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O.S.A. Nos.190 to 193 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

O.S.A.Nos.190 to 193 of 2021

and

C.M.P.Nos.8196, 8197, 8202 & 8205 of 2021

1.Thatha Sampath Kumar

2.A.Balasubramaniyam

... Appellants in all OSAs

Vs.

1.T.Sudharsan

2.T.Subashini

3.T.Sumathi Ammal

4.T.Suguna Gayathri

5.Sri Vupputur Alwar Chetty's Charities,
Represented by its Hereditary Trustee,
Vupputur Ramesh, 183,
Govindappa Naicken Street,
Chennai – 600 001.

Vupputur Sethuram (Deceased)

6.Vupputur Ramesh

7.Vupputur Swaroop

8.C.Vivekananda

... Respondents in all OSAs



Prayer in all the appeals: Original Side Appeals filed under Order XXXVI
Rule 1 of CPC read with Clause 15 of the Letters Patent,

i) to set aside the order and decree passed in Application No.9198 of
2019 in C.S.No.37 of 2019 dated 08.12.2020;

ii) to set aside the order and decree passed in Application No.1400 of
2019 in C.S.No.37 of 2019 dated 08.12.2020;

iii) to set aside the order and decree passed in OA.No.37 of 2019 in
C.S.No.37 of 2019 dated 08.12.2020 and

iv) to set aside the order and decree passed in Application No.1979 of
2019 in C.S.No.37 of 2019 dated 08.12.2020.

For Appellants : Mr.T.Mohan, Senior Counsel
for Mr.G.Muthukumar in all the OSAs

For Respondents : Mr.K.V.Anandhapadmanabhan,
Senior Counsel
for Mrs.C.Sangamithirai for R1 to R4
Mr.N.Baaskaran
for Mr.Eswar Kumar & Rao for R5 and R6
in all the OSAs



COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

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These four appeals are directed against the orders of the learned Single Judge granting injunction restraining the 1st appellant from functioning as Trustee, appointing the 2nd respondent as the Trustee of the 5th respondent Trust, dismissing an application to revoke the leave and application to vacate the injunction granted in O.A.No.37 of 2019 in C.S.No.37 of 2019.

2. These proceedings arose in a suit in C.S.No.37 of 2019 filed under Section 92 of the Code of Civil Procedure seeking to remove the 1st defendant as a Trustee and for an injunction restraining him from functioning as a Trustee. Leave under Section 92 was granted by this Court on 07.01.2019. This Court had also found that there is a *prima facie* case and has granted an injunction in OA.No.37 of 2019.

3. The 1st defendant in the suit/ the appellant herein had filed two applications in A.No.1979 of 2019 seeking to vacate the injunction in OA.No.37 of 2019 and an application in A.No.1400 of 2019 seeking to



revoke the leave granted to institute the suit in A.No.93 of 2019. The other two applications are filed by the plaintiffs in the suit/ respondents 1 to 4 in the appeal to appoint the 2nd respondent/ 2nd plaintiff as a Trustee and to injunct the 1st defendant/ 1st appellant from functioning as a Trustee.

4. The learned Single Judge by a common order has allowed O.A.No.37 of 2019 and A.No.9198 of 2019 viz., the application for injunction restraining the 1st defendant / appellant herein from functioning as a Trustee and appointing the 2nd plaintiff in the suit/ 2nd respondent herein as a Trustee in the place of the 1st defendant. The other two applications viz., A.No.1979 of 2019 to vacate the injunction granted in OA.No.37 of 2019 and A.No.1400 of 2019 to revoke the leave were dismissed. Hence, these four appeals are before us.

The short facts that are required for disposal of these appeals are as follows:-

5. The Trust in question viz., 2nd defendant in the suit was created by one Vupputtur Alwar Chetty. Vast extent of properties situate in George Town, Chennai and Srirangam were dedicated for the purpose of the Trust.



The Trustees were obliged to perform various charitable activities out of the income from the properties. The Author had also provided line of succession for a trusteeship. The trusteeship was essentially vested with the two families viz., Vupputtur family and the Thatha family. The Vupputtur family was to appoint three Trustees and the Thatha family was to appoint one Trustee.

6. The disputes arose between the families in the year 2015 which led to a suit in C.S.No.520 of 2015 being filed by the members of the Vupputtur family against the members of the Thatha family, wherein a declaration was sought for declaring the elections that were held on 13.05.2015 for the Trust as bad and for a consequential injunction restraining the defendants 2 to 5 and 6 therein viz., the members of the Thatha family from functioning as Trustees.

7. Originally an order of injunction was granted by this Court and in the appeals in O.S.A.Nos.315 and 316 of 2017 a compromise was arrived at, in and by which, both the factions were allowed to function as Trustees. The operative portion of the order of the Division Bench made in those appeals



4. Accordingly, counsels have consented to the following pro term arrangement being put in place pending the trial of the suit in so far as the composition of the Board of Trustees is concerned:

(i) Respondent No.1/ plaintiff will continue as a trustee till the culmination of the suit and till such time a decision is rendered as to his status by the Suit-Court. In other words as to whether or not, the plaintiff/ respondent No.1 is a life trustee or was co-opted at the relevant point of time as a tenure trustee will await the decision in the suit.

(ii) Appellant No.2/ Defendant No.2, who, counsels agree, is a life trustee, would continue as a trustee pending the suit and, thereafter, in accordance with the provisions of the subject trust deed.

(iii) Respondent No.2/ Defendant No.3 will continue as a trustee pending the trial like in the case of the plaintiff/ respondent No.1 till a decision is rendered in the suit as to whether or not he is a life trustee.

(iv) In so far as appellant No.3/ defendant No.5 is concerned, who, we are told, has tendered his resignation, he would be considered for being co-opted on to the trust, in case, he makes an application in that



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behalf. In case, appellant No.3/ defendant No.5 does not make an application for being co-opted on to the trust, the trustees will free co-opt on to the trust any other independent person in accordance with mandate of the subject trust deed.

(v) In so far as appellant No.4/ defendant No.6, who, counsels agree is a tenure trustee, will continue as a trustee till his tenure comes to an end, that is, till 28.08.2020.

8. It is not in dispute that C.S.No.520 of 2015 is pending as OS.No.4664 of 2020 on the file of the VI Additional City Civil Court, Chennai. While so, another suit in C.S.No.289 of 2018 came to be filed by the members of the Vupputtur family seeking removal of the 1st defendant/ appellant herein as life Trustee of the 1st plaintiff Trust and for an injunction restraining the defendants 1 to 3 from interfering with the management of the plaintiff's Trust. This suit was filed under Section 92 of the Code of Civil Procedure and leave to institute a suit was granted by this Court on 25.04.2018 in A.No.6533 of 2017. This order was the subject matter of appeal in O.S.A.No.218 of 2018, wherein, the order of interim stay of operation of the order was granted by the Division Bench of this Court. The



appeal came to be dismissed on 10.07.2019. Even during the pendency of the appeal the third suit in CS.No.37 of 2019 came to be filed by some of the members of the Thatha family contending that the 1st defendant/ appellant herein had been accused of misappropriation of trust property in his capacity as Trustee of another Trust which also belongs to the thatha family viz., T.V.R.Subbi Chetty charities and proceedings were launched against him by the HR&CE Department. He has been suspended as Trustee of the said Trust. Therefore, it was contended that the 1st defendant has lost his moral right to continue as Trustee of this Trust and hence he should be removed.

9. In this suit permission was granted to institute the suit under Section 92 of the Code of Civil Procedure in A.No.93 of 2019. Certain documents demonstrating that the 1st defendant was arrested pursuant to the FIR that was registered against him was also produced. Pending the said suit in C.S.No.37 of 2019 an application was filed seeking injunction in O.A.No.37 of 2019. Initially interim injunction was granted and the 1st defendant therein came up with an application to vacate the order of injunction.



10. The 1st defendant resisted the application for injunction and also sought for revocation of leave contending that the order of the Division Bench made in O.S.A.Nos.315 and 316 of 2017 is in force and therefore he cannot be removed and he should not be enjoined from functioning as Trustee. It was his further contention that the allegations made against him are false. The learned Single Judge found that there is no specific denial of the allegations made against the 1st defendant, in his counter affidavit filed in O.A.No.37 of 2019.

11. The learned Single Judge recorded a finding that since the 1st defendant had not very seriously disputed the allegations of mis-management and mis-appropriation attributed to him, there should be an order of injunction restraining him from functioning. A consent was given by the plaintiffs in the suit in C.S.No.37 of 2019 that the 2nd plaintiff in the said suit may be appointed as Trustee in the place of the 1st defendant.

12. We have heard T.Mohan, learned Senior Counsel appearing for the appellants and Mr.K.V.Anandhapadmanabhan, learned Senior Counsel



appearing for the Mrs.C.Sangamithirai, learned counsel for the respondents 1 to 4 viz., the other members of the Thatha family and Mr.N.Baaskaran, learned counsel appearing for the respondents 5, 6 and 7 viz., the Trust and the members of the Vupputtur family.

13. Mr.T.Mohan, learned Senior Counsel appearing for the appellants would vehemently contend that the plaint in C.S.No.37 of 2019 is based on the same grounds on which the plaint in C.S.No.289 of 2018 was filed. Drawing our attention to the similarity of the allegations in both the plaints Mr.T.Mohan would submit that having failed to get an injunction in C.S.No.289 of 2018, the plaintiffs therein have set up the plaintiffs in C.S.No.37 of 2019 to file the present suit. He would also point out that the allegations made in both the plaints are almost identical.

14. The other contention of Mr.T.Mohan is that after he had been removed as Trustee, the other Trustees have joined together and sold at least two valuable properties of the Trust without obtaining permission from the Court. While the allegations against the appellant is that he has sold the property without permission of the Court, the respondents after obtaining



injunction against the appellant from functioning as Trustee have almost indulged in the same act of selling the properties without permission of the Court.

15. We are also informed that one another suit in C.S.No.97 of 2023 has been filed by the plaintiffs in C.S.No.37 of 2019 to remove the members of Vupputtur family as Trustees complaining that they have sold the properties of the Trust and they have engaged in the acts of misappropriation and mal-administration of the properties of the Trust. It is also stated that criminal cases have been filed by the third parties against the Trust and the members of the family claiming that they had entered into agreement for sale of properties which have not been honoured.

16. No doubt, we are on appeal against those four orders passed by the learned Single Judge dismissing application for revocation of leave, and application to vacate the injunction granted in O.A.No.37 of 2019 in C.S.No.37 of 2019, appointing the 2nd plaintiff as Trustee and granting injunction restraining the 1st defendant from functioning as Trustee, but the suit being one under Section 92 of the Code of Civil Procedure and this



Court has a duty to protect the properties of the Trust and it is discharging its function as *parens patriae*. We do not propose to confine ourselves to the appeals before us. We are impelled to travel beyond the appeals in the interest of the Trust and the properties of the Trust.

17. The facts narrated above would show that none of the parties are clean, each one is accusing the other on mal-administration. *Prima facie* evidence of mal-administration is also available in the form of sale deeds executed by the respondents in these appeals in favour of the third parties after disposal of the injunction application by the learned Single Judge. The respondents in these appeals are fighting amongst themselves. A suit in C.S.No.97 of 2023 where serious allegations of mal-administration have been made against the members of Vupputtur family by the members of the Thatha family is also pending.

18. Surprisingly, we also find that the allegations in the plaint in C.S.No.37 of 2019 are almost identical to the plaint in C.S.No.289 of 2018. As a sample we extract paragraph No.4 of both the plaints just to show that the second plaint in C.S.No.37 of 2019 has been prompted by or is at the instance of the plaintiff in C.S.No.289 of 2018. Paragraph No.4 in C.S.No.289 of 2018:



4. The plaintiff respectfully submits that the first defendant's family namely Thatha Family is also running their family charity namely T.V.R. Subbi Chetty's Families Charities and as such it appears to be registered with and is under the control of Hindu Religious & Charitable Endowments Department of Government of Tamil Nadu herein after referred as HR&CE,

It further appears that during his tenure as president of the said T.V.R. Subbi Chetty's Families Charities, the first defendant faced various Charges of mis-appropriation of the properties and funds of the said T.V.R. Subbi Chetty's Families Charities and as such he was suspended from acting as president/hereditary trustee of the said T.V.R. Subbi Chetty's Families Charities by the order of the Commissioner, H.R&CE dated 29-04-2009. The trust deed of the first plaintiff trust indicates that only those persons competent among the descendants of the life trustees shall be eligible for appointment as life trustees in the place of the original life trustees whose place shall stand vacant. However the first defendant having already been found not competent to hold the office of one Charitable Trust on the ground of misappropriation of public trust funds, namely T.V.R. Subbi Chetty's Families Charities, his competency to become the life trustee of the first plaintiff trust, automatically ceased to exist and as such he is not competent to be appointed as life trustee or as any other trustee in the first plaintiff trust. However the first defendant appears to have fraudulently with an intention to take control of the first plaintiff trust and misappropriate the properties and funds of the first plaintiff trust, fraudulently suppressing the fact as to the order of suspension in suspending him as a trustee in T.V.R. Subbi Chetty families Charities, sought appointment as a trustee in the first plaintiff trust and as such then trustees appear to have appointed the first defendant as life trustee in the first plaintiff trust in the vacancy of Thatha Alwar Chetty without knowing the facts that the first defendant is facing charges of misappropriation of public funds belongs to T.V.R. Subbi Chetty's families Charities and as such the first defendant is not competent to be appointed as trustee in the first plaintiff trust. It further appears that the first defendant joined the first plaintiff trust with hidden agenda in taking control of the management of the first plaintiff trust by over throwing the Vupputur family from the trust and as such misappropriated the first plaintiff trust and its properties. Hence one of the members of the Thatha family namely Thatha Sudarsan, lodged the complaint dated 09-08-2017 to the first plaintiff trust against the first defendant requesting the plaintiffs to remove the 1st defendant as life trustee from the first plaintiff trust.



Paragraph No.4 in CS.No.37 of 2019:

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4)The plaintiffs respectfully submits that the their family and First defendant's family namely Thatha Family is also running their family charity namely T.V.R. SubbiChetty's Family Charities and as it appears to be registered with and is under the control of Hindu Religious & Charitable Endowments Department of

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Government of Tamil Nadu herein as referred as HR&CE. It further appears that during his tenure as president of the said T.V.R. SubbiChetty's Families Charities, the first defendant faced various charges of mis-appropriation of the properties and funds of the said T.V.R. SubbiChetty's Families Charities and as such he was suspended from acting as President / Hereditary trustee of the said T.V.R. SubbiChetty's Families Charities by the order of Commissioner, HR&CE dated 29.04.2009. The trust deed of the Second Defendant trust indicates that only those persons competent among the descendants of the life trustees shall be eligible for appointment as life trustees in the place of the original life trustees who place shall stand vacant. However the first defendant having already been found not competent to hold the office of one Charitable Trust on the ground of misappropriation of public trust funds, namely T.V.R. SubbiChetty's Families Charities, his competency to become the life trustee of the 2nd Defendant's trust, automatically ceased to exist and as such he is not competent to be appointed as life trustee or as any other trustee in the 2nd defendant trust. However the 1st defendant appears to have fraudulently with an intention to take control of the second defendant trust and misappropriate the properties and funds of the 2nd defendant trust, fraudulently suppressing the fact as to the order of suspension in suspending him as a trustee in T.V.R. SubbiChetty families Charities, sought appointment as a trustee in the 2nd defendant Trust.



19. The very fact that the paragraph No.4 in both the plaints are identical would show that the plaintiffs in C.S.No.37 of 2019 have been actively aided by the plaintiffs in C.S.No.289 of 2018 to institute the suit. However the 2nd plaintiff who has filed counter in the application in A.No.1400 of 2020 etc., has made a very specific allegation in the counter affidavit to the effect that she was not aware of the pending suit. This is false to her knowledge.

20. We therefore find that allowing any one of the parties to these proceedings, to be in control of the Trust properties, will be very dangerous and ultimately result in liquidation of all the properties. They are making allegations against each other and filing suits after suits spending the valuable time and money, which ought to be spent for charitable purposes.

21. We therefore find a strong *prima facie* case to dislodge all these parties from Trust properties and put the Trust in the hands of a court appointed as Receiver. The Administrator General and Official Trustee is appointed as Receiver and he is directed to take over the administration of



the entire properties and the affairs of the Trust forthwith and report such takeover to us within a period of fifteen days from today.

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22. The Receiver / Administrator General and the Official Trustee will substitute himself in all the legal proceedings that has been launched by the Trust except these four suits viz., C.S.Nos.289 of 2018, 37 of 2019, 97 of 2023 and OS.No.4664 of 2020. The parties are at liberty to appraise the learned Administrator General and the Official Trustee regarding the pending proceedings in which he should substitute himself.

23. These appeals are **disposed of** with the above directions. The properties will remain in the hands of the Administrator General who has been appointed as Receiver by us till the disposal of the suits in C.S.No.289 of 2018, 37 of 2019 and 97 of 2023. We direct all these three suits to be tried together. Permission is granted to the parties to move the learned Single Judge for annulling the sales effected by the trustees.



24. We are informed that the suit in C.S.No.520 of 2015 which was pending in this Court has been transferred to the City Civil Court and numbered as O.S.No.4664 of 2020 and it is pending on the file of VI Additional Judge, City Civil Court, Chennai. Invoking the powers under Clause 13 of the Letters Patent, we withdraw the said suit and transfer it to the Original Side of this Court to be tried along with the other three suits viz., C.S.Nos.289 of 2018, 37 of 2019, 97 of 2023.

25. It is stated that the Trust has filed proceedings under the Tamil Nadu Regulation of Rights and Responsibilities of the Landlords and Tenants Act, 2017 which are as follows:-

RLTOP.Nos.610 to 622 and 140 of 2023. These proceedings are pending before the X Court of Small Causes, Chennai. The Official Trustee will substitute himself as petitioner in the place of the Trustee and proceed with the same in accordance with law. The Trustees who are in the management of the Trust today are required to handover all the account books and properties of the Trust to the Administrator General.



26. We make it clear that all the observations made are *prima facie* observations and the Court which decides the suits will not be influenced by any of the observations in this order made above. No costs. Consequently, the connected miscellaneous petitions are closed.

(R.S.M., J.) (R.S.V., J.)
21.03.2024

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Index : No

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Speaking order



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R.SUBRAMANIAN, J.

and

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