



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.A(MD)No.283 of 2011 & M.P.(MD)No.1 of 2011
and W.P(MD)No.2212 of 2012 & M.P(MD)No.2 of 2012**

W.A(MD)No.283 of 2011:

K.G.Sankaranarayanan

.. Appellant/4th Respondent

Vs.

1.K.G.K.Ganesamoorthy

.. 1st Respondent/ Petitioner

2. The Joint Director of School Education,
Elementary Education,
Chennai.

3.The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The Assistant Elementary Educational Officer,
Tirunelveli.

.. Respondents/Respondents 1 to 3

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this
Court to set aside the order of this Court made in W.P(MD)No.11093 of 2008



WEB COPY dated 04.01.2011.

For Appellant : Mr.P.Thiagarajan

For Respondents : Mr.Narmadhan
for R1

: Mr.M.Sarangan
Additional Government Pleader
for R2 to R4

W.P(MD)No.2212 of 2012:

K.G.Sankaranarayanan

.. Petitioner

Vs.

1.The Secretary to Government,
Education Department,
Fort St.George,
Chennai-600 009.

2.The Joint Director of School Education,
Elementary Education,
Chennai.

3.The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The Assistant Elementary Educational Officer,
Tirunelveli.

5.K.G.K.Ganesamoorthy

.. Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus Certiorari calling for the records relating to the impugned order dated 29.12.2011 bearing Moo.Mu.No. 7915/Aa4/2011 issued by the 3rd respondent and quash the same.

For Petitioner : Mr.P.Thiagarajan

For Respondents : Mr.M.Sarangan
Additional Government Pleader
for R1 to R4

: Mr.Narmadhan for R5

COMMON JUDGMENT

(Order of the Court was made by **P.VELMURUGAN.,J**)

The present *intra* Court appeal in W.A(MD)No.283 of 2011 has been filed challenging the order dated 04.01.2011 passed by the learned Single Judge in W.P(MD)No.11093 of 2008. The learned counsel for the appellant would submit that the said writ petition has been dealt along with one second appeal in S.A. (MD)No.182 of 2005. The learned Single Judge dealt with both the writ petition and the second appeal and passed a common order dated 04.01.2011 wherein the S.A(MD)No.182 of 2005 was dismissed and in view of the dismissal of the



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second appeal, he passed the following order:

“22. In view of the dismissal of the second appeal, the writ petition filed by the petitioner will have to be allowed and the impugned order stands set aside. As far as the management of the School is concerned, the right to manage the school will devolve upon the legal heirs of K.G.Kanthakumar as per the judgment and decree passed by the lower appellate Court in A.S.No.77 of 2008 dated 08.12.2004. No costs. Consequently, connected miscellaneous petitions are closed.”

2. Now, the learned counsel for the appellants would submit that subsequently, a review application has been filed in Rev.Aplc(MD)No.34 of 2011 against the order dated 04.01.2011 passed in S.A.No.182 of 2005. In the said review application, this Court also reviewed the order passed in the second appeal and set aside the same and remitted back the matter to the first appellate Court/I-Additional District Court, Tirunelveli, to decide the validity of the Will. Challenging the same, an SLP was filed before the Hon'ble Supreme Court in Civil Appeal No(S).9695 of 2014. After consideration, the Hon'ble Supreme Court, vide order dated 29.09.2016, confirmed the order passed by this Court in



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the review application in Rev.Aplc.(MD)No.34 of 2011.

3. When the matter was remitted back to the first appellate Court in A.S.No.77 of 2004, the first appellate Court, once again dealt with the first appeal and decided that the Will is not valid vide order dated 18.01.2018. Aggrieved over the said judgment and decree passed by the first appellate Court in A.S.No. 77 of 2004 dated 18.01.2018, a second appeal has been filed before this Court in S.A.(MD)No.275 of 2018 and the same is pending before this Court. Since the writ petition was disposed based on the dismissal of the second appeal in S.A. (MD)No.182 of 2005 and thereafter, due to the change of circumstances, in the review application, the appeal was remitted back to the first appellate Court and the first appellate Court decided the first appeal on merit after giving opportunity to both the parties. Once again, they filed the second appeal and the same is pending which is the subject matter.

4. In such view of the matter, this Court is of the view that the order passed by the Writ Court is liable to be set aside and the matter may be remitted back to the writ court for fresh consideration in view of the change of



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circumstances.

5. In the result,

(1) The present Writ Appeal stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

(2) The Writ Petition in W.P(MD)No.11093 of 2008 is remitted back to the learned Single Judge for fresh consideration and disposal on merits and in accordance with law.

(3) The Registry is directed to tag the writ petition in W.P(MD)No.11093 of 2008 along with the pending second appeal in S.A.(MD)No.275 of 2018 before the learned Single Judge.

(4) In view of the change of circumstances, nothing survives in the writ petition in W.P(MD)No.2212 of 2012. Accordingly, the Writ Petition in W.P. (MD)No.2212 of 2012 is dismissed as infructuous. However, the parties are at liberty to work out their remedy in the manner known to law. No Costs. Consequently, connected miscellaneous petition is closed.

[P.V.,J.] [M.S.Q.,J.]
24.09.2024

NCC : Yes/No
Index : Yes / No
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To

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Education Department,
Fort St.George,
Chennai-600 009.

2.The Joint Director of School Education,
Elementary Education,
Chennai.

3.The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The Assistant Elementary Educational Officer,
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P.VELMURUGAN, J.
and
MOHAMMED SHAFFIQ,J.

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W.A(MD)No.283 of 2011
& M.P.(MD)No.1 of 2011
and
W.P(MD)No.2212 of 2012
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