BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.1739 of 2008

The Joint Commissioner,
H.R & C.E. Administration Department,
Tiruchirappalli- 6,
(Formerly known as the Deputy Commissioner,
H.R. & C.E. Administration Department,
Tiruchirappalli – 6.

... Petitioner/Objector

(Cause title accepted vide order of Court dated
01.04.2008 made in M.P.No.1 of 2008 in
C.R.P.SR.13455 of 2008 by GRJ)

vs.

1.Varadan Asari ...1st Respondent/Petitioner+

2.The Executive Officer,
Arulmigu Ranganathaswamy Temple,
Srirangam, Tiruchirappalli – 620.
... 2nd respondent

(Respondent No.2 is impleaded as per order of this
Court dated 27.11.2023 made in C.M.P(MD)No.11996 of
2023 in C.R.P(MD)No.1739 of 2008 by DEVJ)

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order of the learned Principal District Judge, Tiruchirappalli made in Trust Original Petition No.1 of 1995, dated 01.08.1996.

For Petitioners : Mr.M.Ramesh Saravanan, Government Advocate
For R-1 : Mr.M.Ashok Kumar,
For R -2 : Mr.M.Saravanan

O R D E R

The instant Civil Revision Petition has been field by the objector against the order of the learned Principal District Judge, Tiruchirappalli made in Trust Original Petition No.1 of 1995, dated 01.08.1996. .

2. Brief facts which give rise to the instant Civil Revision Petition are that one Kasthurirenga Achari has executed a Will, dated 14.01.1897 wherein he appointed Trustees to perform Pooja in Kaaliamman Temple situated at Thiruvanaikovil. According to the petitioner, the income derived from the petition mentioned properties were endowed for a religious and charitable purpose. The respondent herein/petitioner has filed an application under Section 34 of the Indian Trusts Act, 1882, seeking permission of the Court to sell the petition mentioned properties on the premise that the income derived

from the petition mentioned properties are not sufficient to fulfil the wishes of the testator. Hence, sought permission for the sale of the properties to the three persons named in the petition.

3. At the time of filing the petition, no respondent was arrayed as a party. However, the revision petitioner has impleaded himself as an objector and filed a counter wherein they have categorically pleaded that the application under Section 34 of the Indian Trusts Act, is not maintainable and that, the reason assigned for the sale of the properties is not supported by any evidence. It was further contended that even without selling the properties, the services which were mentioned in the Will could be effectively performed.

4. Before the trial Court, 1st respondent/petitioner has marked as many as eight documents as Ex.A1 to A8. No document was marked on the side of the petitioner/respondent. On both sides, each one witness was examined.

5. The trial Court after having considered the evidence and documents, had allowed the petition permitting the first respondent/petitioner, to sell the properties to the three persons mentioned in the petition.

6. Aggrieved by the same, the petitioner/objector has filed the instant revision petition on the ground that there was no wider publicity given about the alienation of the trust properties and the value prescribed are very much meagre and it was also contended that there are no proof that the petition mentioned properties have no irrigation facility. To crown it all, they have also raised objection in respect of the maintainability of the petition.

7. Per contra, The learned counsel for the first respondent/petitioner would vehemently contend that the subsequent purchasers have not been impleaded and that first respondent and his men, have been continuously doing the services as desired by the testator and it was also the contention of the learned counsel for the first respondent that the order of the trial Court is well merited and does not deserve any interference.

8. Further, the learned counsel for the first respondent would sincerely submit that they have been doing the services to the temple from their own income.

9. I have given my anxious consideration to the submissions made on either side.

10. The gravamen of the submissions made by the learned counsel for the petitioner is that the very petition filed under Section 34 of the Indian Trusts Act, is not maintainable. In this regard, the learned counsel would submit that even according to the first respondent/petitioner, they have performed the services according to the Will, dated 14.01.1897, as religious and charitable activities. In other words, the religious endowment has been defined under Section 6 Sub-Clause 17 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959(in short the HR& CE Act). For ready reference, the same is extracted hereunder:

> *"6.(17) "Religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution;"*

11. Therefore, this Court has no hesitation to hold that the services which the petitioner was directed to perform to Kaaliamman Temple, is nothing but a religious endowment. If it is a religious endowment, whether the Indian Trust Act, is applicable or not, is to be answered, so as to decide the maintainability of the petition filed under Section 34 of the Indian Trusts Act.

12. According to Section 1 of the Indian Trusts Act, religious or charitable endowment are excluded from the purview of the Indian Trusts Act. For ready reference, Section 1 of the Indian Trusts Actm is extracted hereunder:

> *"1.Short title, commencement- This Act may be called THE INDIAN TRUSTS ACT, 1882, and it shall come into force on the first day of March, 1882.*
>
> *Local extent. Savings. - It extends to the whole of India and the Andaman and Nicobar Islands; but the Central Government may, from time to time, by notification in the Official Gazette, extend it to the Andaman and Nicobar Islands or to any part thereof. But nothing herein contained affects the rules of Muhammadan Law as to waqf, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes*

taken in war among the captors; and nothing in the Second Chapter of this Act applies to trusts created before the said day."

13. Therefore, as rightly contended by the learned counsel for the petitioner, when there is a religious endowment, naturally applicability of Indian Trusts Act, was excluded. It is also brought to the knowledge of this Court about Section 34 of the HR & CE Act, where it has been mandated that before any sale or mortgage and any lease for a term exceeding five years of any immovable property or any encumbrance, sanction must be obtained from the Commissioner of the HR & CE Act.

14. Here the said course was not adopted. In this regard, the learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court in ***Joint Commissioner, Hindu Religious and Charitable Endowments, Admn. Department vs. Jayaraman and others*** reported in ***(2006) 1 SCC 257*** and also relied on an unreported judgment of this Court in C.R.P(NPD).No.2501 of 2011, dated 11.09.2020.

15. From the narration, it is amply clear that the direction and wish which was made as per the Will, dated 14.01.1897, is nothing but religious endowment. If it is a religious endowment, under Section 1 of the Indian Trusts Act, the same is excluded from the purview of the Indian Trusts Act. Therefore, this Court is of the firm view that filing of the petition under Section 34 of the Indian Trusts Act, is not at all maintainable.

16. Therefore, this Civil Revision Petition is allowed, dismissing the application in Trust O.P.No.1 of 1995 on the file of the Principal District Judge, Tiruchirappalli. No Costs.

07.02.2024

Index:Yes/No
NCC:Yes/No
PM

To

1.The Principal District Judge,
Tiruchirappalli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.KUMARAPPAN, J.

PM

C.R.P.(MD)No.1739 of 2008

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