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C.R.P (PD) No.4938 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P (PD) No.4938 of 2024

SRIMATH RAMALINGA SWAMIGAL MADALAYAM

alias PERUMAL SWAMIGAL TRUST

Represented by its President

Mr.S.Marimuthu Son of Sivanpandian

New No.11, Old No.4, Pattinathar Koil Street

Thiruvottiyur, Chennai – 600 019

... Petitioner

Vs

1. Mr.K.Jayaprakash

Son of Kandasamy

2. Mr.Lamba R.Arumugam

3. Mr.S.S.P.Vadivelu

Son of M.Periyasamy

4. Mr.P.Paulraj

Son of M.Pechimuthu

5. Bank of India

Rep. By its Branch Manager

Devaraja Mudali Street

Sowcarpet, Chennai – 600 003

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution
of India against the order and decretal order in unnumbered suit in



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SR.No.105 of 2023 on the file of the District Munsif, Thiruvottiyur dated 02.09.2023.

For Petitioner : Mr.P.Venugopal

ORDER

This Civil Revision Petition challenges the order of the District Munsif, Thiruvottiyur in O.S.SR.No.105 of 2023 dated 02.09.2023.

2. O.S.SR.No.105 of 2023 had been presented for the relief of permanent injunction restraining the defendants 1 to 4 from interfering with the peaceful possession and enjoyment of the Trust under the name and style of “Srimath Ramalinga Swamigal Madalayam, alias Perumal Swamigal Trust” situated at Old No.4, New No.11, Pattinathar Koil Street, Thiruvottiyur, Chennai – 600 019, through the President or other trustees as per the WILL executed by Mr.Perumalsamy. The suit also seeks for mandatory injunction directing the fifth defendant not to disburse the amounts deposited in the name of aforesaid Trust and for other reliefs.



3. The cause of action for the suit pleads that one Perumalsamy, son of Narayanasamy Konar, was an ardent devotee of the great saint Vallalar Swamigal. He created the Trust under the name and style of “Srimath Ramalinga Swamigal Madalyam” on 26.01.1937. The “WILL” executed by him has obtained a certificate of probate from this Court in O.P.No.287 of 1958 dated 19.02.1959. In terms of the “WILL”, five trustees were appointed and the trustees have decided to register a Trust on 11.12.2012. The Trust was commenced and an account was also opened with the fifth defendant Bank. Thereafter, pandemonium prevailed and the trust has been mired in litigation.

4. On account of this fact, the Bank decided to take a safe approach and froze the account of the Trust. This constrained one K.Jayaprakash, claiming to be the Managing Trustee, to file W.P.No. 27765 of 2022. The writ petition was disposed of on 05.01.2023. In paragraph 21 of the order, it was directed that the parties, in case, they have a claim with respect to the office, have to approach the Civil Court. It was added in order to administer the Trust, in case the Trustees have indulged in acts of misappropriation or maladministration etc., the Civil Court will have to be approached. The learned Judge directed that in case any third party,



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other than Mr.Jayaprakash and P.Balraj have any claim, they have to approach the proper civil Court for the purpose of resolving their claim.

5. The plaintiff claiming himself to be the President of Srimath Ramalinga Swamigal Madalayam alias Perumal Swamigal Trust, presented the suit stating that the defendants 1 to 4 are attempting to interfere with the activities of the Trust. The learned District Munsif at Thiruvottiyur rejected the plaint directing the plaintiff to file a suit under Section 92 of the Code of Civil Procedure, 1908. Hence, this Civil Revision Petition.

6. I heard Mr.P.Venugopal for the civil revision petitioner.

7. Mr.Venugopal states that he is the President of Ramalinga Swamigal Madalayam and in term of the order passed by this Court, he is entitled to maintain the suit. He also draws my attention to the orders passed by this Court in W.P.No.17340 of 2022 whereby a challenge was made to the document registering the Trust. This Court had dismissed the writ petition directing the parties to approach the Civil Court. Hence, he states that the order of the District Munsif requires to be revised.



WEB COPY 8. I carefully considered the submission of Mr.Venugopal and I have gone through the records.

9. It is not necessary that in all cases of disputes relating to a Trust property, that a suit under Section 92 of the Code of Civil Procedure, 1908, has to be presented. Section 92 is a special category of suits which arises when the plaintiff pleads that there is a necessity of a decree in terms of Section 92(1)(a) to (h) of CPC. Here is a case where the plaintiff pleads that he is the Managing Trustee of the Trust. Whether he is the President or he is a rank third party to the Trust, are all matters which have to be gone into, only at the time of trial.

10. The relief sought for in the suit is one of personal nature. The relief that has been sought for is not covered under Section 92. Only when the suit falls under the latter category, a suit has to be presented under Section 92 of CPC. The plaintiff claims that he is in possession as the President of the Madalayam and he is also not claiming any relief or framing of a scheme etc., That being the position, the suit cannot be treated one under Section 92 of CPC.



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11. Apart from this fact, when a suit is presented , the Court need not take upon itself the role of a defendant. This position has been settled by a judgment of this Court in ***Selvaraj and Ors. Vs. Kudankulam Nuclear Power Corporation and Ors. (N.Seshasayee, J.)*** reported in **2021 (4) CTC 539**.

12. In his case, the learned trial Judge has dealt with the issues which have to be appropriately dealt with, after the pleadings are completed and evidence is recorded. A reading of the plaint does not show that any of the relief sought under Section 92 has been sought for in this suit.

13. Therefore, this Civil Revision Petition is allowed and the order of the learned District Munsif, Thiruvottiyur in O.S.SR.No.105 of 2023 dated 02.09.2023 is set aside. The District Munsif shall number the plaint if it is otherwise in order. There shall be no order as to costs.

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Index : Yes/No

Neutral Citation : Yes/No

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To

1. The District Munsif
Thiruvottiyur
2. The Section Officer
VR Section
Madras High Court



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V. LAKSHMINARAYANAN, J.

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