



WEB COPY

A. No.3752 of 2022 in C.S.No.133 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2023

PRONOUNCED ON : 18.08.2023

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Application No.3752 of 2022
in C.S.No.133 of 2022

1.M/s.Mahalaxmi Educational Trust,
M/s.Cambridge Matriculation Higher
Secondary School,
No.148, Avai Shanmugam Salai,
Royapettah, Chennai – 600 014.

2.M/s.J.M.Mahalakshmi,
Managing Trustee,
M/s.Mahalaxmi Educational Trust,
M/s.Cambridge Matriculation Higher
Secondary School,
No.148, Avai Shanmugam Salai,
Royapettah, Chennai – 600 014.

3. Go.Neelaharam

4. Martin Rubert

5. V.Venkatesan

6. Kannan

7. M.Mariyammal

... Applicants / Defendants



Vs.

1. R.V.Narasimha Rao
S/o.(Late) Venkateswara Rao,
Founder Trustee,
M/s.Mahalaxmi Educational Trust,
M/s.Cambridge Matriculation Higher
Secondary School,
No.148, Avai Shanmugam Salai,
Royapettah, Chennai – 600 014.

2.P.D.Shivaji

... Respondents / Plaintiffs

PRAYER: Application filed under Order XIV Rule 8 of O.S. Rules read with Order VII Rule 11 of CPC, praying to grant an order to reject the plaint in C.S.No.133 of 2022.

For Applicants : M/s.E.J.Ayyappan

For Respondents : M/s.V.Balasubramanian & Associates

ORDER

This application has been filed by the applicants/ defendants 1 to 7 seeking an order to reject the plaint in C.S.No.133 of 2022.

2.Heard the arguments made by either side learned counsels and perused the materials available on record.

3.The averments of the petition in brief:

The applicants are the defendants. The defendants 3, 4, and 5 are not connected with the Trust's activities, and they were appointed as members of



the Disciplinary Committee to conduct domestic enquiry against the 1st respondent. The petitioners 6 and 7 are the other two active Trustees of the M/s.Mahalaxmi Educations Trust, which is presently managing the Trust. The 1st respondent had been removed from the trusteeship in view of the findings given by the Disciplinary Committee dated 12.09.2021 and vide the letter of the Trust dated 15.09.2021. The 1st respondent has filed this suit as though he continues to be the Trustee of the said Trust.

3.1. The 1st petitioner's Trust is not a public charitable Trust, or a religious Trust and hence, the 1st respondent has no *locus standi* to file this suit under Sec. 92 C.P.C. There is absolutely no allegation of breach of any Trust or conditions stipulated under the Trust deed for the purpose of seeking a Scheme for the administration of the Trust. In fact, there is no relief sought for proper Administration of the Trust and all that needed was to run the School by the name and style of '*M/s Cambridge Matriculation Higher Secondary School*'. The 1st respondent was removed from the Trusteeship for misappropriating several lakhs of the Trust's funds. Just in order to settle his personal vengeance, the suit has been filed.

3.2. The said school is a tenant paying monthly rent, and it does not own any immovable property. The deed of Trust dated 29.09.1991 would



show that the corpus of the Trust is a sum of Rs.1001/- and that no other immovable property was endowed to the 1st petitioner's Trust on that date or any subsequent date. The 1st petitioner's Trust is functioning with three trustees; there is no proposal to either close down the school or sell the school run by the Trust. Neither the school nor the 1st petitioner's trust owns or possess any immovable property in their names, and the suit schedule property over which the school exists is the 2nd petitioner's private property.

3.3. However, the 1st respondent did not assist her and he was always interested in his own personal welfare. After the 2nd petitioner/ plaintiff was appointed as a Managing trustee, the 1st respondent never co-operated and he always acted unilaterally. Hence the 2nd petitioner /plaintiff was forced to induct new trustees to continue the activities of the Trust. Since the 1st respondent had personally involved in handling the books of accounts of the Trust, he is well aware of the financial position of the school; but he did not exercise proper care in maintaining the trust funds. The Trust is functioning in a democratic manner to fulfill its objectives. The ousted trustee is attempting to disturb the tempo of the Trust by filing the suit without making any ground or citing any reason for seeking a scheme. The 1st petitioner is not a public Trust and hence there is no *locus standi* for the 1st



respondent to file any petition under Sec.92 C.P.C. Hence, this suit itself is not maintainable.

4. The brief facts of the counter affidavit filed by the respondents:

The first respondent /1st plaintiff and Founder Trustee of the 1st petitioner Trust and the 2nd respondent is a local resident who is in public service. The school was famous institute in their area before 2015 and thereafter its strength was going down due to the ineffective management and malpractice committed by the people at the helm of the affairs. M/s.Mahalaxmi Educational Trust was formed in the year 1991 and established the school in the name M/s.Cambridge Matriculation Higher Secondary School approved by the Director of Matriculation Schools at No.148, (Old No.313) Lloyds Road, Avvai Shanmugam Salai, Royapettah, Chennai 600 014.

4.1. The school was headed by the founder trustee Mr.S.Mahadevan as Correspondent. S. Mahadevan and his wife K.Jayalakshmi are childless couple and so they adopted a girl baby in the year 1991 through M/s.Grace Kenneth Foundation Hospital. However the adoption was not approved by the Court and thereafter they filed a petition in GWOP.No.49 of 1991 to



appoint themselves as guardian of the child through the order of the Court on the file of the Family Court, Madurai. The said child is none other than the 2nd petitioner herein. The school was well developed and had a strength of more than 1000 students. Mahadevan died on 29.06.2004 and after his death his wife / founder trustee K.Jayalakshmi was made as the Managing Trustee/ Correspondent and took charge of development of the school. During that time the school's strength rose up to 1200 students. K.Jayalakshmi also died on 02.06.2009. During that time the 2nd petitioner had completed 18 years and she was studying biomedical course in college. Even during the life time of the founder Trustees, they have declared that their daughter J.M.Mahalakshmi should be inducted as 'Managing Trustee' in the event of their death by Mr.R.V.Narshimah Rao and he would take control of the Trust till his life time.

4.2. On 03.06.2009 and on 18.06.2009, meetings have been conducted by the 1st respondent and passed a resolution and through which J.M.Mahalakshmi was inducted as a 'Managing Trustee' and it is resolved that she would act as Correspondent to M/s.Cambridge Matriculation Higher Secondary School. However the 2nd petitioner was not interested in the administration of the school. Payments to ESI IT submissions and the PF



maintenance were pending. Hence, the 1st petitioner jumped into action by getting authorization letter from the 2nd petitioner to represent the school and submitted the required papers before the appropriate authorities. The strength of the school was also reduced in view of the 2nd petitioner's interference. The 2nd petitioner joined hands with some third parties who are not related to the school and was trying to induct some third parties as trustees. Then a legal notice was sent by the 1st petitioner on 09.07.2021 with false allegations and the 1st respondent has sent a reply on 21.08.2021. Subsequently a Disciplinary Committee was appointed and the 1st respondent was removed from the trusteeship. The 2nd petitioner continues to violate the terms of the trust. Under clause 17 of the trust deed it is stated that if any dispute arises among the trustees, it shall be referred to an umpire who shall be nominated for the purpose by the majority of the trustees

4.3. The 1st petitioner without bothering to follow the above terms, constituted a the Disciplinary Committee's of his choice to remove R.V.Narshimah Rao from the trusteeship and now plans to close the school and alienate the properties of the Trust. Only during this situation the respondents have filed this civil suit seeking a scheme to be framed along with other reliefs. The respondents have filed an application in A.No.205 of



2022 under Order 14 Rule 8 read with Section 92 of CPC and in which a counter was filed by the petitioners. Only after hearing the parties the petition was allowed and leave was granted to file the suit.

4.4. The 2nd petitioner also filed an another suit in O.S.No.1523/2021 before the XII Asst. City Civil Judge, Chennai with certain false allegations. It is false to state that 6th and 7th petitioners therein are actively managing the affairs of the Trust. The allegation that the petitioners 3, 4 and 5 are not connected with the trust activities and they have been appointed only to conduct a domestic enquiry is not correct. The respondents have challenged the disciplinary proceedings also. It is false to state that the petitioners have no proposal to close the school. No initiative has been taken to enroll new students and raise the strength of the school. Hence the suit is very much maintainable and the petition should be rejected.

5. Before proceeding to the point raised by the applicants/defendants that the Trust is not a public Trust and the suit under Section 92 CPC will not lie, it should be admitted that the respondents have filed an application under Sec.92 CPC in A.No.205 of 2022 for seeking leave to sue and that has been allowed on 15.03.2022. The petitioners/defendants did not choose to grant leave under Sec.92 CPC by virtue of the order dated 15.03.2021 made



in A.No.205 of 2022. Hence the petitioners have precluded from taking the above stand for rejecting the plaint.

6. The rest of the points raised by the applicants/defendants are that the 1st respondent /plaintiff was a trustee removed from the Trust against whom disciplinary proceedings have been initiated and such a person have no *locus standi* to file a suit and that the respondents/plaintiffs had focused only upon the school management and is not interested in activities of the Trust.

7. The plaintiff's trust is known as 'M/s. Mahalakshmi Educational Trust and one of its object is to promote education by establishing educational institutions. Though it is claimed by the respondents that the school is only a tenant in the property belonging to the 2nd respondent and the property does not belong to the trust, these facts cannot be dealt unless issues to these effect are framed during the course of the trial.

8. Even according to the document submitted by the 1st respondent, he seemed to have been acting as the Managing Trustee of 'M/s. Cambridge Matriculation Higher Secondary School' which is one of the unit of the trust. The defendants did not deny the fact that the 2nd respondent /2nd defendant was inducted as an acting trustee of the said school at some point of time.



Though the school was performing well with good strength of students, it started to decline subsequently. It is seen from the materials that the 1st respondent was at the helm of the affairs at some point of time and later misunderstanding arose between himself and the Managing Trustee. The 1st respondent was accused of acting against the interest of the Trust and later he was removed from the trust and disciplinary proceedings were taken against him.

9. It is claimed by the respondents in that whenever there is any dispute or difference between the parties that should be resolved by appointing an umpire by the trust itself. The umpire means an arbitrator and it is submitted that the 2nd petitioner without resorting to such a process contemplated by the founder trustee had chosen to remove him illegally.

10. So the contentious matter raised in the suit revolves around the powers and authority of the parties in decisions making and the merits of such decisions and their actions or inactions in fulfilling the objects of the trust. Repeated representations appear to have been sent from various quarters to the 2nd petitioner that the school should not be closed. However the District Educational Officer has written to the Principal of the school by requesting permission to close the school. He also required some essential



documents and particulars. Communications from the District Educational Officer would show that acceptance from the parents of the students should be obtained by convening a parent teachers meeting. Whether the participation of the functions of the school and the strength of the school was reduced due to the maladministration of the 2nd respondent and the other defendants or whether the respondents had exaggerated the ground realities cannot be dealt at this stage itself without a valid trial.

11. So far as the maintainability of a plaint is concerned, the court has to go with the allegations stated in the plaint. Only if the materials on the face it would show that the suit is not maintainable due to any of the reasons contemplated under Order VII Rule 11 the suit can be *rejected in limini*.

12. For the sake of clarity Order VII Rule 11 of CPC is reproduced as under:

“11. Rejection of plaint

The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;



WEB COPY



(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule “

13. In *Kuldeep Singh Pathania vs Bikram Singh Jaryal* in 2017 (5)

SCC 345 the Supreme Court has held that the court has to read the entire plaint to find out whether the suit discloses any cause of action. The relevant part is extracted below:

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. ...”



WEB COPY



14. As already pointed out in the plaint filed by the plaintiff various averments about the abuse of power and mismanagement have been made and the cause of action for the suit has been found on the basis of such allegations. On the plain reading of the plaint, I do not find the presence of any of the ingredients seen under sub Sections (a) to (f) of Order VII Rule 11 CPC. There are contentious issues raised in the plaint and that would warrant a trial. The court can not dwell into the merits of those contentions at the threshold stage itself without offering a fair opportunity for trial. Hence, I find no merits in the application filed by the applicants.

In the result, this Application is **dismissed**.

18.08.2023

jrs



WEB COPY



A. No.3752 of 2022 in C.S.No.133 of

R.N.MANJULA, J.,

jrs

Speaking Order : Yes / No
Internet : Yes/No
Neutral : Yes /No

Pre-Delivery Order made in
Application No.3752 of 2022
in C.S.No.133 of 2022

18.08.2023