



*A.S.(MD)No.298 of 2008*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 14.06.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**A.S.(MD)No.298 of 2008**  
**and M.P.(MD)No.2 of 2008**  
**and C.M.A.(MD)No.1188 of 2007**  
**and C.R.P.(MD)No.1833 of 2008**

**A.S.(MD)No.298 of 2008**

- 1.Nagarajan
- 2.Saravana Kumar
- 3.M.Vellaiyammal
- 4.M.Leelavathy
- 5.R.Ramalakshmi
- 6.A.Muthulakshmi
- 7.M.Shanthi
- 8.V.Latha
- 9.M.Karthika

... Appellants in  
A.S., C.M.A and C.R.P.

**Vs.**

- 1.Gnanagursami (Died)
- 2.Subburaj



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3.Palanivel

4.Chandra

5.Kamaraj

6.Subbulakshmi

7.Kanagavel

8.Palaniammal

9.Kumarajothi

10.Nagalakshmi

11.Meena Rani

12.Kaja Mohideen

13.Syed Abuthahir

14.Mohammad Mustafa

15.Ismail Mydeen

16.Jaffar Ali

17.Mohammad Kasim

18.Seethapathy

19.R.Palanivel

20.R.Muthu Krishnan

21.C.Nagendran

22.K.Muthusami

23.R.Mayakrishnan

24.V.Gomathy

25.J.Mohammad Mydeen

26.H.R.Harianandan

27.R.Chandra

28.Yesumani



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29.N.T.Parthasarathy

30.Muniyammal

31.Soundarapandi

32.Duraipandi

33.Selvaraj

34.Pandiammal

35.Linga Muthu

36.Murugeswari

37.Ramesh Kumar

38.Manimekalai

39.Selva Kumar

40.G.Vendamani

41.S.Gowri

42.G.Alagarsamy

43.G.Hari

(Respondents 40 to 43 are brought on record as LR's of the deceased 1<sup>st</sup> respondent vide Court order dated 20.07.2022 made in M.P.(MD)Nos.1, 1 and 1 of 2011 in A.S.(MD)No.298/2008, C.M.A.(MD)No.1188/2007 and C.R.P.(MD)No.1833/2008)

(Respondents 18 to 34 are given up in this Appeal as they have remained exparte before the lower Court)

... Respondents in  
in all A.S., C.M.A and C.R.P.

**PRAYER IN A.S.(MD)NO.298 OF 2008:** This Appeal Suit is filed under Section 96 of C.P.C. against the decree and judgment dated 22.12.2006 passed in O.S.No. 83 of 2004 by the learned Additional District Judge, Fast Track Court No.1, Madurai.



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**PRAYER IN C.M.A.(MD)No.1188 OF 2007:** This Civil Miscellaneous Appeal is filed under Section 104 of C.P.C. against the order dated 22.12.2006 passed in the application in I.A.No.663/2005 in O.S.No.83/2004 by the learned Additional District Judge, Fast Track Court No.1, Madurai.

**PRAYER IN C.R.P.(MD)No.1833/2008:** This Civil Revision Petition is filed under Section 115 of C.P.C. against the order dated 22.12.2006 passed in the application in I.A.No.667/2006 in O.S.No.83/2004 by the learned Additional District Judge, Fast Track Court No.1, Madurai.

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|                 |                                                                                                                                                                                          |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For Appellants  | : Mr.J.Barathan                                                                                                                                                                          |
| For Respondents | : Mr.P.Paranthaman for R6, R8 to R11<br>Mr.M.R.Murugeshan for R12 to R17<br>No Appearance for R2 to R5, R7, and<br>R35 to R43.<br>R18 to R34 given up (vide EB)<br>R1 died – steps taken |

**C.M.A.(MD)No.1188/2007**

|                 |                                                                            |
|-----------------|----------------------------------------------------------------------------|
| For Appellants  | : Mr.J.Barathan                                                            |
| For Respondents | : Mr.P.Paranthaman for R2<br>R8 to R34 – given up<br>R1 died – steps taken |



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**C.R.P.(MD)No.1833/2008**

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For Petitioners

: Mr.J.Barathan

For Respondents

: Mr.P.Paranthaman for R3, R8 to R10  
Mr.M.R.Murugeshan for R12, 13, 15  
to R17

No Appearance for R2, R4, R5, R7, R14,  
R35, R36 and R40 to R43.  
R18 to R34 given up (vide EB)  
R1 died – steps taken

### **COMMON JUDGMENT**

Appeal suit has been filed as against the judgment of the trial Court rejecting the plaint in O.S.No.83 of 2004. Rejection of the plaint has been made pursuant to the rejection of the application filed under Section 92 of the CPC, seeking permission to institute the suit which is under challenge in Civil Miscellaneous Appeal. Civil Revision Petition has been filed challenging the dismissal of the application filed under Order 1 Rule 8 of CPC, seeking permission to file a suit as representative capacity.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking before the Trial Court in O.S.No.83 of 2004.



**3. The brief facts of the cases are as follows:-**

The suit has been laid by the plaintiffs *inter alia* contending that the suit properties are Trust properties. The trust was created by one Kamatchi Pandithan. The plaintiffs 2 and 3 are the sons of the first plaintiff. Some of defendants are the legal heirs through the second wife of the said Kamatchi Pandithan, who is the original owner of the suit properties. It is the case of the plaintiffs that the suit properties are the public charitable Trust. Hence, the suit has been laid on the ground that there is a breach of trust and certain properties have been sold to the defendant Nos.14 to 19 / respondents 12 to 17 and further, the defendants also neglected to construct any shelter for sadhus and the very object of the trust has not been achieved and neglected. Hence, making various allegations of breach of trust, the suit has been laid for following relief:

*a) removing the defendants 2 to 4, 6 to 13, 32 to 41 from the trusteeship of the suit trust founded by Kamatchi Pandithan under his Will dated 29.04.1925;*

*b) appointing plaintiffs 2 and 3 as trustees of the said trust to manage the suit trust properties and to perform the dharmams of the trust;*

*c) framing a proper scheme of administration for management of the suit trust and the suit properties and for performing the dharmams mentioned in the founder's Will dated 29.04.1925; and applying the doctrine of CYPRES, if necessary;*

*d) directing the defendants 2 to 4, 6 to 13, 32 to 41, to deliver*



*possession of item 1 of the suit trust properties to the plaintiff or the new trustees to be appointed under the scheme of management to be framed by Court;*

*e) declaring that the sale of suit item 2 under sale deeds dated 21.11.1991 executed by defendants 1 and 2 in favour of defendants 14 to 19 as null and void and not binding on the suit trust and consequently, directing the defendants 14 to 19 to deliver possession of suit item 2 to the plaintiffs or the new trustees to be appointed under the scheme of management to be framed by Court;*

*f) directing the defendants 2 to 4, 6 to 13, 32 to 41 to render a true and proper account for all the sums realised from the suit trust properties after the death of Muthupillai Ammal and Chellammal, till delivery of possession of the suit trust properties to the new trustees appointed by the Court or under the scheme of administration; and*

*g) directing the contesting defendants to pay the plaintiffs the costs of the suit.”*

It appears that before deciding the application filed under Section 92 of C.P.C., the suit got numbered. Thereafter, the application filed under Section 92 of C.P.C. has been taken on file and decided later and based on that the suit has been rejected.

4. The main contention of the contesting defendants is that the Trust has become defunct by way of cancellation deed dated 03.08.1995. Further, it is the case of the defendants that one of the plaintiffs has already filed a suit in O.S.No.



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126 of 1959, wherein no right whatsoever has been sought by him and hence, the same was dismissed. The plaintiffs being the relative of the founder of the Trust has filed a suit only to vindicate their personal rights and there is no public interest involved. Therefore, opposed the suit.

5. The trial Court after hearing both sides have rejected the application filed under Section 92 of C.P.C. upholding that earlier suit has been filed, wherein one of the plaintiffs rights have been decided and therefore, leave cannot be granted.

6. The learned counsel appearing for the plaintiffs / appellants would submit that in an earlier litigation in O.S.No.126 of 1959, a categorical finding has been recorded that except Vinayagar Temple, all other properties are public Trust and charities have to be performed and the said finding has been reached finality. It is further contention that the suit has been filed in the year 07.02.1995. After filing of the suit, certain cancellation deed and sale deed have been executed. On this basis, the defendants / respondents projected the case as if there is no trust in existence. Hence, it is the contention of the learned counsel appearing for the plaintiffs / appellants that merely because a relief has been sought for appointing the plaintiffs as trustees, it cannot be construed to mean that they are vindicating



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their personal rights. The primarily relief in the suit is for framing the scheme and also appoint the trustees by the Court to look after the trust property. Such being a position, when there is a public charity available, which has also been proved, the defendants / respondents cannot make the Trust defunct, by executing certain documents on their own. Therefore, the order of the trial Court has to be set aside and the matter requires detailed trial.

7. The learned counsel appearing for the defendants / respondents would submit that the fourth plaintiff in the original suit in O.S.No.126 of 1959, being the relative of the founder of the Trust, only prosecuting the suit for their personal rights and there is no public interest involved in this matter. The very relief claimed by them indicates that they sought a prayer for appointing them as trustees. Further, to obtain a leave under Section 92 of C.P.C., the Trust must be in existence. Whereas in this case, Trust has been dissolved by the document dated 03.08.1995. The properties also sold to the various third parties. Therefore, the application filed under Section 92 of C.P.C. is not maintainable.

8. In the light of the above submissions, now the points arise for consideration in all these matter are as follows:



1) Whether the trial Court is right in rejecting the application mainly on the ground that the suit properties have been sold to the third parties?

2) Whether the plaintiffs are vindicating their personal rights?

3) To what relief, the parties are entitled?

9. On a perusal of the entire plaint, it is found that the plaint is proceeded with various allegations regarding breach of trust. One such allegation is with regard to the sale of the property in favour of the third parties, who are the defendants 14 to 19 / respondents 12 to 17. The sale in their favour is not disputed before this Court. It is relevant to note that suit has been presented on 07.02.1995. After the suit being filed, the sale has been taken place. Certain documents also are said to have been executed as if the trust has become defunct. Trust is a juristic person and there cannot be any dissolution by act of parties. It is relevant to note that in earlier litigation in O.S.No.126 of 1959, the Court has held that except a small Vinayagar Temple all other properties are public charities. That judgment has also reached finality.

10. Such being a position, when the trust properties are very much available, merely because the parties have sold the property, it cannot be said that trust has



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been dissolved. The very sale of property during the pendency of the suit itself indicates that there is a breach of Trust and no permission whatsoever has been obtained from the Court for such sale. Such being the position, a detailed trial is required in this matter. It is also stated by both sides that a suit has been filed cancelling the document to dissolve the trust, which has been admittedly executed during the pendency of the suit. Therefore, this Court is of the view that mere pendency of the separate suit for seeking the relief to set aside the cancellation deed will not be a bar to entertain the present suit.

11. Further, merely a relief is sought to appoint the plaintiffs as trustees, considering the facts and circumstances, this Court is not able to construe the same as personal rights. The larger relief sought in the plaint clearly indicates that the suit has been filed for framing of scheme and also appointing Trustees by the Court itself. When the breach of Trust is apparent on the face of the documents, it cannot be said that there is no public interest involved. Admittedly, the forefather of the plaintiffs and the defendants created the Trust only for the benefit of the public. When those properties have been dealt without permission of the Court, it has to be tested in the trial. Such being a position, on the basis of one of the reliefs, in respect of appointing the plaintiffs as trustees, it cannot be concluded that plaintiffs are vindicating their personal rights rather than the public interest.



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**12.** Such view of the matter, the order of the trial Court dismissing the application filed under Section 92 of C.P.C. is not sustainable and the same is set aside and the suit has to restore to file. Similarly, the application filed under Order 1 Rule 8 of C.P.C. is also allowed and the order of the trial Court dismissing that application is also set aside. The trial Court shall proceed the suit. The trial Court before deciding the application under Section 92 of C.P.C., has numbered the suit. Therefore, merely because of such a mistake committed by the trial Court, this Court is of the view that technicalities cannot be given much importance and the object and intention of the founder of the Trust has to be seen in the trial Court. The Court being *parens patriae* of the trust properties has to decide the suit on its own merits.

**13.** In view of the above, the Appeal Suit, Civil Miscellaneous Appeal and Civil Revision Petition are allowed. It is stated that at the relevant point of time, when the applications have been filed, only the Principal Subordinate Judge was the Court of Original jurisdiction now the Principal District Judge is a Court of



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original jurisdiction. Therefore, the Suit shall be transferred to the Principal District Judge, Madurai. The learned Principal District Judge is directed to proceed with the trial in O.S.No.83 of 2004, after providing opportunities to all the parties and expedite the trial and conclude the same and thereafter, decide the suit on its own merits, within a period of six (6) months from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

**14.06.2023**

NCC : Yes /No  
Index : Yes/No  
vsm

To

- 1.The Additional District Judge,  
Fast Track Court No.1, Madurai.
- 2.The Principal District Judge, Madurai.
- 3.The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**N.SATHISH KUMAR, J.**

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**Judgment in**  
**A.S.(MD)No.298 of 2008**  
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**and C.M.A.(MD)No.1188 of 2007**  
**and C.R.P.(MD)No.1833 of 2008**

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