BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.2094 of 2022
and
CMP(MD)No.9645 of 2022

1.A.Navaneetha Krishnan

2.K.Sivasakthi

3.S.Ramajeyam ... Petitioners

Vs

S.Ramanavalakshmi ... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 16.08.2022 passed in IA.No.1 of 2022 in OS.No.77 of 2021 on the file of the learned Sub Court, Mudukulathur.

For Petitioners : Mr.T.Thirumurugan

ORDER

This civil revision petition is filed as against the order dated 16.08.2022 passed in IA.No.1 of 2022 in OS.No.77 of 2021 on the file of the learned Sub Court, Mudukulathur.

2.The petitioners are the defendants in OS.No.77 of 2021, which is pending on the file of the Sub Court, Mudukulahtur. The respondents filed the above suit to declare the gift deed of her father in favour of these petitioners in document Nos.154 of 1987 and 373 of 1994 dated 02.03.1987 and 21.07.1994 respectively and document No. 57 of 2021 dated 01.02.2021 as null and void that the properties were gifted to the petitioners for certain objects, however, by defeating the objects, the petitioners have sold the properties among themselves.

3.The petitioners / defendants have filed an interlocutory application under Order VII Rule 11 of CPC claiming that the suit is not maintainable since the respondent/ plaintiff has not obtained leave of the Court as per Section 92 CPC, to strike of the plaint. They have also pleaded that the Court fee was not properly paid and therefore, on this ground the suit filed by the respondent in OS.No.77 of 2021 has to be struck off.

4.The trial Court dismissed the application that the suit was not filed for any relief as against the trust and it is only with regard to the gift deed dated document Nos. 154 of 1987 and 373 of 1994 dated 02.03.1987 and 21.07.1994, 57 of 2021 dated 01.02.2021 executed by her father in favour of the trust. They were executed for the purpose of running a school, however, the petitioners have closed the school and also exchanged the gifted properties among themselves and therefore, Section 92 of CPC is not attracted.

5.The learned Counsel for the petitioner submits that the first petitioner is the president of a public charitable trust and the trust is a registered one. Considering the service of the trust, the plaintiff's father has gifted certain properties by way of a registered gift deeds in the year 1987 and 1994 and those documents were duly registered before the Sub Registrar Office, Mudhukulathur. The gifted properties were also used for running a school through the trust, however, the trust could not run the school in view of the recent guidelines issued by the educational department and also in view of the low number of students. Therefore, by resolution dated 30.06.2019 and 07.01.2021 the trust decided to sell the properties to the petitioners 2 and 3 in the interest of the trust. The gift deed executed by the plaintiff's father in the year 1987 and 1994 is sought to be cancelled after a period of 35 years and 28 years respectively and the respondents have no right to question the same and her request is barred by limitation. He further submits that the properties, which were transferred by gift deed cannot be cancelled and the donor alone has the right to cancel the gift deeds and even it could be done only within a period of three years nd this suit is filed after a period of 35 years and 28 years.

6.The learned Counsel has also relied on the provisions of Section 92 of CPC that the plaintiff ought to have obtained leave and due permission from the Advocate General as per Section 92 of CPC and in this case, the suit was filed without complying with the provisions of Section 92 of CPC and without considering the same, the trial Court has dismissed the said application without any valid reason and hence the order is liable to be set aside.

7.The learned Counsel for the respondent submits that the suit is not filed as against the administration of the trust and it is only with regard to the gift deeds executed by her father in favour of the petitioners and the gift deeds were executed only for the purpose of running a school and the fact remains that the school was run by the trust in the gifted property and the property which was gifted for the purpose of running a school has been alienated among themselves and the very object for the purpose it was gifted was defeated and therefore, the petitioner is having every right to question the gift deeds executed by her father and the subsequent deeds created among themselves.

8.This Court considered the submission of the learned Counsel for the petitioners and also perused the materials placed on record.

9.The petitioners/ defendants have filed the above interlocutory application in IA.No.1 of 2021 under Order VII Rule 11 CPC to strike of the plaint that the suit was filed without complying with the provisions under

Section 92 of CPC and the property was not properly valued and it is hit by limitation.

10.The respondent / plaintiff has filed the above suit challenging the gift deeds executed by her father as document Nos.154 of 1987 and 373 of 1974 and 57 of 2021 dated 02.03.1987, 1.07.1994 and 01.02.2021 respectively and also as against the documents, which were created among the petitioners in document Nos.57 of 2021 and 263 of 2021 dated 01.02.2021 and 21.04.2021. The plaintiff's father has donated lands for certain objects. Admittedly the school was run by the petitioners/ defendants in the said gifted property for sometime and the same is now closed for want of required number of students. The properties which were gifted by these respondent's father were also transferred among the trust members by way documents dated 01.02.2021 and 21.04.2021. The petitioners / defendants claim that it was transferred only based the resolution dated 30.06.2019 and 07.01.2021. As per Section 51 of the Indian Trust Act, trustee may not use trust property for his own profit and a trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust. As per Section 52 of the Trust Act, no trust shall directly or indirectly buy the trust property. The trust properties can also be sold only after the permission from the Court. The fact remains that the properties, which were gifted were transferred among the trust members. The respondent has filed the above suit challenging the sale deeds in document No.57 of 2021 dated 01.02.2021 and 21.04.2021. The suit properties are the properties, which were gifted by her father in the year 1987 and 1994 and that too for certain charitable purposes. Since the object for which, the properties were gifted, has not been achieved, the respondent/ plaintiff has filed the above suit. The plaintiff has not asked for any relief with regard to the administration of the trust or for removing or appointing any trustee or settling any scheme or vesting any property in a trustee.

11.The main purpose of Section 92(1) of CPC is to give protection to public trust of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that Section can only be filed either by the Advocate

General, or two or more persons having an interest in the trust with the consent in writing of the Advocate General. The object clearly is that before the Advocate General files a suit or gives his consent for filing a suit under Section 92, he would satisfy himself that there is a prima facie case either of the each of trust or of the necessity for obtaining directions of the Court. This Section has no application unless the following three conditions are fulfilled (1) the suit must relate to a public charitable trust or religious trust; (2) the suit must be founded on an allegation of breach of trust or the direction of the Court is required for administration of the trust and (3) the reliefs claim are those which are mentioned in the Section.

12.The petitioners/ defendants themselves have admitted in the written statement that the educational institution conducted by the trust is closed by way of passing a trust resolution and the object of the gift deed comes to an end through the resolution of the petitioners / defendants trust. As such Section 92 does not arise and the respondent plaintiff had not pleaded anything about the mismanagement of the trust and its properties.

13.The cause of action for the suit arose on the sale deeds created by the petitioners/ defendants among themselves, dated 01.02.2021 and 21.04.2021 and since the gift is also for certain charitable purposes and by these documents the purpose of the gift deed is also defeated and therefore, the suit is not barred by limitation.

14.Regarding the valuation of the court fee also this Court is not inclined to interfere with the orders of the trial Court. Therefore accordingly, this civil revision petition stands dismissed. No costs. Consequently connected miscellaneous petition also stands dismissed.

31.10.2022

dsk

To

The Sub Judge,
Mudukulathur.

B.PUGALENDHI, J.

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