order passed by the Court below is liable to be set aside.

6. The suit in O.S.No.49 of 2007 was filed by the 1st respondent herein/plaintiff to direct the defendant to execute the sale deed in favour of the plaintiff or its nominee after receiving the balance of consideration by fixing a date and on failure to execute, execute the sale deed through process of Court and Costs.

7. The learned counsel appearing for the petitioner relied upon the Judgment reported in **1989 Supp(2)SCC 356 in R.Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others**, in which the Hon'ble Supreme Court held as follows:

"A suit under Section 92 of the Code is a suit of a special nature for the protection of public rights in the public trusts and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. A suit whether under Section 92 of Civil Procedure Code or under Order 1 Rule 8 of Civil Procedure Code is by the representatives of large number of persons who have a common interest. Thus the suit binds not only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that Explanation VI to Section 11 of the Code constructively bars by res judicata the entire body of interested persons from re-agitating the matters directly and



substantially in issue in an earlier suit under Section 92 of the Code."

8. He also relied upon the Judgment reported in **2015 (13) SCC 579, in Baluram Vs. P.Chellathangam and Others**, in which the Hon'ble Supreme Court held as follows;

"12. After due consideration of the rival submissions, we are of the view that the High Court erred in interfering with the order of the trial Court impleading the appellant as a party defendant. Admittedly, the appellant is a beneficiary of the Trust and under the provisions of the Trusts Act, the trustee has to act reasonably in exercise of his right of alienation under the terms of the trust deed. The appellant cannot thus be treated as a stranger. No doubt, it may be permissible for the appellant to file a separate suit, as suggested by Respondent I, but the beneficiary could certainly be held to be a proper party. There is no valid reason to decline his prayer to be impleaded as a party to avoid multiplicity of proceedings. Order 1 Rule 10(2) CPC enables the court to add a necessary or proper party so as to "effectually and completely adjudicate upon and settle all the questions involved in the suit".

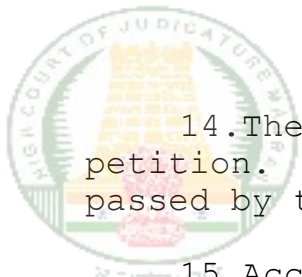
9. But, the facts of the aforesaid case is different. The case was filed for scheme decree.

10. As already stated the School is not beneficiary under the Trust.

11. The issues of the case on hand is to be decided is whether the plaintiff is entitled for execution of sale deed on the basis of sale agreement only party to the sale agreement are necessary parties. If any other person having title in the property can be impleaded.

12. In this case the Kodaikonal School is completely a stranger to the agreement. It has only possessionary right. If its right is disturbed it can file separate suit to seek their remedy.

13. Since the suit is for specific performance, the revision petitioner is not a necessary party.



14. Therefore, the trial Court has rightly dismissed the petition. This Court has no reason to interfere with the order passed by the Court below.

15. Accordingly, this Civil Revision Petition is dismissed by confirming the order, dated 23.03.2016 in I.A.No.3 of 2013 in O.S.No.49 of 2007 passed by the learned Additional District Judge, Dindigul. No Costs. Consequently, connected miscellaneous petition is closed.

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 Additional District Judge,
Dindigul.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-12040[F] dated 15/03/2022)

+2 CC to M/s.I.SUTHAKARAN, Advocate (SR-12105[F] dated 15/03/2022)

C.R.P. (MD) No.788 of 2016
15.03.2022

NSN(CO)
KB(24.03.2022) 4P 5C