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O.A.Nos.508 & 509 of 2023
in C.S.No.97 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2023

PRONOUNCED ON : 18.08.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.A.Nos.508 & 509 of 2023
in C.S.No.97 of 2023

1.T.Subhashini

2.T.Sudharsan

...

Applicants / Plaintiffs
[in both O.As]

versus

1.Sri Vupputur Alwar Chetty's Charities,
Represented by its Hereditary Trustee,
Vuputtur Ramesh,
No.183, Govindappa Naicken Street,
Chennai-600 001.

2.Vupputur Aswath

3.Vupputur Ramesh

4.Vupputur Swaroop

5.C.Vivekananda

6.A.Balasubramaniam

...

Respondents/Defendants
[in both O.As]

PRAYER in O.A.No.508/2023: Original Application filed under Order XIV Rule 8 of O.S. Rules read with Order XXXIX Rule 1 & 2 of the Civil Procedure Code, praying to ad interim injunction restraining the respondents / defendants from taking major decisions without the approval of the plaintiff in 1st defendant namely, Sri Vupputur Alwar Chetty's Charities pending disposal of the suit.



PRAYER in O.A.No.509/2023: Original Application filed under Order XIV Rule 8 of O.S. Rules read with Order XXXIX Rule 1 & 2 of the Civil Procedure Code, praying to ad interim injunction restraining the 3rd respondent / 3rd defendant from interfering with the management of the 1st defendant namely, Sri Vupputur Alwar Chetty's Charities pending disposal of the suit.

For Applicants : Mr.V.P.Sengottuvel, Senior Counsel
[in both O.As] for M/s.C.Sangamithrai
For Respondent Nos.1&3: Mr.M.Nandakumar
[in both O.As]
For Respondent Nos.2&4: Mr.N.Baaskaran
[in both O.As]
For Respondent No.6 : Mr.N.Sreenivasalu
[in both O.As]
For Respondent No.5 : No Appearance
[in both O.As]

COMMON ORDER

Original Application No.508 of 2023 has been filed by the applicants / plaintiffs seeking for an order of ad-interim injunction restraining the respondents / defendants from taking any major decisions without the approval of the plaintiffs in 1st defendant namely, Sri Vupputur Alwar Chetty's Charities. Original Application No.509 of 2023 has been filed seeking for an order of ad-interim injunction restraining the 3rd respondent / 3rd defendant from interfering with the management of the 1st defendant namely, Sri Vupputur Alwar Chetty's Charities.



2. Heard the learned Senior Counsel for the applicants / plaintiffs

and the learned counsels for the respondents 1 to 4 & 6 / defendants 1 to 4 & 6 and perused the materials available on record.

The averments of the applications in brief:-

3. The respondents 2 to 4 / defendants 2 to 4 are the close relatives of the plaintiffs; the first defendant Trust was formed by the grandparents of the defendants 2 to 4 with the name of 'Sri Vupputur Alwar Chetty's Charities' to do charity work which consists of the male members of the family namely:-

“(i) Vupputur Alwar Chetty

(ii) Vupputur Ethirajulu Chetty

(iii) Vupputur Thiruvengadathan Chetty”

3.1. Vupputur Alwar Chetty being the eldest member of Vupputur family had managed the family and formed the Trust through their Trust Deed dated 28.08.1922; 6 trustees were appointed for the Trust; among the 6 trustees, 4 trustees must be the life trustees and 2 shall be the ordinary trustees; in the trust deed of the first defendant Trust, he had consciously



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chosen not to give any discretion to the trustees to reduce the strength of the total number of the trustees; the first defendant Trust was formed to perform various charities to the public by using the income from the properties of Vupputtur family situated at (1) Govindappa Naicken Street, George Town, Chennai, (2) West Uthara Street, Srirangam (3) Stringer's Street, Chennai and (4) Anderson Street, Chennai; the trust deed itself describes the properties given for the first defendant Trust and the charities to be carried out by the first defendant Trust.

3.2. After the life time of Vupputur Alwar Chetty, Vupputur Ethirajulu Chetty, Vupputur Thiruvengadathan Chetty, their descendants namely Vupputur Emberumanar Chetty, Vupputur Anandakrishna Chetty, Vupputur Sethuram became life trustees and after the lifetime of Thatha Nagaiah Chetty, his descendant Thatha Alwar Chetty became the life trustee in the first defendant Trust; the plaintiffs' Thatha family is also running their family charity, namely T.V.R.Subbi Chetty's Family Charities and it is under the control of Hindu Religious and Charitable Endowments; due to the proceedings initiated in O.A.No.9198 of 2019 in C.S.No.37 of 2019, Thatha



Sampathkumar, who is an ex-trustee was removed and the plaintiffs were appointed in his place.

3.3. The income of Vupputur Alwar Chetty's Charity is being siphoned off; the vision and philanthropic gesture of the founder is not preserved; the third defendant mismanaged the first defendant's income by misappropriating the funds; due to the activities of the third defendant and his representations, the bank authorities had frozen the accounts; most of the rents from the tenants of the Trust are being collected with the third defendant by way of cash and its being misused; earlier this Court had passed orders by preventing the trustees from selling the properties of the Trust.

3.4. The third defendant has appointed one Sudhakar as Manager to the trustee without consulting the plaintiffs and he is taking all major decisions and signing the cheques; he had also appointed one Murali as a temporary trustee without consent of the plaintiffs and he misused the power and swindled the trust money worth Rs.70,00,000/- and transferred it to his



wife Sharda; if the accounts were not frozen, the entire money of the Trust would be swindled and hence, the plaintiffs had filed the suit.

3.5. The plaintiffs have also taken out these applications to restrain the third defendant from interfering with the management of the first defendant namely Sri Vupputur Alwar Chetty's Charities and to restrain the defendants from taking any major decisions without the approval of the plaintiffs.

Counter of the respondents 1 and 3 in brief:-

4. The respondents did not commit slightest act of causing prejudice to the interest of the Trust; the suit has been filed just on a personal agenda by misleading the Court; the respondents had not taken any steps to freeze the trust accounts, the brother of the first applicant had illegally frozen all the accounts of the Trust in the year 2017 and because of which the welfare activities got stalled.

4.1. The applicants had sent a notice on 13.07.2023 to freeze the accounts without getting any court orders; no material evidence are recorded



to show that the funds of the Trust were swindled by the respondents; the appointment of the Manager is to carry out the Trust related works; since all the trustees are senior citizens, they cannot go and collect rentals from the tenants; the plaintiffs set up one Hariharan Manikandan and forged the signature of the third respondent with the help of one Zakir Hussain and created a Joint Venture agreement as though it was signed by the third defendant; the present applications are nothing but abuse of process of law; there is no merits in the applications filed by the applicants and hence, these applications have to be dismissed.

Rejoinder to the counter in brief:-

5. The allegations raised against the respondents 1 and 3 were proved by evidence; the respondents 2 and 4 had colluded with the third respondent and tried to encumber the property and misuse the trust funds; since Vupputur Alwar Chetty's Charities has high regards to Thatha Nagaiah Chetty and he chosen to give one representation to his family in Sri Vupputur Alwar Chetty's Charities; the third respondent was involved in criminal cases and FIR has been registered against him for cheating and he cannot continue as a trustee; the third respondent had withdrawn the



amounts from the trust account on various dates; the third respondent did all illegal and fraudulent activities with a *malafide* intention to swindle the trust money and to misuse the trust fund and he also mismanaged the charity; the balance of convenience is in favour of the applicants and hence, these applications should be allowed.

Discussion:-

6. An order of ad-interim injunction has been granted by restraining the third respondent / third defendant from taking any individual decisions. After the counter was filed, it was seriously contended by the learned counsel for the third respondent that the applicants did not comply Order XXXIX Rule 3 C.P.C. by sending all the documents on the basis of which the applicants / plaintiffs had obtained the interim order. However it was objected by the learned Senior Counsel for the applicants that Order XXXIX Rule 3 C.P.C. had been complied.

7. Even when the applications were taken up for enquiry, both the parties were making mutual allegations against each other and the third respondent claimed that the applicants / plaintiffs are acting at the



instigation of the erstwhile trustee Sampath Kumar, who is the brother of the first applicant / first plaintiff. But the learned counsel for the third respondent expressed some serious concerns in keeping the accounts of the Trust frozen. He also submitted that since the account was frozen it is not possible for the Trust to disburse the salary of the employees and to meet out the essential functions of the Trust.

8. The attention of the Court is also drawn to certain transactions which were done with the approval of the first applicant herself. Leaving the main issues between the parties to be dealt after recording the evidence, I feel it is appropriate to make some arrangements in order to see the smooth functioning of the Trust, by taking into consideration of the larger interest. Both the learned counsels for the parties have understood the said necessity and during the course of submissions, the learned counsel for the third respondent suggested that the first applicant's mobile number can be given to the bank as the registered mobile number for the bank account and that will enable the Bank to send SMS to the first applicant's mobile number and hence, the first applicant will be updated about the payments. It is further submitted that the statement of the accounts of every month should also be



given. The learned Senior Counsel for the applicants submitted that there is no record to show the existing tenants and their rentals. The learned counsel for the respondents had agreed to furnish the list of tenants and the rents paid by them. If the transactions are done only through bank and payments are also made through bank transactions and not through cash transaction, it can serve as a proper check and balance.

9. It is fair on the part of the third respondent that he would provide the first applicant's mobile number to be given as the customer mobile number to be attached with the trust account. So it will help the first applicant to get messages about the transactions made through the bank account of the Trust. If the statement of accounts are also furnished every month, it will be easier for all the trustees to appreciate whether the functions of the Trust has been done in an appropriate manner and whether the funds of the Trust has been utilised properly. If the income of the Trust is mainly the rental incomes, then the respondents are bound to provide the list of tenants along with the respective rents paid by them after taking stock of the above details. So, I feel these applications should be disposed with the following terms:-



- i. The first applicant's mobile number shall be provided to the bank as the customer registered mobile number for the account of the trust maintained with the bank;
- ii. The respondents shall furnish the statement of accounts for every month to all the trustees and it shall be placed in the meetings of the trustees as and when required;
- iii. The respondents shall take the list of tenants, who are in occupation of the trust properties as on today and provide the details of the rents paid by them. Whenever rents are collected from the tenants, the receipts shall also be issued by whomsoever is in the helm of the affairs of the trust.

10. With the above terms and directions, the Original Applications in O.A.Nos.508 and 509 of 2023 are disposed.

18.08.2023

Speaking order

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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Pre-Delivery Common Order made in
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18.08.2023

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