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A.NO.4915 OF 2022 IN CS DR.NO.107781 OF 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

APPLICATION NO.4915 OF 2022
IN C.S.DR.NO.107781 OF 2022

1.V.Balakrishnan
2.G.Sivarama Krishnan

.. Applicants/
Plaintiffs

VS.

1.Sri Venkateswara Charitable Trust
Registered Office at No.81/124,
Patel Road, Perambur,
Chennai – 600 011.

2.T.Babu
3.P.Ramachandran

4.M/s.Sri Venkateswara Bhaktha Samajam
Represented by its General Secretary
S.Venkataraman
Having Office at 'Anandha Nilayam'
No.81/124, Patel Road, Perambur,
Chennai – 600 011.
(4th respondent impleaded as per order
dated 23.06.2023 in Application No.3194/2023
and time extended as per order dated 10.10.2023)

.. Respondents/
Defendants



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PRAYER: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 92 of CPC with a prayer to grant leave to sue the respondents / defendants for framing a Scheme in respect of the 1st respondent Trust “Sri Venkateswara Charitable Trust” under Section 92 of CPC till the disposal of the Suit.

For Applicants / Plaintiffs : Mr.H.Mohammed Farook

For Respondents / Defendants : Mr.K.Chandrasekaran
1 to 3

For Respondent 4 : Mr.S.Vijayaganesh

ORDER

This Application has been filed by the applicants / plaintiffs to grant leave to sue the respondents / defendants for framing a Scheme in respect of the first respondent Trust “Sri Venkateswara Charitable Trust” under Section 92 of Civil Procedure Code till the disposal of the Suit.

2.The applicants / plaintiffs claims to be public filed the present unnumbered Suit alleging that the Resolution passed by the first respondent Trust is not in accordance with the by-laws and the first applicant / first plaintiff was permitted to continue beyond the period of one year. The



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affidavit of the applicants / plaintiffs indicates that the first respondent Trust is a Public Charitable Trust and formed by one Mr.R.M.Seshan, by a Deed of Trust dated 27.12.1995 under the name and style of Sri Venkateswara Charitable Trust, which was registered under the Indian Trust Act, 1882, vide Document No.11/1996 on the file of Sub Registrar Office, Purasaiwalkam, appointing himself as the Managing Trustee. Thereafter, seven others were also appointed as First Trustees as per the by-laws.

3.It is the contention of the applicants / plaintiffs that after the death of some of the First Trustees, vacancies were filled up by co-opting new trustees in their place as per the provisions of the said Trust Deed for a period of one year. From the date of inception of such Trustees till the date of death of the Managing Trustee on 06.08.2020 and the first respondent – Trust was smoothly administered and managed efficiently without any bias and partiality in the interest and welfare of the Trust. It is the contention of the applicants/plaintiffs that after the death of the Managing Trustee Mr.R.M.Seshan, the respondents 2 and 3 have been cunningly working together to capture the entire management under their control with autocratic



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manner without any regard for democratic values for the purpose of misusing the funds and assets of first respondent – Trust. According to the applicants / plaintiffs, in a meeting conducted on 20.08.2020, a Resolution was passed and the second respondent was appointed as Managing Trustee and third respondent was appointed as Treasurer of the first respondent Trust in a self-styled manner, besides co-opting Mr.S.Venkataraman, son of Mr.R.M.Seshan as new Trustee in the place of his deceased father. The first plaintiff has signed it without knowing their *malafide* intention of capturing the Trust. Hence, it is the further contention of the applicants / plaintiffs that the Trustees continuing beyond the period of one year is against the Trust Deed and therefore, a Scheme has to be framed.

4.In the counter affidavit filed by the respondents 1 to 3 / defendants 1 to 3, it is their contention that 'Sri Venkateswara Bhaktha Samajam' is a Society registered under the Tamil Nadu Societies Registration Act and is in existence for more than 50 years and there are 130 life members in the Samajam. The applicants/plaintiffs were very much part of the Samajam and the Founder Trustee Mr.R.M.Seshan was spearheading the



Samajam for more than 50 years. Hence, it is the contention that some of the Members appointed were continued beyond the period of 'one year of co-option' and various Resolutions were passed right from 2021 viz., 11.12.2021, 25.12.2021, 07.05.2022, 08.10.2022 and 26.12.2022 and the procedural mistakes were resolved and further, non-adherence to the period of 'one year of co-option' has not affected the functions of the Trust in any manner or whatsoever. Hence, the respondents / defendants strongly opposed this application.

5.It is the contention of the fourth respondent / fourth defendant in the counter affidavit that he is the co-opted Trustee by his father in the place of his father and a Resolution has also been passed in this regard. The first plaintiff is also one of the signatories to the said Resolution. Hence, it is the contention of the fourth respondent / fourth defendant that the Suit is nothing but to vindicate the personal right of the first plaintiff. The first applicant / first plaintiff is a life-member of the fourth respondent Society, elected as General Secretary vide Executive Committee Meeting / Resolution dated 23.08.2020 and was unanimously removed by the Resolution dated



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20.03.2023 from General Secretaryship. After his removal only, the present unnumbered Suit has been filed. Hence, he strongly opposed this application.

6.The learned counsel for the applicants / plaintiffs would submit that all the Resolutions passed are without any quorum, which is contrary to the terms of the Trust Deed and co-opted Trustees were allowed to continue beyond the period of one year, which is also against the Trust Deed. Further, there was no quorum for passing such Resolution. Now, the second and third respondents are trying to dissolve the Trust. Therefore, it is the contention of the applicants / plaintiffs that in the interest of public and to continue the Trust, a Scheme has to be framed.

7.The learned counsel for the respondents / defendants submitted that at some point of time, some of the co-opted Trustees were continued beyond the period of one year, in fact, the first plaintiff is also one of the co-opted Trustees and he continued beyond the period of five years. Therefore, it is the contention that now the Trust has taken a corrective measures and co-opted Trustees have been appointed according to the Trust



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Deed. Further, absolutely there is no allegation with regard to breach of trust.

Therefore, the Suit cannot be allowed to continue to harass the Trust itself.

8.The learned counsel for the respondent / defendants submitted that this application is nothing but to vindicate the personal right of the first applicant wherein he was removed from the Trusteeship. He further contended that the fourth respondent is a parent body and it was registered as a Society and now the Trust is running properly and there is no need for a Scheme to be framed.

9.Heard the submissions made on either side and perused the entire materials available on record.

10.The point raised for consideration is that is there any breach of trust shown to grant leave to file Suit under Section 92 of Civil Procedure Code.



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11. On perusal of the entire affidavit filed by the applicants / plaintiffs, absolutely there is no allegation with regard to misappropriation of funds or breach of trust. The only allegation raised is that some of the co-opted members were allowed to continue beyond the period of one year. Further, subsequent Resolution appointing the second respondent as a Managing Trustee and one Mr. Venkatraman as a Trustee is without any quorum. The entire plaint is mainly focused on the Resolution dated 20.08.2020 stating that the same is to set aside. It is not disputed that the applicants / plaintiffs are also one of the signatories to the said Resolution. Further, it is also not disputed that the first applicant / first plaintiff, who is also a co-opted Trustee, continued as a Trustee beyond the period of one year. When a person complaining certain violations, taken benefit of the said violations as long as he was a Trustee only when he was non-suited from the Trusteeship by subsequent Resolution by the existing Trustees, the present Suit has been filed alleging that there was a breach of trust. The very conduct of the applicants / plaintiffs to approach this Court after they non-suited from the Trusteeship indicates that the Suit is nothing but to vindicate the personal rights rather than a public interest involved.



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12. On perusal of other allegations, it is seen that there was no allegations with regard to misappropriation of funds or misusing of the properties of the Trust. Therefore, merely because the petitioner has been non-suited from the Trusteeship, by way of a Resolution passed by the existing Trustees, as a matter of right, leave cannot be granted to vindicate their personal rights. Even assuming that there was some violations and co-opted members were allowed to continue beyond the period of one year at the earlier point of time, the same cannot be a ground to disturb the Trust, which is otherwise run properly, without there being any malfunctions or mismanagement. Now, it is the stand of the Trust that the co-opted members have been appointed only for a period of one year strictly in accordance with the terms of the Trust Deed. In such view of the matter, as the corrective measures have already been taken by the Trust and the Members have been inducted and there was no breach of trust established and the entire Suit and the allegations appears to be to vindicate their personal rights, this Court is of the view leave cannot be granted and the Suit cannot be allowed to continue.

13. The Hon'ble Supreme Court in **R.M.NARAYANA**



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CHETTIAR AND ANOTHER VS. N.LAKSHMANAN CHETTIAR AND

OTHERS [1991 (1) SCC 48] has held that when the Court finds that the Suit is only to vindicate the personal right and to harass the Trust, leave cannot be granted.

14.In such view of the matter, I do not find any merit in this application and accordingly, the Application filed for grant of leave is dismissed and consequently, the un-numbered Suit is rejected. No costs.

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Index : Yes / No
Neutral Citation : Yes / No
Speaking / Non-speaking order
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N. SATHISH KUMAR, J.

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