



CRP (MD) No.2091 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	08.09.2023
Pronounced on	21.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.2091 of 2023

and

C.M.P.(MD)No.10487 of 2023

1.K.Manikanda Raja

2.Charumathy Raja

... Revision Petitioners

Versus

1.Adarsh Educational Trust,
Represented by its Chairman,
Dr.Gopal Surendran
S/o.Dr.G.Surendran,
Adarsh Vidya Kendra,
M.S.Road,
Vettoornimadam, Nagercoil.

2.The Secretary,
Adarsh Educational Trust,
Adarsh Vidya Kendra,
M.S.Road,
Vettoornimadam,
Nagercoil.



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3.The Treasurer,
Adarsh Educational Trust,
Adarsh Vidya Kendra,
M.S.Road,
Vettoornimadam,
Nagercoil - 629003

4.The Chairman,
Bank of Baroda,
C-26, G.Block,
Bandra Kurla Complex,
Mumbai – 400 051.

5.The Regional Manager,
Regional Office,
Bank of Baroda,
82, Bank Road,
IIIrd Floor,
Coimbatore – 641 018.

6.The Manager,
Bank of Baroda,
D.D.J.Complex,
Vadasery,
Nagercoil - 629001

... Respondents

Prayer : The Civil Revision Petition is filed under article 227 of the Constitution of India, to set aside the order dated 19.06.2023 passed in I.A.No.9 of 2022 in O.S.No.67 of 2016 by Principal District Court, Kanyakumari at Nagercoil.

For Revision Petitioners : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates



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For Respondents : Mr.V.M.Balamohan Thampi

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ORDER

This Revision is preferred against the order dated 19.06.2023 passed in I.A.No.9 of 2022 in O.S.No.67 of 2016 by the learned Principal District Judge, Kanyakumari at Nagercoil.

2. According to the Revision Petitioners, the Respondents 1 to 3/Plaintiffs filed the suit in O.S.No.67 of 2016 as against the Respondents 4 to 6 herein and against the father of the 1st Revision Petitioner namely N.Kumaraswamy seeking the following reliefs :

(i) for declaring that the closing of SB account No.503 at Bank of Baroda, Nagercoil in the name of Adarsh Vidya Kendra, Nagercoil by Defendants 3 and 4 is illegal and not binding on Plaintiffs,

(ii) for declaring that the opening of C.C. Account Nos.1589, 1590, 1656, 1657, 1658 in the name of Adarsh Vidya Kendra, Nagercoil in the 3rd defendant bank by defendants 3 and 4 is illegal and not binding on plaintiffs,

(iii) for declaring that the amounts in deposit in C.C. Account Nos :

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1589, 1590, 1656 and 1658 in the 3rd defendant bank in the name of Adarsh Vidya Kendra, Nagercoil belongs to 1st Plaintiff trust,

(iv) for declaring that all the amounts in fixed deposits in the name of Adarsh Vidya Kendra, Nagercoil and Adarsh Vidya Kendra Society in the 3rd defendant bank belongs to 1st Plaintiff trust and

(v) for mandatory injunction directing the defendants 1 to 3 to defreeze the accounts in C.C.Account Nos.1589, 1590, 1656, 1657 and 1658 in the name of Adarsh Vidya Kendra, in 3rd defendant Bank and transferring the amounts in the said accounts to the accounts of Adarsh Educational Trust viz.8036, 8039, 8040, 8041, 8042 and 8044 in 3rd defendant bank and change the name in fixed deposit receipts in the name of Adarsh Vidya Kendra or Adarsh Vidya Kendra Society to Adarsh Educational Trust.

3. It is the case of the Respondents 1 to 3 that Adarsh Vidya Kendra School was started by Adarsh Vidya Kendra Society. Later on, after the formation of Adarsh Educational Trust during June 2007 the assets and liabilities of Adarsh Vidya Kendra Society became vested with Adarsh Educational Trust. It is also the case of Respondents 1 to 3, that the 1st Revision Petitioner's father who was arrayed as 4th defendant in the suit



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functioned as Treasurer of Adarsh Vidya Kendra Society and later as Treasurer of Adarsh Educational Trust.

4. The Respondents 1 to 3 further alleged in their Complaint that even after winding up of Adarsh Vidya Kendra Society, the 1st Revision Petitioner's father continued to operate the accounts in the name of the said Society with the 3rd defendant bank and further opened, operated accounts in the name of School without any resolution from Adarsh Educational Trust with active collusion of 3rd defendant. Therefore they were constrained to file the above suit.

5. According to the Revision Petitioner the father of the 1st Revision Petitioner was contesting the suit by filing the written statement and he died on 28.03.2022. In the suit, the 1st Revision Petitioner was examined as DW2. Since his father was not in good health condition after the death of the 1st Revision Petitioner's father, for effective adjudication of the allegations raised against the 1st Revision Petitioner's father, as legal heir/representative of the 1st Revision Petitioner's father and as person



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claiming a status as a trustee of the trust, with respect to which litigation is also pending, along with 2nd Revision Petitioner herein, who is the wife of the 1st Revision Petitioner, who is also a trustee of the trust, filed an application in I.A.No.9 of 2022, praying to implead them as defendants 5 and 6 in the suit.

6. It is submitted that, both the Revision Petitioners have already filed a petition under Section 92 C.P.C before the District Judge, Nagercoil in I.A.No.435 of 2012 in O.S.S.R.651 of 2012, challenging the removal of them as a trustees from the 1st Respondent Trust and prayed the Court for framing a scheme to the Trust for better administration. Allowing the petition in their favour, the Principal District Court, Kanyakumari in its order observed as follows :

“The materials produced in this case shows that there are allegations and counter allegations against the petitioners and respondents with regard to the management and administration of the 1st respondent Trust. Both allege malpractice



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and mismanagement. There is a power struggle between two groups to corner the right to manage and administer the 1st respondent trust. Therefore, they are engaged in making allegations and counter allegations against each other. The veracity of these allegations and counter allegations can be decided only if the trial is conducted. If the 1st respondent is not run efficiently due to the power struggle between the two groups, certainly the object of the trust i.e., to provide for the quality education, extracurricular and social activities to student's community would be defeated. It is also made clear that the petitioners were removed from the board of trustees without following the proper procedure and the respondents 8 to 12 were admitted as trustees without following proper procedure as contemplated in the trust deed. In the said



circumstances this court is of the considered view that it is a fit case for giving permission to the petitioner's u/s 92 CPC to file the suit for the reliefs claimed in the suit."

7. It is submitted that the above said order was challenged by the Respondent before this Court in C.R.P.(MD)No.2274 of 2016 and the same was dismissed by this Court. Further, the Revision Petitioner submitted that the Respondents filed a special leave petition before the Hon'ble Supreme Court in SLP(C)No.30919 of 2018 and the same was also dismissed by the Hon'ble Supreme Court, confirming the order of the District Judge, Kanyakumari and the order of this Court in C.R.P.(MD)No.2274 of 2016. It is submitted that now the main suit i.e., O.S.No.88 of 2015 was dismissed for default and the Revision Petitioners filed a restoration petition in I.A.No.1 of 2019 and now it is pending before the District Court, Kanyakumari and has been posted for orders.

8. While so, the Petitioners are struggling to establish their rights in the 1st Respondent Trust before the District Court, Kanyakumari. In the suit



in O.S.No.67 of 2016, the father of the 1st Revision Petitioner was the only contesting defendants and he has to dispute the allegations leveled against him in the plaint. The other Defendants who are Defendants 1 to 3 are bankers and they are formal parties. In such circumstances, after the death of the 4th Defendant who is the father of the 1st Revision Petitioner, his legal heir and elder son of the family, the 1st Revision Petitioner has to protect his father's dignity and safeguard his family goodwill and reputation in the society. Therefore, if the Revision Petitioners are not impleaded as a Defendants in this suit, it will cause great prejudice to the Revision Petitioners right and it will directly affect the Revision Petitioners case in O.S.No.88 of 2015.

9. The learned counsel appearing for the Revision Petitioners would submit that the Trial Court failed to appreciate that in the written statement of the 4th Defendant, it has been averred that the 4th Defendant along with the Revision Petitioners filed a suit for declaration that they continue to be the trustees of the 1st Respondent Trust for framing the scheme and for other reliefs. The Respondents 1 to 3 in their pleadings has admitted



the same. The Trial Court failed to appreciate that in O.S.No.88 of 2015 which was filed by the Revision Petitioners along with the 4th Defendant was pending in the same Court. Though it was dismissed for default, an application in I.A.No.1 of 2019 was filed to restore the same and it is pending. Since the Revision Petitioners are claiming the status as trustees of the 1st Respondent Trust and as Plaintiff in O.S.No.88 of 2015 which is the suit filed for framing of scheme for proper administration of the Trust, the Revision Petitioners are proper and necessary parties to O.S.No.67 of 2016.

10. The Trial Court erred in dismissing the application by stating that since the 4th Defendant was impleaded in his personal capacity and there is no necessity for impleading the Revision Petitioners. The Trial Court failed to appreciate the fact that the Respondents have raised allegations against the 4th Defendant, the father of the 1st Revision Petitioner tarnishing his image and creating a stigma. Moreover, the 1st Revision Petitioner was examined as DW2 in support to the 4th Defendant. In order to rebut the allegations raised against the 4th Defendant and on account of his death, the 1st Revision Petitioner being his legal representative, he is proper and necessary party to



the suit.

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11. He would further submit that the relief sought in O.S.No.67 of 2016 is pertaining to the financial management of the Trust, as a persons who have interested in the welfare of the Trust and as a persons who have filed a suit praying for framing a scheme for proper administration of of the Trust, the Revision Petitioners are necessary party to O.S.No.67 of 2016. The Trial Court failed to exercise the discretion vested in it in the proper manner and erred in dismissing the application. Hence, the order of the Trial Court in I.A.No.9 of 2022 is liable to be dismissed.

12. On the other hand, the learned counsel appearing for the Respondents would submit that the general principles of law contains in Order 1 Rule 3 of Code of Civil Procedure has got to be made against the person against whom the right to relief his alleged to exist. To support his contention, he has relied upon the decision case reported in ***AIR 1976 SCC 2538***.

13. The learned counsel further submitted that the deceased 4th Defendant as well as the present Revision Petitioners are not the trustees of the Adarsh Educational Trust. They were removed from the Trust as per the resolution passed in the Adarsh Educational Trust held on 14.10.2011. The 4th



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Defendant namely N.Kumarasamy was also removed from membership of the Trust. The Revision Petitioners and the 4th Defendant N.Kumarasamy filed a suit in O.S.No.143 of 2010 before the Principal District Court, Kanyakumari at Nagercoil representing Adarsh Educational Trust, Nagercoil against the other trustees of Trust for framing of scheme and removal of some of the trustees. The said suit was dismissed and no appeal was filed. The judgment and decree became final. The Revision Petitioners and the deceased 4th Defendant N.Kumarasamy have also filed a suit in O.S.S.R.No.2213 of 2011 for framing of scheme and for removal of some of the members against Adarsh Educational Trust and other trustees. The said suit was dismissed as withdrawn. The Revision Petitioners and the 4th Defendant have also filed a suit in O.S.No.88 of 2015 for framing of scheme for management of Trust and for removal of some of the trustees and for accounts, the same was also dismissed for default on 23.07.2019. Hence, the Revision Petitioners have falsely stated that they are the trustees of the Adarsh Educational Trust.

14. The present suit is filed by the Trust and its Secretary and Treasurer against the Defendants 1 to 4 in respect of the accounts in the Bank



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stood in the name of Adarsh Vidya Kendra and Adarsh Educational Society and to transfer the money to the said account of the Adarsh Educational Trust. The 4th Defendant was added in the suit not as a trustee of the Trust but was impleaded as party as he has committed fraud while he was acting as a Treasurer before June 2010. Since the suit itself was filed by the Trust, there is no question to implead the Revision Petitioner in order to safeguard the interest of the Trust. The right to sue or defend do not arise in favour of the proposed Petitioners/3rd parties. Hence, the Trial Court has rightly dismissed the application filed by the Revision Petitioners which calls for no interference.

15. Heard on both sides and perused the records.

16. Admittedly, the present suit is filed by the Trust and its Secretary and Treasurer against the Defendants 1 to 4 in respect of the accounts in the Bank which stood in the name of Adarsh Vidya Kendra and Adarsh Educational Society and for transferring the money from the said account to Adarsh Educational Trust.

17. According to the Revision Petitioners, their father N.Kumarasamy was included in the suit as the 4th Defendant and certain



allegations were averred in the plaint against the 4th Defendant which amounts to tarnishing the reputation of the 4th Defendant in the society. The Revision Petitioners who are the 3rd parties, are the legal representatives of the 4th Defendant and therefore, they may be impleaded as additional Defendants 5 and 6 to safeguard their family's goodwill and reputation in the society. The 1st Revision Petitioner being the son of the deceased 4th Defendant and the 2nd Revision Petitioner being the wife of the 1st Revision Petitioner are entitled to protect the legal rights of the 4th Defendant in the suit and to establish that the allegations against the deceased 4th Defendant are false. Whereas, it is the case of the Respondents 4 to 6 that the 4th Defendant was added in the suit not as the trustee of the Trust but was impleaded. Since he had committed fraud while he was acting as Treasurer in the said trust during June 2010.

18. Admittedly, the Revision Petitioners and the deceased 4th Defendant were removed from the trusteeship and the suit filed by them against the Trust for framing of scheme and for removal of trustees were dismissed. Moreover, the suit itself was filed by the Trust and there is no



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question to implead the Revision Petitioners in order to safeguard the interest of the Trust. Considering the fact that the suit was filed against the 4th Defendant in his individual capacity and was not impleaded as the trustee of Adarsh Educational Trust and the suit itself is filed by the Trust, there is no question of safeguarding the interest of the Trust by the proposed Revision Petitioners. Moreover, no relief is claimed against the 4th defendant.

19. Moreover, the suit filed by the Revision Petitioner and the deceased 4th Defendant against the Trust for framing of scheme and for removal of trustees were dismissed and no appeal was preferred against the order of dismissal.

20. This Court finds that the Revision Petitioners have not made out the case for impleading themselves as additional Defendants in the suit.

21. In the result, Criminal Revision Petition is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

12.2023

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Index:Yes/No

Speaking Order : Yes/No

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To

The Principal District Court,
Kanyakumari at Nagercoil.



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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER MADE IN

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and

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