IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2023

PRONOUNCED ON : 28.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application Nos.2983 to 2985 of 2019
in C.S.No.341 of 1935

1.T.K.Viswanatha Davey 2.T.K.Venkatesa Davey (deceased)	...	Applicants 1 & 2 / Defendants 4 & 5 [L.R.s of 2nd defendant] [in all Applications]
3.T.R.Ramanatha Davey (Deceased) 4.T.R.Subbaraya Davey 5.T.R.Lakshmi Sankar Davey (Deceased) 6.T.R.Rajaram Davey	...	Applicants 3 to 6 / Defendants 6 to 9 [L.R.s of 1st defendant] [in all Applications]
7.T.R.Ranganatha Davey	...	7th applicant / Proposed 10th defendant [L.R.s of 6th defendant] [in all Applications]
8.Sreedhar Lakshmishankar Davey	...	8th applicant / Proposed 11th defendant [L.R.s of 8th defendant] [in all Applications]

9.V.Ramesh
10.V.Balaji ... Applicants 9 & 10 /
Proposed Defendants
[L.R.s of 5th defendant]

[applicants 9 & 10 are brought on record as legal heirs of the deceased 2nd applicant as per order dated 09.02.2022 in A.No.3236, 3237, 3040 of 2020]

versus

1.The Advocate General,
Madras at Chennai.

2.The Hindu Religious
Endowments Board,
a body constituted under the
Hindu Religious Endowment Act
Act II of 1927,
Chennai - 600 034. ... Respondents/Plaintiffs
[in all Applications]

PRAYER in Application No.2983 of 2019: Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC, praying to authorise the applicants herein to sell item 1 of the schedule I of property to the tenants shown and listed in the 2nd schedule morefully described in the judge's summons at a price to be fixed by this Court.

PRAYER in Application No.2984 of 2019: Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC, praying to authorise the applicants herein to sell item 2 of the schedule I of the property morefully described in the judge's summons by means of public auction.

PRAYER in Application No.2985 of 2019: Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC, praying to authorise the applicants herein to construct hall in item 3 of the schedule I of the property morefully described in the judge's summons at a cost of Rs.86,85,000/- out of the sale proceeds and to invest the balance if any.

For Applicants : Mr.A.Sivaji
[in all Applications]

For Respondents : Mr.R.Shanmugasundaram
[in all Applications] Advocate General
Asst. by Mr.Edwin Prabakaran
Special Government Pleader &
Mr.P.Harish
Government Advocate (C.S.)

COMMON ORDER

Application No.2983 of 2019 has been filed to authorise the applicants to sell item no.1 of the schedule-I of the property to the tenants shown and listed in the schedule-II morefully described in the judge's summons at a price to be fixed by this Court; Application No.2984 of 2019 has been filed to authorise the applicants to sell item No.2 of the schedule-I of the property morefully described in the judge's summons by means of public auction; and Application No.2985 of 2019 has been filed to authorise the applicants to construct hall in item no.3 of the schedule-I of the property more fully described in the judge's summons at a cost of Rs.86,85,000/- out of the sale proceeds and to invest the balance, if any.

2. Heard the learned counsel for the applicants and the learned Advocate General for the respondents / plaintiffs and perused the materials available on record.

3.Applications in brief:-

3.1. The 4th applicant is the 7th defendant in the suit; in view of the death of original defendants 1 and 2, the applicants 1 to 6 were brought on record as defendants 4 to 9; the applicant's brother was recognised as the Managing Trustee of the suit trust by name Tawker's Charities at Ayanavaram; applicants 5 and 6 are the fourth applicant's younger brothers, applicants 1 and 2 are his cousin brothers and legal heirs of the deceased 2nd defendant and 7th applicant is the son of the deceased 6th defendant.

3.2. Originally a scheme for management was settled by this Court in C.S.No.315 of 1909; the defendants have filed a suit in C.S.No.341 of 1935 by impleading T.R.Ranganatha Davey and his brother T.R.Krishnaji Davey as defendants; by a judgment and decree dated 24.08.1937 a modified scheme was settled by this Court; Clause-1 of the decree stipulates that the trusteeship shall be hereditary as provided in the indenture dated 09.05.1807 and the trustees shall be entitled to receive the income etc.; based on this, the legal heirs of the deceased original defendants were brought on record; the trust through its trustees filed a suit in C.S.No.480 of 1997 against the respondents herein and other third parties as defendants and the same was dismissed; pending O.S.A. the 6th defendant [first appellant] died and as per Clause-1 of the scheme, the application has been filed to bring the 7th applicant as his legal heir and it was allowed.

3.3. On account of the death of T.R.Ramanatha Davey [6th defendant] on 30.12.2011, his son was brought on record as his legal heir and 4th applicant recognised as the Managing Trustee by virtue of the order passed in C.M.P.No.973 of 2012 in O.S.A.No.80 of 2005 dated 23.01.2013 and O.S.A.No.80 of 2005 was disposed on 16.11.2016. Hence, these applications have been filed seeking permission to sell item no.1 of the schedule-I of the property to the tenants shown in the schedule-II at a price to be fixed by this Court and item no.2 by means of public auction and to construct a community hall in item no.3 at a costs of Rs.86,85,000/-, out of the sale proceeds and to invest the balance, if any.

3.4. The trust is managing Arulmigu Kasi Viswanathar Temple and Choultry; this is a composite trust and hence Section 92 of C.P.C. alone applies; as per the provisions of the scheme, the trustees are paying scholarships and contributions to feed orphans and students; the annual income from 01.07.1995 to 30.06.1996 was Rs.7,81,506/-; the annual common expenses would come to Rs.6,56,246/- and there is a balance of Rs.1,25,559/- and this has to be divided into two parts and the one part for religious and the other part for the secular purposes.

3.5. The sites in item no.1 were leased out to various persons and superstructures were put up; there are totally 41 tenants; even if action is taken against them under the City Tenants Protection Act, the trustee has to pay the costs of the superstructure and the trust has no funds for making such payments; the monthly income is also very low and hence it cannot be put to better use; if the property is sold by public action no one will come forward to buy it for a better price because of the meager rent and hence they may be permitted to be sold to the tenants themselves.

3.6. Item no.2 is a dilapidated building; the trust has got no funds for reconstruction; the property is in a lane in Park Town surrounded by buildings and it is in a busy locality; item no.3 is a vacant plot near the Choultry; if a community hall is constructed that can be rented out to poor people of Gujarathi Community and others for marriages and other small functions; if this is undertaken as an act of charity, small surplus may be made as additional income. Hence Managing Trustee filed these applications to sell item nos.1 and 2 and to construct community hall in item No.3 as stated in the applications.

4. The respondents 1 and 2 / plaintiffs have filed counter in brief:-

4.1. Originally a scheme of management was settled by this Court in C.S.No.315 of 1909; later the defendants have filed C.S.No.341 of 1935 and by virtue of the judgment and decree dated 24.08.1937, the scheme decree passed in C.S.No.341 of 1935 has been modified. Clause 14, 17 and 18 of the modified scheme decree reads as under:-

> *"(14) The charges of the establishment and other expenses mentioned in the Schedule I annexed hereto shall be met out of the common funds and what remains thereafter shall be divided equally between the religious and the secular portions of the charities, one half being applied for the worship and other services in the temple and one half for feeding and other secular purposes of the Trust.*
>
> *(17) the Trustees shall have liberty to draw the amount of Rs.4000/- odd in deposit in the District Court of Chengalpattu in C.R.O.Ps.4 of 1912, 1 of 1913 and 4 of 1915 and Rs.600/- in the Court of Small Causes, Madras and invest the same and the balance of the fixed deposit with the Imperial Bank of India remaining after meeting the expenses mentioned in clause 15 above in the purchase of immovable properties in the City of Madras in the name of the Trust;*
>
> *(18) That the Trustees be at liberty to apply the income resulting from the Trust funds and properties to such objects and in such proportions*

> *as they in consultation with the Advocate General may deem fit and proper and the parties hereto do have liberty to apply to the Court for further directions, if need be."*

4.2. Application No.4019 of 1983 has been filed earlier to permit the applicant to enter into the proposed sale of several plots of land and the said application was dismissed on 02.02.1984. Challenging the above order, an appeal has been filed in O.S.A.No.135 of 1985 and that has also been dismissed on 25.09.1985.

4.3. The suit was filed by the trustees in C.S.No.480 of 1997 with a similar prayer as mentioned in the present applications against the respondents and other third parties as defendants and the suit was dismissed by a judgment dated 06.02.2004; in the judgment itself, it has been observed that in view of Section 63 of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [H.R.&C.E. Act], the Joint / Deputy Commissioner got the power to decide whether the institution is a charitable institution or a religious institution; because the present trust has got both the religious and charitable objects; even according to Section 64(5) of H.R.&.C.E Act, the authority concerned can modify or cancel the scheme decree in force.

4.4. After the commencement of the H.R.&C.E. Act, 1951 Section 92 of C.P.C. ceased to be applicable for the properties relating to HR&CE; in the absence of any specific provision in the modified scheme decree enabling the trustees to alienate the properties and in the absence of any appeal against the judgment passed by the Division Bench, the suit under Section 92 of C.P.C. cannot be maintained and the court does not have any jurisdiction under Section 92 of C.P.C.

4.5. By making the above observation, C.S.No.480 of 1997 was dismissed; the appeal filed challenging the above judgment has also been dismissed on 16.11.2016. Hence all these applications filed by the applicants to alienate the public property belonging to the public religious institution without the permission of the Commissioner under Section 34 of H.R.&C.E. Act, are not maintainable. As per the said Act, the State

Government or the Commissioner of H.R.&C.E. Department, who are the Trustee / administrator of the temple lands, shall not alienate or give away the lands contrary to the wish of the donor and the lands shall always remain with the temples; the public purpose theory shall not be invoked in case of temple lands over which the interest of a community of the religious denomination generally rests.

5. The learned counsel for the applicants submitted that in the earlier application filed in A.No.2367 of 1948 in C.S.No.341 of 1935 it has been observed that the trust has to take appropriate action under the provision of the Trust Act for the sale of the property and hence the applicants have come out with these applications to sell the properties and to improve the income of the trust.

6. The learned Advocate General for the respondents / plaintiffs submitted that the very same prayer has been made in the suit filed in C.S.No.480 of 1997 and the suit was dismissed on 06.02.2004. It has been observed in the said judgment that Section 92 of C.P.C. is no more applicable to the properties belonging to the trust which has got religious and charitable objects or in other words in respect of the religious institution Section 92 of C.P.C. is not applicable and hence the applicants cannot seek permission to alienate the property. It is further observed that the earlier scheme decree does not have any clause as to the sale of the property.

7. It is seen that the applicants someway or other are taking the very same attempts by way of filing different proceedings for the same prayer and each time it got negatived by the Courts. A.No.4019 of 1983 in C.S.No.341 of 1935 has been filed for similar purpose and got dismissed. The appeal filed challenging the above said order in O.S.A.No.135 of 1985 also got dismissed. The trust is said to have the dual objects of both religious and charitable purposes. The trust properties comprise of a temple and the power to decide whether the property is a religious institution or not lies with the authorities of H.R.&C.E. namely Deputy Commissioner as the case may be and in accordance with Section 63 of H.R.&C.E. Act.

8. As per Section 5(e) of the H.R.&C.E. Act, Sections 92 and 93 of C.P.C. are not applicable for trust. Even though it is claimed by the respondents that the property would come under the folder of the H.R.&C.E. Act, so far, no listing has been done under Section 46 of H.R.&C.E. Act. If the respondents / plaintiffs strongly believed that the properties of the trust are religious in nature and they would come under the definition of religious institution, they ought to have filed such an application before the appropriate authority and got it decided as per Section 63 of the H.R.&C.E. Act. If the scheme decree is not applicable and it does not meet out the purpose for which the trust is created or does not allow the trustees to alienate the trust property for the benefit of the trust. There is no inability to file an application before the appropriate authority in accordance with Section 64(5) of H.R.&C.E. Act and seek due permission. So far as the scheme decree is concerned, it does not speak about anything about the alienation of the property and it is needless to state that subsequent to the coming into force of the H.R.&C.E. Act 1951, Section 91 or 92 of C.P.C. are not applicable to religious institution.

9. First of all, it should be decided whether the property belongs to the trust or religious institution; in such case, it is obligatory on the part of the H.R.&C.E. authorities to take appropriate steps in order to augment any of the religious institution and for the better management of the temple and other activities by forming a scheme under Section 64(5) of the H.R.&C.E. Act. It is only because the H.R.&C.E. Department is silent, the applicants are compelled to knock the doors of the Court every now and then in some way or other and seek permission for selling the property or for any other purposes. The respondents can not be complacent by claiming that there is a religious institution and the power to decide the manner in which the property should be managed vests with the authorities contemplated under H.R.&C.E. Act without taking any action. In such a perplexed situation, this Court cannot grant permission to the applicants for selling the suit property for the reasons stated by them.

10. In view of the above stated reasons, the applications in Application Nos.2983 to 2985 of 2019 are dismissed.

28.04.2023

Speaking order
Index : Yes
Neutral Citation : Yes

sri

To

The Hindu Religious,
Endowments Board, a body constituted
under the Hindu Religious Endowment Act,
Act II of 1927,
Chennai - 600 034.

R.N.MANJULA, J.

sri

**Pre-Delivery Common Order made in
Application Nos.2983 to 2985 of 2019
in C.S.No.341 of 1935**

28.04.2023