BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.07.2023

Delivered on : 07.09.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.1134 of 2018

Dhandeswara Ganapatigal Trust,
Rep. by its Managing Trustee,
S.Chandrasekaran ... Revision Petitioner/ Petitioner

Vs.

NIL ... Respondent / Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 06.09.2016 passed in Trust O.P.No.3 of 2015, on the file of the Principal District Judge, Tiruchirapalli.

For Petitioner : Mr.T.Lajapathy Roy, Senior Counsel
for Mr.S.Rajasekar

ORDER

The revision petitioner herein is the petitioner before the trial Court. The instant revision petition has been filed against the fair and decretal order of the Court below, dated 06.09.2016, in Trust O.P.No.3 of 2015.

2. Shun of unnecessary pleadings, the short facts, which gives rise to the instant Revision Petition, are as under:

The petitioner has filed an application under Section 34 of the Indian Trusts Act (Herein after called “the Act”), seeking opinion of the Principal District Court, to sell the schedule mentioned properties to the intending purchaser.

3. According to the petitioner, the suit property belongs to one Dhandeswara Iyer Vetha Padasala and other Charitable Trust. The petitioner is the Managing Trustee of the said Trust. The Scheduled mentioned properties originally belongs to one Dhandeswara Ganapathigal, S/o. Subramani Ayyer. The said Dhandeswara Ganapathigal executed a Will, dated 16.07.1962. The said Will constituted a trust by endowing some

properties. The C, D and E Schedule properties of the Will were endowed for the purpose of performing some religious and charitable obligations. The income of the C schedule properties were endowed for performing daily pooja and lighting of lamps at Allur Village. D schedule properties were endowed for the purpose of Thanneer Pandhal at Allur Village. E schedule properties have been endowed for the purpose of running Vedapadasala. Therefore, the testator has created a specific endowment from and out of the income derived from C, D and E schedule property of the Will.

4. According to the petitioner, though the schedule mentioned properties is capable of yielding income of Rs.30,000/- per annum, they find it difficult to realise those amounts properly. They further submit that the tenants are willing to purchase the schedule property at the prevailing market price. It is the endeavour of the petitioner that, if the properties are sold and the sale proceeds are deposited in the Bank, through the interest income, they would be able to perform endowment in a better way, as desired by testators. Therefore, the petitioner has come forward with this application.

5. Here, no respondent was arrayed as party to the application.

6. After full trial, the learned trial Judge has rejected the petition and denied the permission sought for by the petitioner for the sale of the trust properties. In it's order, the Court below found the dichotomy of the tenant's conduct in delaying the payment of rent on the one hand, and willingness to pay the sale price to the property. It was also the finding of the learned trial Judge that there is no specific reason mentioned in the petition for the sale of the property. It was also found by the learned trial Judge that, when the testator had a desire to do the endowment only from the income of property, the prayer sought for to sell the trust property could not be granted.

7. Aggrieved with the above order, the instant Civil Revision Petition has been filed.

8. The learned Senior Counsel appearing for the petitioner would submit that, the object of the trust is to do charitable endowments, without any disruption. The learned Senior Counsel would further submit that

when the trustees find it difficult to perform the desire of the testator due to paucity of funds, such short coming can be alleviated by permitting the trustee to sell the trust property and generating income through the interest from the sale proceeds. He would further submit that the sale proceeds can be invested in the Bank to derive more income than what the property actually deriving.

9. The learned Senior Counsel would also put forth his second line of argument that, if in any case, this Court is not permitting the petitioner to sell entire lot of the schedule mentioned properties, in the alternative prayed to consider the sale of portion of the properties. In this regard, he would rely upon the judgment of the Hon'ble Supreme Court reported in ***2007-5-SC-189 (Ashok Kumar Kapur V. Ashok Khanna)***. The relevant portion of the judgment is as follows-

> *"41. Whereas a direction to sell a portion of the trust property may be issued for the benefit of the trust as also the beneficiary thereof and not for preservation of the property, in our opinion, the same test cannot be applied for the purpose of obtaining in truth and substance an order of extinction of the trust. The two reliefs are absolutely different. "*

10. I have given my anxious consideration to the submissions of the learned Senior Counsel.

11. It is pertinent to mention here that, this Court vide order dated 31.10.2022, directed the petitioner to produce Audit Report for the last 10 years and also called for the report of the petitioner as to how the Trust has been functioning for the past 5 years, without selling any properties. As per the direction, the petitioner has submitted extract of income and expenditure of the petitioner Trust from 13.02.2012. While perusing the said extract, only during 2013, a sum of Rs.9,850/- was the excess expenditure over the income. However, in the subsequent years, it was steadily reduced. The above extract would also fortify the existence of an Asset to the tune of Rs.13,82,127/-.

12. While the petitioner approaching the Court below, they submitted income and expenditure statement. The same was marked as Ex.P10. The said income tax report is also annexed with the original typed set of papers submitted before this Court. While perusing the said income

tax audit report, of the year ending with 31.03.2014, on the Head of fund account of Allur Thandeswara Iyer Veda Padasala, and other Charitable Trust, the opening balance was shown as Rs.3,96,027/-. However, when the petitioner filed income and expenditure account before this Court, as per this Court direction of the very same period ending with 31.03.2013, in the fund account, the opening balance shown as Rs.11,67,267/-. Therefore, the theory of better maintenance by selling the Trust property cannot be countenanced in the back ground of discrepancy in the account. This Court does not want to add further in this regard.

13. Even the conduct of the tenant is also not above board. They find it difficult to pay the paltry rent. However, they have readily come up with an undertaking affidavit proclaiming with their wherewithal to pay the sale consideration. The very conduct of the tenant finding difficulty for paying rent, and readiness to pay the huge sale consideration would show the dichotomy of the tenants attitude on the one hand and credulous nature of the petitioner. As rightly observed by the Court below it was the sublime desire of the testator that the Trust property, should not be alienated. Only based on such recital the Court below rejected the application. In view of

the above detailed discussion, this Court finds no material to interfere with the well considered order of the Court below.

14. Hence, the instant Civil Revision Petition stands **dismissed**. There shall be no order as to costs.

NCC : Yes/No **07.09.2023**
Index :Yes/No
Ls

To

1.The Principal District Judge,
Tiruchirapalli.

2.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.

C.KUMARAPPAN.,J.

Ls

Pre-delivery Order made in

C.R.P(MD)No.1134 of 2018

07.09.2023