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A.No.1277 of 2024 in C.S.No.26 of 2023

Orders Reserved on : 28..03..2024

Orders Pronounced on : 18..04..2024

A.No.1277 of 2024

in

C.S.No.26 of 2023

**N.SATHISH KUMAR.J.,**

This Application has been filed by the 3<sup>rd</sup> defendant – Sri Muthukumaran Educational Trust, Rep. by its Founder Trustee (for short **“the 3<sup>rd</sup> defendant trust”**) seeking to strike off its name from the array of party defendants in C.S.No.26 of 2023 and to strike off the averments made in Paragraph 13 of the plaint in C.S.No.26 of 2023 as detailed in the affidavit filed in support of the application.

2. The Civil Suit in C.S.No.26 of 2023 has been filed seeking to pass a judgement and decree (i) declaring that the letter dated 07.01.21023 issued by the 4<sup>th</sup> defendant under which the 4<sup>th</sup> defendant communicated to the plaintiffs that they were ceased to be the hereditary trustee of the 1<sup>st</sup> defendant – Meeenakshi Ammal Trust (for short, **“the 1<sup>st</sup> defendant trust”**) as null and void, non-est and

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not binding on the plaintiffs; (ii) granting permanent injunction restraining the

defendants 4 & 5 or their men, agent or any other person acting through them, from interfering with the plaintiffs in their right to discharge their duties and functions as the Hereditary Trustees of the 1<sup>st</sup> defendant trust; and for costs of the suit.

3. For the sake of convenience and to avoid unnecessary confusion or ambiguity in the discussion, the parties will hereinafter be referred to as per their array in the civil suit.

4. The facts leading to the filing of the present application by the 3<sup>rd</sup> defendant, in brief, are as under:-

(i) There was no cause of action for the suit against the 3<sup>rd</sup> defendant trust and no relief was also sought against the 3<sup>rd</sup> defendant trust in the suit. The 3<sup>rd</sup> defendant has nothing to do with the plaintiffs and as such, the 3<sup>rd</sup> defendant trust is not at all a necessary party to the suit. The 3<sup>rd</sup> defendant trust has been unnecessarily dragged by the plaintiffs in the above suit order to harass the



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defendants 3<sup>rd</sup> defendant trust, more particularly, the defendants 4 & 5 who are the

founder trustee and one of the trustees of the 3<sup>rd</sup> respondent trust as well respectively and purely to vindicate their personal right. There is not even a single allegation made against the 3<sup>rd</sup> defendant trust and that the relief sought in the suit is only personal in nature, that too, purely against the 1<sup>st</sup> defendant trust and not to decide the right of the plaintiffs 1 to 4 against the 3<sup>rd</sup> defendant trust. Therefore, the 3<sup>rd</sup> defendant trust represented by its Founder Trustee, prays to strike of its name from the array of parties.

5. A counter affidavit has been filed by the plaintiffs 1 to 4 *inter alia* contending that the 3<sup>rd</sup> defendant trust is a necessary party to the suit as its interest has been involved vis-a-vis the affairs of the 1<sup>st</sup> defendant trust. All the three trusts viz., Meenakshi Ammal Trust (1<sup>st</sup> defendant); (2) Meenakshi Academy of Higher Education and Research Trust (2<sup>nd</sup> defendant); and (3) Sri Muthukumaran Educational Trust (3<sup>rd</sup> defendant) are run by one single family. The defendants 4 & 5 are founder trustee and trustee of the 1<sup>st</sup> defendant trust as well the 3<sup>rd</sup> defendant



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trust. So far as the 3<sup>rd</sup> defendant trust is concerned, the plaintiffs being legal heirs

of the respective trustees are entitled to be appointed as trustees. Furthermore, certain allegations of breach of trust and financial irregularities as to how funds of the 3<sup>rd</sup> defendant trust have been misused by defendants 4 and 5 for their personal benefits have been made against the defendants 4 & 5.

6. The plaintiffs further contended that there are criminal cases filed against the 4<sup>th</sup> defendant as the Trustee of the 3<sup>rd</sup> defendant trust for the offences like land grabbing, cheating, etc., by the local police and the Enforcement Directorate (i) C.C.No.3484 of 2020 on the file of the Chief Metropolitan Magistrate, Egmore, (ii) Enforcement Directorate case in Spl. C.C.No.8 of 2023 on the file of the learned VIII Additional Special Judge for CBI and PMLA Cases, Chennai. Recently another case was registered in Crime No.10 of 2022 on the file of the CCB, Avadi. Further, there are instances where the funds of the 1<sup>st</sup> defendant trust had been transferred to the 3<sup>rd</sup> defendant trust and vice versa. It is always open for the plaintiffs to amend the plaint, if the same is warranted and that the 3<sup>rd</sup>



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defendant cannot be allowed to go out of the jurisdiction by virtue of this

application. When the mediation talks were going on one side, the 4<sup>th</sup> defendant on the other side, as the Founder and Managing Trustee of the 1<sup>st</sup> defendant trust, conducted EGM 27.12.2022 and inducted the 5<sup>th</sup> defendant and the 5<sup>th</sup> defendant's son - Akash Prabakar as the other trustees of the 3<sup>rd</sup> defendant trust. Only recently, the plaintiffs came to know from the financial statements that a sum to the tune Rs.17,35,40,600/- was withdrawn from the account of 3<sup>rd</sup> defendant trust on various dates.

7. The plaintiffs further contended that though only a sum of Rs.6,15,00,000/- only was received as loan from certain private money lenders, during the relevant period, a sum of Rs.31,36,80,000/- was repaid to such private lenders from the account of the 3<sup>rd</sup> defendant trust, which resulted in excess payment to the tune of Rs.25,21,80,000/-. Thus, the funds of the 3<sup>rd</sup> defendant trust appears to have been diverted to purchase various properties without a proper resolution by the board of trustees and that they pleaded various financial



irregularities in the plaint. Therefore, they strongly opposed the present application

filed by the 3<sup>rd</sup> defendant trust to strike off its name from the array of party defendants.

8. Heard Mr.M.S.Krishnan, learned senior counsel appearing for the applicant/3<sup>rd</sup> defendant and Mr.T.R.Rajagoplan, learned senior counsel appearing for the respondents 1 to 4/plaintiffs.

9. Mr.M.S.Krishnan, the learned senior counsel for the 3<sup>rd</sup> defendant would submit that the 3<sup>rd</sup> defendant trust has been unnecessarily impleaded as party defendants. No allegation whatsoever was made against the 3<sup>rd</sup> defendant trust and no relief was sought against it. Only in order to harass the defendants 4 & 5, the 3<sup>rd</sup> defendant trust has been impleaded. The plaintiffs are neither trustees nor have any interest in the 3<sup>rd</sup> defendant trust.

10. The learned senior counsel for the 3<sup>rd</sup> defendant would further submit that that this court has power to strike off the pleadings when any matter in the pleading is found to be unnecessary, scandalous, frivolous or vexatious or it may



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tend to prejudice, embarrass or delay the fair trial of the suit, or is otherwise an abuse

of the process of the court and in support of his contention, the learned senior counsel relied on the judgement reported in the cases of (i) **Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi (AIR 1987 SC 1577)** and (ii) **Ajay Singh v. Sharadendu Tiwari (AIR 2016 SC 4087)**.

11. The learned senior counsel placing reliance on the judgement reported in the case of **T.Vetriselvan v. Tamil Nadu Merchantile Bank Limited [(2002) 1 CTC 513 : MANU/TN/0019/2002]** would submit that when the allegations contained in the plaint para 13 are irrelevant and unconnected with the reliefs sought in the suit, the 3<sup>rd</sup> defendant trust is unnecessary party and its name is to be struck off.

12. Mr.T.R.Rajagopalan, the learned senior counsel for the plaintiffs would submit that the 3<sup>rd</sup> defendant trust is also one of the family trusts of the individual parties. There were various money transactions and a huge sum seems to have been withdrawn from the account of the 3<sup>rd</sup> defendant trust. Since all the trusts are run by one single family and the 3<sup>rd</sup> defendant trust is funded by the 1<sup>st</sup> defendant trust, 3<sup>rd</sup> defendant is also a necessary party to the suit and at this stage, the 3<sup>rd</sup>

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defendant cannot seek to strike off its name from the array of party defendants.

13. Now the points that arise for consideration on the basis of the above

averments of either party are:-

- (1) Whether there is any cause of action against the 3<sup>rd</sup> defendant?
- (2) Whether the 3<sup>rd</sup> defendant is a necessary party to the suit?
- (3) Whether the averments made in Para 13 of the plaint in C.S.No.26 of 2023 are liable to be struck off for want of cause of action against the 3<sup>rd</sup> defendant?
- (4) To what other relief the 3<sup>rd</sup> defendant is entitled to?

**Point Nos.1 to 3:-**

14. This court has considered the rival submissions and perused the affidavit filed in support of the petition and the counter affidavit and also the averment in plaint in C.S.No.26 of 2023 carefully.

15. A careful perusal of the entire plaint averments would only go to show that the plaintiffs want to vindicate their personal right and their case would not fall within the ambit of section 92 of CPC.



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16. On a combined reading of para 13 of the plaintiff, this court is of the view that though certain allegations have been made about the 3<sup>rd</sup> defendant, no cause of action is pleaded against the 3<sup>rd</sup> defendant trust. Whereas only for the first time in the counter affidavit filed to the present application, plea of breach of trust has been made. When the averments made in para 13 do not disclose any cause of action against the 3<sup>rd</sup> defendant, the same are liable to be struck off under Order IV, Rule 15 & 16 of the CPC.

17. Admittedly the plaintiffs are not the trustees of the 3<sup>rd</sup> defendant trust nor the 2<sup>nd</sup> defendant trust. They were inducted as hereditary trustees of the 1<sup>st</sup> respondent along with the 5<sup>th</sup> defendant and others on 11.08.2021 by virtue of Amendment of Trust Deed dated 11.08.2021. It was brought to the notice of this Court that three other suits filed individually against the trusts (1) Meenakshi Ammal Trust, (2) Meenakshi Academy of Higher Education & Research Trust, and (3) Sri Muthukumaran Educational Trust, seeking to frame a scheme in terms of Section 92 of CPC are yet to be numbered.



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18. When the present suit in C.S.No.26 of 2023 has been filed by the plaintiff only to vindicate the personal right of the plaintiffs and there has been no allegation made against the 3<sup>rd</sup> defendant trust, this court is of view that the 3<sup>rd</sup> defendant trust has been unnecessarily dragged in the personal dispute among the trustees of the 1<sup>st</sup> defendant trust, more particularly, between the brothers (plaintiffs 1 and 2) and one of the sisters of the plaintiffs 1 and 2 (5<sup>th</sup> defendant), the 3<sup>rd</sup> defendant has been dragged in the suit and it is an unnecessary party to the suit. Therefore, this court is of the considered view that the 3<sup>rd</sup> defendant is not at all a necessary party to the suit. However, it is needless to state that the plaintiffs are at liberty to work out their remedies on the allegations of breach of trust and financial irregularities in the pending suits which have been filed seeking to frame a scheme in terms of Section 92 of CPC. The point Nos.1 to 3 are answered accordingly in favour of the applicant/3<sup>rd</sup> defendant and against the plaintiffs.

**Point No.4:-**

19. In view of the conclusion arrived at under Point Nos.1 to 3, the 3<sup>rd</sup>



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defendant is entitled to have its name struck off from the array of party defendant

and also to have the pleadings in Para 13 of the plaint struck off. This point is also answered accordingly in favour of the 3<sup>rd</sup> defendant and against the plaintiffs.

**In the result,** the application is allowed and the averments made in para 13 of the plaint in C.S.No.26 of 2023 are struck off and that 3<sup>rd</sup> defendant is declared as unnecessary party to the suit and therefore, the name of the 3<sup>rd</sup> defendant trust is struck off from the array of parties in the suit. Considering the relationship between the parties, this court is not inclined to pass any order as to costs.

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**N.SATHISH KUMAR.J.,**

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Pre Delivery Order  
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