



C.R.P(MD)Nos.1359 to 1362 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 04.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)Nos.1359 to 1362 of 2015

and

M.P.(MD)Nos.1, 1, 1 and 1 of 2015

Madha Trust,
Represented by its Founder/Managing Trustee,
Rev.Fr.A.Savarimuthu,
S/o.Anthony, 45, Karuppur,
Maruthanallur Post,
Kumbakonam Taluk,
Thanjavur District. ...Petitioner in CRP(MD)No.1359/2015

Integrated Multi Services Trust,
Represented by its Founder/Trustee,
I.Mariya Selvam,
S/o.Irudhayasamy,
No.4/730, Needamangalam Road,
Sakkottai,
Kumbakonam Taluk. ...Petitioner in CRP(MD)No.1360/2015

Savariar Educational Trust,
Represented by its Founder,
Mariya Christy,
W/o.Amalraj,
45, Karuppur,
Marudhanallur Post,
Kumbakonam Taluk,
Thanjavur District. ...Petitioner in CRP(MD)No.1361 of 2015



C.R.P(MD)Nos.1359 to 1362 of 2015

WEB CO Integrated Research Reconstruction and

Development Trust,

Represented by its Founder,

I.Mariya Selvam,

W/o.Irudayasamy,

4/730, Needamangalam,

Sakkottai, Kumbakonam Taluk,

Thanajvur District.

...Petitioner in CRP(MD)No.1362/2015

-VS-

1.D.Daniel Amaladoss

2.P.Ravikumar

3.Smt.Akciliya Roselin Aruna

4.Uthiriyathan

5.I.Mariya Selvam

6.I.Mariya Christy

7.Pitchai Jothimani

8.Bhuvaneswari

... Respondents in CRP(MD)No.1359/2015

1.D.Daniel Amaladoss

2.P.Ravikumar

...Respondents in CRP(MD)Nos.1360,
1361 and 1362/2015

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to call for the records to pertaining to the order dated 03.06.2015 passed in I.A.No.82 of 2014 in O.S.No.42 of 2014, I.A.No.302 of 2015 in O.S.No.106 of 2014, I.A.No.206 of 2015 in O.S.No. 110 of 2014 and I.A.No.303 of 2015 in O.S.No.111 of 2014 on the file of the Second Additional District cum Sessions Judge, Thanjavur and set aside the same.



C.R.P(MD)Nos.1359 to 1362 of 2015

In all Petitions:

For Petitioner : Mr.T.A.Ebenezer
For R2 : Mr.G.Karnan
For R1 : No Appearance

In CRP(MD)No.1359 of 2015:

For R3 : Ms.S.Mahalakshmi
For R4 to R8 : No Appearance

COMMON ORDER

All the revision petitions arise out of a common order of the trial Court, wherein applications filed by the defendants for rejection of plaint were dismissed.

2.The contesting respondents in all revision petitions have filed O.S.Nos.42, 106, 110, 111 of 2014 on the file of the II Additional District and Sessions Court, Thanjavur for the relief of framing a scheme for four different trusts along with other reliefs. Along with the said suits, the plaintiff had filed I.A.Nos.151, 109 & 110 of 2014 in O.S.Nos.106, 110 & 111 of 2014, respectively under Section 92 of the Civil Procedure Code (hereinafter referred to as 'CPC' for the sake of brevity) seeking leave of the



C.R.P(MD)Nos.1359 to 1362 of 2015

WEB COPY

Court to institute the said suits. However, from the records, it could be seen that no application under Section 92 CPC seeking leave of the Court has been filed along with the plaint in O.S.No.42 of 2014. The trial Court, instead of issuing notice to the other side in the applications filed under Section 92 CPC, had directly numbered the suits and issued notice to the defendants in the suits.

3.The defendants have filed I.A.Nos.82 of 2014 & 302, 206 and 303 of 2015 seeking rejection of plaint on the ground that without allowing Section 92 applications, the suits have been numbered and therefore, they have to be rejected.

4.The plaintiffs have contended that they have filed applications under Section 92 CPC in all suits and when the said applications were pending, petitions under Order 7 Rule 11 CPC are not maintainable. The trial Court accepted the said view and dismissed all the applications seeking rejection of plaint. Challenging the said orders, the present revision petitions have been filed.



C.R.P(MD)Nos.1359 to 1362 of 2015

WEB COPY

5. According to the learned counsel for the revision petitioners, grant of leave by the Court under Section 92 CPC is made before numbering the suits as against the Public Charitable Trusts. Therefore, without granting such leave, the suits could not have been numbered. The trial Court had erroneously dismissed the applications filed under Order 7 Rule 11 CPC without considering the legal aspect of obtaining leave under Section 92 of CPC.

6. Per contra, the learned counsel for the respondents/plaintiffs contended that, they along with suits, have filed Section 92 CPC applications. However, the trial Court has proceeded to number the suits and they cannot be found fault for the fault of the Court and the plaints filed by the parties for framing of a scheme for administration of trusts cannot be rejected.

7. I have carefully considered the submissions made on either side and perused the records.



C.R.P(MD)Nos.1359 to 1362 of 2015

WEB COPY

8.Perusal of the plaints in all four suits would reveal that apart from the prayer of framing a scheme for the administration of four different trusts, other prayers have also been sought for by the plaintiffs. Therefore, it is clear that leave of the Court has to be obtained under Section 92 CPC. Even though some of the prayers relate to some personnel disputes between the parties, the main prayer revolves around framing of schemes by the trial Court. Therefore, it is mandatory to obtain leave of the Court before numbering the said suits.

9.Admittedly, the plaintiffs had filed Section 92 applications in O.S.Nos.106, 110 and 111 of 2014 and they have been numbered and pending. The trial Court without deciding the said applications on merits, had directly numbered the suits. The applications filed under Order 7 Rule 11 CPC were also dismissed solely on the ground that Section 92 applications are pending. This procedure adopted by the trial Court is clearly in violation of Section 92 CPC, in view of the fact that allowing of application under Section 92 CPC is a prerequisite for numbering the suit.



C.R.P(MD)Nos.1359 to 1362 of 2015

WEB COPY

10.The Hon'ble Supreme Court in the case of ***Bhupinder Singh vs. Joginder Singh (D) by Lrs and others*** [2020 2 L.W. 297], in Paragraph No.

7, has held as follows:

“7. Learned counsel for the appellant urges that in view of law laid down by this Court, it is imperative that leave must be granted before the suit is instituted. There is no quarrel with this proposition and we are not inclined to hold, as the High Court did, that leave can be presumed to have been granted. There can be no presumption of this kind in a case of this nature. We are clearly of the view that in every suit filed under Section 92, CPC, the grant of leave is necessary before the suit can be said to be properly instituted.”

11.In view of the said legal position, the trial Court ought not to have numbered the suits. There cannot be any presumption that Section 92 applications have already been allowed, just because the suits have been numbered. However, the plaintiff cannot be found fault with for the said procedure adopted by the trial Court.

12.When Section 92 applications have been filed and numbered, the trial Court ought to have issued notice to the respondents in the said applications and after hearing them, orders should have been passed in those applications. Depending upon the result in Section 92 applications, the suits



C.R.P(MD)Nos.1359 to 1362 of 2015

should have been numbered. But in the present case, the suits have already been numbered due to the fault on part of the Court. Therefore, the plaintiffs cannot be put to prejudice for the fault committed by the Court by adopting erroneous procedure.

13.As far as I.A.Nos.106, 110 and 111 of 2014 in O.S.Nos.106, 110 and 111 of 2014 are concerned, the trial Court was right in rejecting Order 7 Rule 11 CPC applications on the ground that Section 92 petitions are already pending. However, the trial Court should not proceed with the trial of the suits before disposing of Section 92 petitions.

14.As far as O.S.No.42 of 2014 is concerned, the trial Court has given a specific finding that no application has been been filed under Section 92 CPC seeking leave of the Court. The prayer in the said suit reveals that apart from other prayer, the plaintiff has sought for framing a scheme for the management of the trusts, which squarely falls under Section 92 (1)(g) of CPC. The trial Court was not right in tagging the suit in O.S.No.42 of 2014 along with other suits and passing a common order.



C.R.P(MD)Nos.1359 to 1362 of 2015

WEB COPY

15.In view of the judgment of the Hon'ble Supreme Court stated supra, in a suit filed under Section 92 CPC and leave of the Court should be obtained. If not done, the suit ought not to have been numbered and the suit is not maintainable. Therefore, the order of the trial Court in I.A.No.82 of 2014 is hereby set aside and the plaint in O.S.No.42 of 2014 stands rejected and C.R.P.(MD)No.1359 of 2015 stands allowed.

16.C.R.P.(MD)Nos.1360 to 1362 of 2015 stand dismissed with the aforesaid observations. No costs. Consequently, connected miscellaneous petitions are closed.

04.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
ta

To

The Second Additional District cum Sessions Judge,
Thanjavur.

9/10



WEB COPY



C.R.P(MD)Nos.1359 to 1362 of 2015

R.VIJAYAKUMAR,J.

ta

C.R.P.(NPD)(MD)Nos.1359 to 1362 of 2015

04.09.2023