



C.R.P.No.2188 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 19.06.2023

Delivered on 13.06.2024

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.2188 of 2021
and C.M.P.No.16600 of 2021

S.Aparajitha

...Petitioner/Petitioner/Defendant

-Vs-

1.Kannammal Memorial Charities
a Public Charity Trust rep. by
its Trustee Mr.E.J.Ayyappan
No.3, Tiruppur Palladam Main Road
Palladam 641 664.

2.Mr.E.J.Ayyappan

3.Mr.A.S.Arumugam

4.Mr.S.Murugabharathi

...Respondents/Respondents/Plaintiffs

Prayer:- Petition filed under Article 227 of the Constitution of India,
against the fair and decretal order of the learned Principal District and
Sessions Judge at Tiruppur dated 17.09.2021 passed in I.A.No.200 of 2021
in O.S.No.77 of 2021.

For Petitioner : Mr.K.V.Babu

For Respondents : Mr.V.G.Suresh Kumar



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ORDER

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This Civil Revision Petition is filed by the Defendant in the suit in O.S.No.77 of 2020 on the file of the learned Principal District Judge, Tiruppur, who is the Revision Petitioner herein.

2.The brief facts, which are relevant to decide this Civil Revision Petition, are as follows:-

- a) The suit was filed by the Respondents herein as Plaintiffs in the suit, stating the 1st Plaintiff is the Kannammal Memorial Charities, a Public Charity Trust represented by its Trustees, who are Plaintiffs 2 to 4.
- b) The suit had been filed seeking to declare that the Defendant is no longer a Trustee of the 1st Plaintiff Trust and for a consequential injunction restraining the Defendant from interfering with the Management of the 1st Plaintiff Trust and the school managed and administered by the 1st Plaintiff Trust, for a mandatory injunction directing the Defendant to deliver possession of the assets of the Trust and records of the 1st Plaintiff Trust and for costs.



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c) The Defendant in the suit had filed Petition under Order VII, Rule 11 of CPC, to reject the plaint, stating that the suit was barred by law without obtaining leave of the Court, and the suit had been instituted. The learned Principal District Judge, Tiruppur, had dismissed the I.A.No.200 of 2021 in O.S.No.71 of 2021.

3. Aggrieved by the same, the sole Defendant in the suit had preferred this Civil Revision Petition seeking to set aside the dismissal of I.A.No.200 of 2021 in O.S.No.71 of 2021 dated 23.03.2022.

4. When the Civil Revision Petition was pending, the learned Counsel for the Respondents filed a memo stating that the Respondents as Plaintiffs in the suit had filed Petition to withdraw the suit with liberty to file a fresh suit on the same cause of action.

5. Learned Counsel for the Revision Petitioner submitted that if the suit is to be withdrawn, automatically, this Revision Petition has to be allowed. It is to be noted that the Plaintiffs had filed Petition seeking to withdraw the suit with liberty to file a fresh suit on the same cause of



action. Only after the sole Defendant had raised the issue that before ever filing the suit, the Plaintiffs ought to have obtained leave of the Court as per Section 92 of C.P.C.

6. At this juncture, it is apropos to advert to the judgment of this Court in **2010 (5) CTC 438 [K.Srinivasan -vs- G.Kuppusamy Naidu Memorial Sports Trust, Kovilpatti and another]**, the relevant portion of which is extracted below:-

“Code of Civil Procedure, 1908 (5 of 1908), Section 92 – Public Trust vis-a-vis Private Trust – Test to be applied to find out the nature of the Trust - Factors relevant - Primary object of Trust is sine qua non to ascertain nature of Trust – Section 92 contemplates “express or constructive trust created for public purpose of charitable or religious nature”

7. Considering the development that the Plaintiffs are not interested in prosecuting the suit, it is nothing but to overcome the filing of this Civil Revision Petition and to wriggle out of the legal complications. The attempt of the Plaintiffs before the trial Court seeking to withdraw the suit with liberty to file a fresh suit on the same cause of action is nothing but to harass the Defendant/Petitioner.



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8.In the light of the affidavit filed by the fourth Respondent in this Civil Revision Petition seeking withdrawal of the suit, this Civil Revision Petition is allowed. The order passed by the learned Principal District and Sessions Judge, Tiruppur in I.A.No.200/2021 in O.S.No.77 of 2021 is set aside. The petition filed under Order VII, Rule 11 C.P.C. in I.A.No.200 of 2021 in O.S.No.77 of 2021 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.06.2024

cda/srm

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

1. The Principal District and Sessions Judge,
Tiruppur.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda/srm

**Order made in
C.R.P.No.2188 of 2021**

13.06.2024