



C.M.A.No.1182 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2024

PRONOUNCED ON : 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1182 of 2021

and

C.M.P.No.6002 of 2021

V.Ramanujam (Died)

1.R.Venkatraghavan

2.R.Suresh

V.Vasudevan (Died)

3.R.Senthil Kumar

4.R.Sundarambaal

5.R.Rajasekar

6.R.Krishnamohan

.. Appellants/Petitioners/
Plaintiffs

Vs.

1.T.Ramanathan

2.Dr.K.Jayakumar

.. Respondents/Respondents/



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Defendants

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code r/w Section 104 of Civil Procedure Code, praying to set aside the Order and Decreetal Order dated 22.09.2020 in I.A.No.189 of 2018 in O.S.C.F.R.No.5720 of 2018, on the file of the Principal District Judge, Coimbatore as 'void'.

For Appellants : M/s.V.Srimathi
For R-1 : M/s.Sarvabhauman Associates
For R-2 : Mr.N.Jayakumar

JUDGMENT

The Civil Miscellaneous Appeal is filed by the petitioners challenging the dismissal of I.A.No.189 of 2018 in an unnumbered suit on the file of the learned Principal District Judge, Coimbatore, whereby, the Trial Court has dismissed the leave petition filed under Section 92 of Civil Procedure Code to sue the respondents/defendants.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Trial Court.



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3. The case of the petitioners is that the petition mentioned property comprised in T.S.No.36/3 in Town Survey Ward 5, Kaspas Pollachi Town, Pollachi Taluk, Coimbatore District, having a total extent of 5664 sq.ft in Plot No.34 with three buildings, belong to Nanjaya Nadar School Trust. Mr.Nanjaya Nadar, who is the paternal grandfather of the plaintiffs 1, 2 and 4, created a Trust for imparting education and settled his properties by way of Will dated 12.12.1937. One of the properties bequeathed through the Will was dedicated to the Trust. Subsequently, after the demise of Nanjaya Nadar, the Will came into force and based on the income earned, the Trust has purchased the petition mentioned property on 18.10.1978. Subsequently, the Trust has approached the Principal District Court, Coimbatore, seeking permission to sell the petition mentioned property by filing Original Petition in Trust O.P.No.129 of 2016. Permission was granted by the District Court, with liberty to sell the properties either to the second respondent therein or to the third parties, whoever tenders highest price.

4. The first respondent herein is the Managing Trustee of the Trust



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and the second respondent was the proposed purchaser of the property. The petitioners are Trustees and have suggested to sell the property only through public auction, but the first respondent refused to go for public auction and sold the property to the second respondent. A sale deed dated 16.11.2016 was executed by the first respondent in favour of the second respondent and the other trustees have not subscribed their signature in the sale deed. The sale was executed within 15 days from the date of the order of permission granted by the District Court and it shows that there is a collusion between the first and second respondents. The market value of the property is more than the sale consideration mentioned in the sale deed. As per the Trust deed, if any property is sold, the sale consideration received shall be utilised only for the purpose of purchasing another property. But, the first respondent has failed to comply the sale and he tries to grab the management of the Elementary School, which is managed by the petitioners.

5. Now the second respondent is taking steps to construct a superstructure in the property purchased by him. Hence, the petitioners have come forward to file a suit against the second respondent to hand over



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the possession of the property and also for cancellation of the sale deed executed by the first respondent. For the purpose of filing the suit against public Trust, the petitioners filed a petition seeking leave to file the suit against the respondents.

6. The Principal District Judge has ordered notice in the leave petition to file a suit and the respondents have filed separate counters, in which, the first respondent has stated that as per the orders of the Principal District Court, in Trust O.P.No.129 of 2016 dated 01.09.2016, permission was obtained to sell the petition mentioned property. Based on the unanimous resolution passed by the trustees dated 11.03.2016, the Trust decided to sell the property to the second respondent for a sale consideration of Rs.1,45,00,000/-. The petitioners herein are also parties to the Original Petition filed seeking permission to sell the property. On the basis of the joint application filed, the District Court has granted permission. The petitioners herein are in charge of Elementary School owned and run by the Trust. Since there is gross violations made by the petitioners against the interest of the School, a show cause notice dated 29.03.2017 was issued to



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the petitioners and after receiving their explanation, the Trust Board has passed a resolution to remove the petitioners from the trusteeship. Thus, the proposed suit is filed as an act of vengeance and it is not for the interest of the Trust.

7. The second respondent in his counter has stated that as per the orders of the District Court obtained in Trust O.P.No.129 of 2016, he was permitted to purchase the petition mentioned property for a total sale consideration of Rs.1,45,00,000/-. The interest of the Trust was protected by issuing direction to deposit the entire sale consideration in the nationalised Bank and the Trust was allowed to withdraw the interest once in six months. The possession of the property was also handed over to him on 16.11.2016. Accordingly, he had taken possession of the property and doing developments in the said property. This order has not been challenged by the petitioners and the same is binding on the petitioners.

8. Based on the pleadings, the Principal District Court, Coimbatore had passed a detailed order and rejected the leave petition on the following



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grounds:

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(i) The petitioners have come forward to file a suit as an vindicative act.

(ii) The order permitting the Trust to sell the property was passed after analysing and after conducting a proper enquiry.

(iii) The petitioners herein were also parties to the petition, more particularly, they were the petitioners, who have joined with the trustees and prayed for selling the property and now they are not entitled to contend that the sale proceeds are inadequate or the order in Trust O.P.No.129 of 2016 is against the interest of the Trust.

9. Aggrieved over the dismissal of the interlocutory application, this appeal has been filed by the petitioners.

10. The learned counsel for the appellants would submit that the original order of the Trust Original Petition has not been complied with by the first respondent in its true letter and spirit. After passing of the order, immediately, for the purpose of enriching himself, the first respondent has



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hurriedly removed the petitioners from the trusteeship. The learned counsel further submitted that the District Court has granted only two months' time to sell the property, whereas, the first respondent has executed the sale deed on 16.11.2016, which is after the two months period, thereby the order of the District Court is violated. The petitioners have come forward to initiate civil proceedings against the first respondent for protecting the interest of the Trust. But, the Trial Court has not properly appreciated the case of the petitioners and dismissed the leave petition without adducing proper reasons. Hence, they have come forward with the present appeal.

11. The learned counsel for the respondents would submit that in the Original Petition filed in Trust O.P.No.129 of 2016 on the file of the learned Principal District Judge, Coimbatore, the Trust along with 13 other trustees have come forward with the permission petition, to sell the schedule property therein for a total sale consideration of Rs.1,45,00,000/-. This petition was filed based on the resolution passed by the Trust Board, in which, the petitioners are also parties. They were aware about the total sale consideration and they were aware about the object behind the sale of the



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property. The learned counsel further submitted that after due enquiry and proper paper publication to the general public, the District Court has allowed the petition with conditions that the sale must be effected within a period of two months from the date of the order. It also ordered to deposit the entire sale consideration in a nationalised Bank and the Trust is entitled to withdraw the interest. All these conditions have been properly complied with by the respondents. There is no violation of orders of the Court. The learned counsel also submitted that since the petitioners herein have been removed from the trusteeship, as a counter blast, they have come forward with the proposed suit, which is not for protection of the interest of the Trust and hence, prays to dismiss the appeal.

12. I have considered the submissions made on both sides and perused the records.

13. Admittedly, the Trust has passed a resolution dated 11.03.2016 to sell the property for the purpose of carrying out the charitable objects of the Trust. The second respondent was running a hospital and he came forward



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to purchase the property. Subsequently, an agreement for sale was also entered into between the Trust and the second respondent herein. In the permission petition filed under Section 92 of CPC, the Principal District Court has conducted an enquiry and passed the following order:

“In the result,

*i) This petition is **ALLOWED** and the petitioners are permitted to sell the petition mentioned property i.e. an extent of 5664 sq.fts. not less than at the **Rs. 1,45,00,000/-** rate within **TWO** months from this date, either to respondent others, after obtaining approval of the draft Sale deed, from the Court.*

*ii) The Petitioners are directed to deposit the entire sale proceeds into court **within 10 days** or prior to that from the date of completion of the sale transaction and on deposit. the amount will be deposited in a Nationalised Bank.*

*iii) Giving permission to the trustees to withdraw interest alone once in **SIX months** with a direction to welfare of the 1st Petitioner trust.*

iv) Any violations of the above conditions shall stand automatically cancelled the permission granted for the sale.



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v) *At the time of deposit of the amount, the petitioners are directed to produce the registration copy of the Sale Deed also.”*

14. One of the contentions of the petitioners herein is that the sale deed has been executed by violating the time limit fixed in the order dated 01.09.2016, whereas, the respondents submitted that the time limit was also extended as per the order passed in I.A.No.822 of 2016. This allegation of violation was considered by the Trial Court and it is held that, there is no violation of the order dated 01.09.2016. The conditions such as deposit of sale consideration before the Bank, deposit of copy of sale deeds were also complied with. Based on the order passed, the first respondent in the capacity of Managing Trustee, has executed the sale deed and this Court finds no violation of the order dated 01.09.2016 and the same could not be termed as collusion between the respondents. Their act is legally valid.

15. Admittedly, the petitioners herein were parties to the permission petition and they have not raised any grievance against the order passed by the Principal District Court granting permission to sell the petition



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mentioned properties for a total sum of Rs.1,45,00,000/-. Even today, they have not challenged the same and the order is binding on the petitioners herein. The Hon'ble Apex Court in ***Salem Muslim Burial Ground Protection Committee Vs. State of Tamil Nadu and others*** reported in **2023 (6) CTC 520**, while considering the principle of estoppel, has held in paragraphs 43 and 44 as follows:

“43. The Principle of Acquiescence has been explained in Black's Law Dictionary, 9th Edition, as a person's tacit or passive acceptance or implied consent to an act. It has been described as a principle of equity which must be made applicable in a case where the order has been passed and complied with without raising any objection. Acquiescence is followed by estoppel. A Constitution Bench of the Supreme Court in Pannalal Binjraj v. Union of India, six decades ago, had an occasion to explain the scope of estoppel. It says that once an order is passed against a person and he submits to the jurisdiction of the said order without raising any objection or complies with it, he cannot be permitted to challenge the said order, subsequently, when he could not succeed. The conduct of the person in complying with the order or submitting to the jurisdiction of the order of the Court by participation, disentitles him to any relief before the Court.



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44. It is settled that law does not permit a person to both approbate and reprobate as no party can accept and reject the same instrument. A person cannot be permitted to say at one time that the transaction is valid and to obtain advantage under it and on the other hand to say that it is invalid or incorrect for the purposes of securing some other advantage.”

The Trial Court has rightly held that since the petitioners herein are parties to the proceedings, they are not entitled to contend that the sale consideration fixed by the Court is not valid. They are estopped from raising such contention.

16. To file any legal proceedings against a public Trust under Section 92 of CPC, the intention of the parties must be *prima facie* established that it is for the protection of the interest of the Trust. In this case, the respondents are able to produce the copy of the plaint filed by the petitioners 2, 3 and 5 along with the deceased petitioner Vasudevan, challenging the removal of the trusteeship and also for injuncting the defendants therein from exercising the powers of the trusteeship. This plaint was filed in O.S.No.434 of 2017 dated 08.12.2017, shows that the



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petitioners herein have been removed from the trusteeship and they have separately challenged their removal. Only thereafter, they have come forward with the present proposed suit along with leave to file suit against the first and second respondents, who are Managing Trustee and the purchaser of the property, respectively.

17. The Hon'ble Apex Court in *Vidyodaya Trust Vs. R.Mohan Prasad and others* reported in **2008 (4) SCC 115**, while deciding the scope of Section 92 of Civil Procedure Code, has held that the Courts have to be careful to eliminate the possibility of a suit being laid against public trusts under Section 92 by persons whose activities were not for protection of the interests of the public trusts.

18. In this case, the facts, as discussed above, only show that the petitioners herein have not come forward to file the proposed suit against the first respondent for vindicating the interest of the beneficiaries of the Trust or protecting the interest of the Trust. Per contra, it is only an act of vengeance. This Court is of the view that the Trial Court has rightly



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dismissed the petition filed by the petitioners seeking leave to file the suit.

Accordingly, the appeal fails.

19. In the result, this Civil Miscellaneous Appeal is dismissed and the order dated 22.09.2020 passed in I.A.No.189 of 2018 in O.S.C.F.R.No.5720 of 2018, on the file of the learned Principal District Judge, Coimbatore, stands confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

30.04.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Lm

To
1.The Principal District Judge,
Coimbatore.

2.The Section Officer,
V.R. Section,
High Court, Chennai.



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K.RAJASEKAR,J.

Lm

Judgment made in
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