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A.Nos.1553, 1554, 262 & 2186 of 2023
& O.A.Nos.43 & 322 of 2023 and 533 of 2021
in C.S.No.678 of 2019

<i>Reserved on</i>	<i>17.04.2023</i>
<i>Delivered on</i>	<i>05.06.2023</i>

K.KUMARESH BABU, J.

These applications have been filed seeking for various reliefs as follows:

(i)to restore the original application in O.A.No.1080 of 2019 in C.S.No.678 of 2019 which was closed on 27.11.2020 filed by the applicants may be restored to the file of this Court for early hearing and disposal.

(ii)to restore the original application in O.A.No.1081 of 2019 in C.S.No.678 of 2019 which was closed on 27.11.2020 filed by the applicants may be restored to the file of this Court for early hearing and disposal.



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(iii) to appoint a party receiver to take over the management and affairs of the 1st respondent Trust and its properties and collect all the income and receivable of the 1st respondent Trust and to maintain property accounts pending disposal of the above C.S.No.678 of 2019.

(iv) to permit the applicants to conduct necessary board meetings of the Trust and pass resolutions to finalize the annual accounts by dealing with such authorities including its Bankers to pay necessary taxes for filing its Income Tax Returns for the previous years.

(v) to grant an order of ad interim injunction restraining the 8th respondent/8th defendant herein from withdrawing the amounts lying to the credit of the 1st respondent Trust in the Savings Bank Account Nos.0427301000035330 and 0427301000021247, M/s.DBS Bank India Limited (Formerly



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M/s.Lakshmivilas Bank) Govindappa Naicken Street Branch, Chennai pending disposal of the above C.S.No.678 of 2019.

(vi)to pass an order of injunction restraining the respondents herein, their men, agents, servants, legal representatives and assigns from in any way acting upon the lease agreement dated 30.05.2018 which was registered as document No.709 of 2018 on the file of SRO, Sowcarpet entered into between the first respondent Trust and Mrs.S.Suneetha.

(vii)to grant interim injunction restraining both 1 and 2 respondents/plaintiffs and 7th respondent/9th defendant from intervening with the bankers of the Trust i.e. DBS Bank and ICICI Bank pertaining to the bank accounts of the 1st applicant Trust without any prior notice or order of this Court.

2.The suit had been initiated under Section 92 of C.P.C. seeking for framing of a scheme for proper conduct of affairs of the first defendant trust, directing



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removal of the second and seventh defendants from the post of trustees of the first defendant Trust, and also directing the defendants to render true and proper accounts in respect of the first defendant Trust from the year 2016 till actual date of rendition of accounts and for a permanent injunction restraining the defendants 2 and 7 from discharging / acting as managing trustees/trustees in the first defendant Trust.

3.Heard Mr.R.Krishna, learned counsel for the plaintiff in A.Nos.1553 & 1554 of 2023, O.A.No.533 of 2021 & C.S.No.678 of 2019. Mr.E.Prabhu, learned counsel for the applicant in A.No.262 of 2023 & O.A.No.43 of 2023 and Mr.Sathish Kumar, learned counsel for D1, D3 & D8 in A.Nos.1553 & 1554 of 2023, O.A.No.533 of 2021 & C.S.No.678 of 2019 and for applicants in A.No.2186 of 2023 & O.A.No.322 of 2023.



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4.The first defendant Trust had been found by the great grandfather in 1938.

It is the case of the plaintiff that item nos.1 and 2 to the schedule of property in the suit had been dedicated to the Trust. A complaint has also been made by the plaintiff that the accounts of the Trust have not been audited by a qualified Auditor which creates a doubt on the various financial transactions and that there had been no meetings of the Board of Trustees as contemplated. He would submit that there has been unsanctioned withdrawal of the Trust amount from the banks in which the Trust accounts are being maintained. He would further submit that even though the Trust mandates that the accounts of the Trust shall be operated by a treasurer along with another trustee who may be nominated by the Resolution passed by the member of trustees, the account is presently being operated only by the second defendant without being counter signed by any other trustee. Notice of the Trust meetings are not issued to the members of trustees and that the decisions are being taken at the whims and fancies of the second defendant.



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5.A common written statement had been filed by the second defendant on behalf of the defendants 1 to 3, they have admitted the formation of the Trust and dedication of the properties mentioned in the suit schedule. It was also further contended that the first defendant Trust had also purchased a property in Ambattur measuring an extent of 72 cents. A further allegation is made against the first plaintiff that the property at Ambattur was given by way of annual rent by the Trust to the first plaintiff as the object of running an Educational Institution and that the lease was for a limited period of 21 years. However, it is the contention of the defendants that the Trust is only a Family Trust and not a Public Charitable Trust and hence, the suit under Section 92 is not at all maintainable.

6.He would contend that the income tax returns of the Trust are being made in the status of an association of persons and not as a Public Charitable Trust. It was also alleged that the first plaintiff had constructed a huge commercial complex in the property leased out to him for running a school and had unjustly enriched



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himself. There were also allegations about the Secretary of the Trust by the plaintiff for which, a complaint also seems to have been made in C.S.R.No.25 of 2018 on the file of the Flower Bazaar Police Station. The defendants would further contend that the first plaintiff herein as a witness on behalf of the Trust had deposed before the XIV Small Causes Court that the first defendant is only a Private Trust and not a Public Trust. Therefore, he would contend that the first plaintiff is now estopped to make a claim that the first defendant Trust is a Public Trust and hence, the suit filed under Section 92 C.P.C. is only with a malice to harass the private defendants.

7.He would further submit that what the plaintiff seeks to vindicate is his personal right and not the rights of the public. Even if assuming that the Trust is a Public Charitable Trust, he had also questioned the locus standi of the second plaintiff as a trustee in view that its appointment itself was illegal, the reason attributed to such illegality was that the maximum number of members of the



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trustees as per the Trust Deed is only 7 and the first plaintiff had mislead the other trustees to induct the second defendant who is his son as eighth trustee which is in contravention of the trustee.

8.It was also submitted that the first plaintiff presently has no locus standi as he has been unanimously removed from the trusteeship in the Board Meeting held on 21.09.2019. It was also contented that there was no illegal or unlawful operation of the bank account of the Trust. In the written statement filed by the defendants 1 to 3 have been adopted by the eighth defendant. This Court by order dated 09.03.2022 had framed various issues. By order dated 15.11.2022, this Court had also permitted a third party to the suit to be impleaded as a further defendant in the suit, these applications were all heard in common.

9.During the course of the arguments, various documents have been placed before this Court in support of the respective contentions raised by the learned



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counsels. The Trust Deed dated 19.05.1938 under which the Trust had been created, was carefully analyzed. From the recitals made in the Trust Deed, it could be seen that the object of the Trust was for carrying out a Religious and Charitable purposes particularly set out in the Trust Deed. The Trust Deed provides as to how the trustees shall be appointed. The trustees were also permitted to take charge or conduct any endowment or charitable request of any benevolent person or persons. Under the Trust Deed, items 1 and 2 of the schedule to the suit had been dedicated to the Trust and income arising from those properties would have to be utilised for the benefit of the Trust. Schedule B of the Trust Deed provides for Religious and Charitable purposes which have to be carried out from the income of the Trust.

10.A suit had been initiated in C.S.No.10 of 1968 by the trustees of the first defendant Trust seeking permission of this Court to develop the property at Kasi Chetty Lane, Chennai one of the dedicated property under the Trust Deed. This Court after considering the proposal submitted had permitted the trustees to



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develop the properties had granted the permission. A perusal of the aforesaid judgment would show that the then trustees had submitted a proposal to utilise the accumulation of rents that had been collected from the shops that was proposed to be put up for putting up Ramanujakutam on the first floor, as per the wishes of the Founder Trustee and which was one of the main objects of the Trust.

11.It is not disputed by the respective parties that, at present the Trust owns three properties:

(a)the property at Acharappan Street, George Town, Chennai measures about one ground 277 sq.ft. in which there are 9 shops on the ground floor and a house on the first floor.

(b)Kasi Chetty Lane, George Town, Madras measuring an extent of one ground 2312 sq.ft. with a built up portion of ground + three floors in which 123 shops have been put up.



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(c)the property at Ambattur measuring about 72 cents in which about 100 shops have been constructed.

12.The Trust seems to have commercial properties which could yield good income for the Trust. The allegations made by the plaintiffs are that the properties in 'A' & 'B' are in possession of the eighth defendant by way of a Lease Agreement entered by herself with the first defendant which was represented by its Secretary, the second defendant herein. Further allegation is that the second and the eighth defendants are the father and the daughter. It is also brought to the notice of this Court that the eighth defendant subsequent to the Lease Deed had become a trustee to the Trust. The registered lease document entered by the first defendant Trust through the second defendant with the eighth defendant was produced before this Court by the plaintiffs.



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13.Four documents were produced as regards to the lease of the properties in respect of the properties 'A' & 'B' noted supra.

(a) Deed of Lease dated 28.12.2017. The said Deed has been executed by the first defendant represented by the second defendant in favour of the eighth defendant. The property to the schedule of the Deed of Lease for the properties 'A' & 'B'. Covenants of the lease would show that the period of lease was 40 years. The lessee is entitled to sublease the demised properties. The lessee was also permitted to demolish and reconstruct the buildings. Shocking is that a consideration of sum of Rs.2,00,000/- was fixed as rent for the entire period of 40 years in respect of two properties which are in the heart of a commercial hub of the City of Chennai.

(b) Deed of Cancellation dated 30.05.2018. The earlier Lease Deed dated 28.12.2017 was sought to be cancelled so as to enable a fresh Lease Deed to be



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executed. The recitals in the said cancellation would indicate that the lease has been entered for a lesser period and that there was a wrong mentioning of the survey number of item no.1 of the property.

(c) Deed of Lease dated 30.05.2018. On the same day a fresh Deed of Lease had been executed by the first respondent through the second respondent in favour of the eighth respondent. The demised properties under the Lease Deed are both 'A' & 'B' properties supra. From the covenants, it could be seen that the lease had been made for a period of 98 years and the lease is based upon a consideration of Rs.4,00,000/- for the entire period of lease.

(d) A Lease Deed dated 01.11.2019, the said Lease Deed had been entered between the eighth defendant and one Sushil Jain, a third party. The demised portion under the Lease Deed is a shop in the first floor of the property 'B'. The period of lease is 36 months, the rent has been fixed at Rs.6,500/- per month apart



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from the tenant deposit of Rs.65,000/- as interest free advance and Rs.75,000/- as one time interest free security deposit. It is pertinent to note that only a sum of Rs.75,000/- was supposed to be refunded at the time of delivering the vacant possession.

14.From an analysis of the aforesaid documents, it could be seen that the entire property 'B' along with the property 'A' had been leased out by the Trust represented by the second defendant who is one of the trustees in favour of the eighth defendant. The second defendant and the eighth defendants are the father and daughter. The lease has been made for a period of 98 years rental consideration of Rs.4,00,000/- for the entire period of 98 years. The eighth defendant had entered into a Lease Agreement with the third party to lease out one shop in the first floor for a sum of Rs.6,500/- as rent per month for a period of three years. A calculation of rent at the rate of Rs.6,500/- per shop per month would clearly establish that the eighth defendant would be receiving a sum of Rs.78,000/- per month for that shop.



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There are 123 shops in that complex. Even assuming that all the shops have been rented at the same rental value, the income from property 'B' would come to Rs.95,94,000/- per year. This would itself show that the trustees of the Trust are mismanaging the Trust properties denying the substantial income of the Trust. It is also to be noted that the property 'A' also consists of shops and house which would also yield a substantial rental income.

15.I am of the prima facie view that all these income are being siphoned off by the trustees by executing such Lease Deed in favour of their relatives. It is also imperative to note that this Court in its judgment and Decree dated 31.01.1968 had permitted the then trustees to develop the property 'B', the proposal on which such permission was granted was that Ramanujakutam which was one of the object of the Founder Trustee was sought to be established in the proposed construction of the first floor at property 'B'. From the schedule of property given in the Lease Deed executed by the Trust, it is obvious that that the promise has not been kept up



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by the then trustees which would imperatively show that the trustees are not adhering to the objects and purposes for which the Trust had been created.

16.As regards to the property 'C' which is at Ambattur, it had been alleged by the defendants that the same is in possession of the plaintiff and that the properties had been originally leased to the first plaintiff for running a school who had constructed a commercial complex having 100 shops and is appropriating the same to his personal benefits. Such allegations have been made by the defendants in their written statement, no reply has been filed by the plaintiff denying such allegations in the written statement. The said allegations had also been made by the first and eighth defendants in an application filed by them in O.A.No.312 of 2023, the said allegations have also not been controverted by the plaintiff. There was also no denial during the course of arguments in all these applications.



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17.From various documents and the pleadings from the plaint, an irresistible conclusion is that the first defendant Trust owns three properties viz., the properties 'A', 'B' & 'C' stated supra. The same are in the hands of individuals by way of lease from the Trust for a paltry sum and they are being subleased by the said individuals who are unjustly enriching themselves. An argument had been made on behalf of the defendants 1 to 8 that the Trust is not a Public Charitable Trust and is only a Private Trust.

18.From a perusal of the Trust Deed, I am of the view that the objects and purposes envisaged under the Trust Deed would show that it is a Religious and Charitable Trust. Be that as it may, even if this Court comes to a conclusion that it is a Private Trust as claimed by the defendants even again from the findings supra, it is clear that the income of the Trust is being siphoned off by the individuals who are claiming to be the trustees of the Trust by entering into a sham and nominal Lease Deed with a paltry rental consideration and subleasing the properties to



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various third parties are unjustly enriching themselves, denying the benefits to the beneficiaries of the Trust.

19. In such circumstances, I am of the view that the income of the Trust and the properties of the Trust will have to be protected. Therefore, in the interest of the Trust, I appoint Hon'ble Mr. Justice N.K. Kirubakaran, No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai – 600 089, a former Judge of this Court as an Administrator of the Trust who shall forthwith take possession of the Trust properties enumerated as properties A, B & C stated supra and rents paid by the tenants into the accounts of the Trust.

20. The plaintiffs and the eighth defendant are directed to hand over the possession of the properties to the learned Administrator. If the Administrator feels that the rent that is being collected is not equivalent to the fair market rent, it will be open to him to negotiate with the tenants to fix a higher rent and if they failed to negotiate, it will be open to him to initiate appropriate action for fixation of fair rent. The learned Administrator shall be entitled to a sum of Rs.2,00,000/- per



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month as remuneration. The learned Administrator is also entitled to appoint any

person or persons to assist him in the administration of the Trust properties.

Remuneration to such persons shall be fixed by the learned Administrator.

Individual and administration expenses shall be drawn out of the Trust funds by the learned Administrator. The Learned Administrator is at liberty to take assistance of the Police Authorities if necessary for taking survey of the occupants of the Trust properties and for any other purposes for the administration of the Trust. The Police Authorities are directed to give necessary protection if they are approached.

21.It is unnecessary to adjudicate any further on all the applications and the applications are accordingly closed. Since the issues are already framed, the parties are directed to appear before the learned Master for recording their evidence and the learned Master is requested to complete the recording of evidence of all the parties as expeditiously as possible.

05.06.2023

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Pre-delivery common order in
A.Nos.1553, 1554, 262 & 2186 of 2023
& O.A.Nos.43 & 322 of 2023 and 533 of 2021
in C.S.No.678 of 2019

05.06.2023