



WEB COPY



A.S.(MD)No.161 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved On	Order Pronounced On
09.12.2024	16.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.161 of 2019

1. Congress Ponvizha Mandapam Trust,
Through its Managing Trustee,
S.Gopal,
Having its Office at No.17, East Car Street,
Ambasamudram, Tirunelveli.

2.S.Gopal

...Appellants

--Vs--

1.P.Veldurai
2.A.Murugesan
3.Tamilselvan

...Respondents

PRAYER: Appeal Suit filed under Section 96 read with order XLI Rule 1 & 2 of Civil Procedure Code, 1908, against the Judgment and Decree in O.S.No.65 of 2017 dated 31.10.2018 on the file of the 3rd Additional District Court, Tirunelveli.

For Appellants : Mr.G.Dhanapal
R1 : Died
For R2 and R3 : Mr.R.Mariappan



A.S.(MD)No.161 of 2019

JUDGMENT

The present First Appeal is filed by plaintiffs against the Judgment and Decree dated 31.10.2018 passed in O.S.No.65 of 2017 on the file of the 3rd Additional District Court, Tirunelveli.

2. The plaintiffs are the appellants herein and the defendants are the respondents herein. For the sake of convenience, the parties shall be referred as plaintiffs and defendants as per the ranking in the suit.

3. The suit is filed by the plaintiffs for (a) declaring that the persons mentioned in the 1st schedule to this plaint are the Trustees of the 1st plaintiff Trust, (b) for a permanent injunction restraining the defendants their men, servants, agents etc., from in any manner disturbing the persons mentioned in the 1st schedule to the plaintiff in any way from enjoying possession and managing the property of the 1st plaintiff Trust more particularly described as schedule 2 herein.

4. The brief facts as stated by the plaintiffs are that the property in the 2nd schedule of the plaint consisting of building absolutely belongs to the first



A.S.(MD)No.161 of 2019

plaintiff Trust. The plaintiff trust was created by three Congress Martyrs viz.,

1.Gomathi Sankara Diksthadar, 2.Marimuthu Konar, 3.K.N.Harihara Iyer. As founder Trustees they have executed a registered Deed of Trust dated 20.10.1954 in Document No.2499 of 1954. One of the founder Trustees namely Marimuthu Konar died in the year 1955 and another founder Trustee Gomathi Sankara Diksthadar died in the year 1971. Then surviving founder trustee K.N.Harihara Iyer appointed K.V.Subramanian son of Veeraputhira Moopanar and M.P.Swamy son of Pothikasala Thevar in the place of the deceased founder trustees by exercising the power granted under the Trust Deed for appointing trustees. While so, the said K.V.Subramanian and the founder Trustee K.N.Harihara Iyer resigned the Trusteeship on 02.10.1988 and 01.08.1991 respectively. The only remaining Trustee, M.P.Swamy appointed Sangamuthu Thevar and Ilayaperumal as Trustees in the place of the resigned Trustees K.V.Subramanian and K.N.Harihara Iyer and he has executed a “Deed of Trust” to that effect on 10.06.1992. While so, the said M.P.Swamy and Ilayaperumal died, then the only surviving Trustee Sangamuthu Thevar appointed S.Gopal (the 2nd plaintiff), Dr.Neelakanda Iyer, T.S.R. Venkatramana and Gomathinayagam as Trustees to the 1st plaintiff Trust and to that effect the said Sangamuthu Thevar executed a Deed dated 27.10.2014. The Trustees S.Gopal, K.Neelakandan, T.S.R.Venkatramana and Gomathinayagam have been managing the Trust and they were in possession and enjoyment of the



2nd schedule property in their capacity as Trustees to the 1st plaintiff Trust. The 2nd plaintiff as a Managing Trustee with the consultation of other Trustees executed a Deed dated 22.06.2015 and it makes it clear that the Trustees were the 2nd plaintiff Gopal, Gamathinayagam, Venkatramana and Dr.Neelakandan. Subsequently, the 2nd plaintiff S.Gopal in his capacity as a Managing Trustee to the 1st plaintiff Trust in consultation with other Trustees appointed S.Valli daughter of Sangamuthu Thevar as one of the Trustees in addition to the existing Trustees as above mentioned by a deed dated 17.03.2017. Hence, the present Trustees of the first plaintiff Trust are as given below and their names are given in the 1st schedule to the plaint:

1. S.Gopal
2. Gamathinayagam
3. T.S.R.Venkatramana
4. Dr.Neelakandan
5. S.Valli

5.(i) The 2nd plaintiff Gopal, as already mentioned is a Managing Trustee to the first plaintiff Trust. He is a member in the Indian National Congress and he was a President, Town Youth Congress, Ambasamudram, and Secretary to the Regional Congress, District Secretary, Congress and a member in District Executive Committee, Congress and President Gandhi Sevak Sangh.



A.S.(MD)No.161 of 2019

5.(ii) The Trustee Gomathinayagam was a former member of Executive Committee, State Congress Committee, Former Chairman, Kadayam Panchayat Union and is a son of Shanmugam Pillai, the Martyr.

5.(iii) T.S.R.Venkatramana is an Advocate, practising in Madras High Court and Supreme Court of India and was an Ex. M.L.A., a writer, Journalist and a Philanthropist.

5.(iv) Dr.Neelakandan is a son of the Founder Trustee Harihara Iyer and he is a retired Doctor from Government service.

5.(v). S.Valli is the daughter of Sangamuthu Thevar, the former Trustee of the 1st plaintiff Trust.

6. The defendants are strangers to the Trust and they claim as Trustees of the 1st plaintiff Trust as if they have appointed as in-charge for maintaining the 2nd schedule building (Mandapam) claiming through a paper publication in "Daily Thanthai" on 05.05.2017. The defendants herein met the 2nd plaintiff on 10.05.2017 asking him to hand over the key of the building and possession. The 2nd plaintiff rejected their claim, informed them it is a property belonging to the



A.S.(MD)No.161 of 2019

Trust for which the persons mentioned in the 1st schedule to the plaint are the Trustees, appointed by virtue of a Trust Deed dated 20.10.1954. The defendants are reluctant and recede back, but intimidated they would come again along with their henchmen and the 2nd plaintiff must be prepared to hand over the possession of the Trust building to them failing which, the 2nd plaintiff has to face the dire consequences. The defendants again came on 14.05.2017 with their henchmen and attempted to take forcible possession of the 2nd schedule building, but the 2nd plaintiff prevented with his friends and supporters and had faced tough time in his life. But the defendants threatened and intimidated that they would come stealthily and forcibly take possession of the building at any cost and if prevented they would physically assault the plaintiff. The defendants are no way related to the 1st plaintiff Trust and they are absolutely third parties. And their claim that they are the Trustees appointed by Tamil Nadu Congress Committee, but the Committee has no locus standi to appoint the Trustees to the first plaintiff Trust. The 1st plaintiff Trust is an individual legal entity constituted and founded by the persons as already mentioned in the year 1954. The present Trustees stated in the 1st schedule are the trustees of the plaintiff Trust appointed as per the rule and as per the Trust Deed of the year 1954. Hence, the suit for declaration and injunction.

7. The 1st defendant had filed written statement and had denied all the



A.S.(MD)No.161 of 2019

allegations stated in the plaint. Infact denied each and every sentence stated in the plaint and denied in entirety. Further stated that the plaintiffs have not stated whether 1st plaintiff is public trust or private trust and if the 1st plaintiff is public trust, the plaintiffs ought to have got permission under Section 92 of C.P.C. If the 1st plaintiff trust is private trust, the plaintiffs ought to have filed the suit as per section 34 of Indian Act. If the 1st plaintiff trust is private trust, then this Hon'ble Court has no pecuniary jurisdiction to entertain this suit and the Principle District Court alone has jurisdiction to entertain the suit related to private trust. The plaintiffs have not stated the objects of 1st plaintiff trust and the 2nd plaintiff has not stated in the plaint that 1st schedule alleged trustees are performing the objects of 1st plaintiff trust. The 2nd plaintiff himself stating himself as Managing Trustee of 1st plaintiff and the 1st schedule alleged trustees are trustees of 1st plaintiff. The 1st schedule alleged trustees are necessary party to the suit and non-joinder of 1st schedule alleged trustees is fatal to the case of plaintiff, hence the plaint is hit by non-joinder of necessary party. The defendants further submitted that the plaint Document No.1 will clearly prove that 1st plaintiff Trust belongs to congress party, as per its recital, 1st plaintiff trust was created by congressmen, the schedule property was purchased by congressmen from their own fund and money was collected from congressmen and from public. It will show the 1st plaintiff trust in under the control of congress party. As per the said document, the trustees of 1st

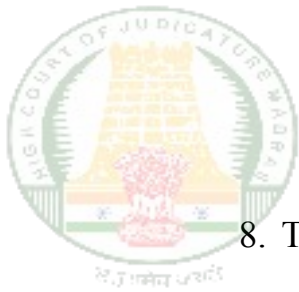


plaintiff Trust ought to have propagating Gandhiji's thought and congress principles, the person having the principle to propagate the Gandhiji's thought and Congress principle ought to be holding the post of trustee, the 2nd schedule property ought to be used only to propagate Gandhiji thoughts and to conduct meetings of congress party. The Document No.2 would show who were the trustees for 1st plaintiff trust in the year 1992. The Document No.3 is not registered hence no evidential value. When the 2nd plaintiff claims he was appointed as trustee vide unregistered document, then the appointment as trustee is illegal, hence the Document No.4 cannot be executed and has no right to file the suit and hence the suit is not maintainable. Hence the maintainability of the suit ought to be decided as preliminary issue. Further Document No.4 would clearly show that only to earn money from the 2nd schedule property, to grab the property, so many new conditions are included and the said new conditions is against the object of the trust document. The said Document No.4 was executed by trustees of 1st schedule, hence the said document will not bind the congress party and congressmen. Also the Document No.5 will not bind the congress party and congressmen. The Document No.6 is paper news and has no evidential value. The Document No.7 was created by 2nd plaintiff only for the purpose of filing the present suit and in the said document 1st schedule alleged trustees had not signed, but only the 2nd plaintiff had signed. The alleged resolution dated 13.5.2017 is not



A.S.(MD)No.161 of 2019

valid. The Document Nos.8 & 9 would show that the property tax is paid and building construction approval is obtained. Further the alleged trustees are not actively participating in 1st plaintiff Trust and in congress party. The 2nd plaintiff is not having any post in congress party. The 2nd person Gomathinayagam is residing in Kadayam and due to his old age he is not participating in any activities of congress party. The 3rd person T.S.R.Venkatarama Iyer is residing in Madurai, he is a senior advocate, he is practicing in Supreme Court and High Court, and he is not actively person participating in 1st plaintiff trust and congress party. The 4th person Doctor Neelakandan is permanently residing in America. The 5th person S.Valli does not belongs to congress party and she is the 3rd party to congress party. The alleged 1st schedule trustees are not any way connected with 1st plaintiff trust. They have not propagated the Gandhiji's thoughts and congress principles. They are dummy person appointed by 2nd plaintiff only to grab the 2nd schedule property. The 2nd plaintiff has misused the schedule property and leased out the 2nd schedule property to 3rd party and earned lot of money. The 2nd plaintiff did not perform the object of 1st plaintiff trust. Hence the congressmen sent complaints against 2nd plaintiff and hence the Congress Committee had appointed the defendants as co-trustees to 1st plaintiff trust on 29.04.2017. Hence the defendants are co-trustees to 1st plaintiff trust and hence injunction cannot granted against co-trustees. Hence prayed to dismiss the suit.



A.S.(MD)No.161 of 2019

8. The Trial Court had marked Ex.A1 to Ex.A28 and PW1 and PW2 are examined on the side of plaintiff. The Ex.B1 to Ex.B8 and DW1 was examined on the side of the defendants. Ex.C1 Commissioner plan and report was marked as Court document. The Trial Court had framed the following issues and additional issues:

- i. Whether the plaintiff is entitled for declaration?
- ii. Whether the plaintiff is entitled for injunction as prayed for?
- iii. Whether the 1st plaintiff Trust belonged to Congress party?
- iv. Whether the 2nd plaintiff is not legal trustees of the 1st plaintiff?
- v. To what other relief the plaintiff is entitled to”

Additional Issue:

- vi. Whether the plaintiff ought to have got permission under section 92 of CPC to file the suit?

9. After perusing the pleadings and evidence, after hearing the rival submission the Trial Court had dismissed the suit. Hence the present appeal suit is preferred by the plaintiffs.

10. The points for consideration in the present appeal are as follows:



WEB COPY



A.S.(MD)No.161 of 2019

- i. Whether the plaintiff ought to have got permission under section 92 of CPC to file the suit?
- ii. Whether the 1st plaintiff Trust belonged to Congress party and whether the defendants appointed by the Congress Committee can interfere with the administration and management of the Trust?
- iii. Whether the plaintiff is entitled for declaration and injunction as prayed for?
- iv. Whether the 2nd plaintiff is not legal trustees of the 1st plaintiff?
- v. To what other relief the plaintiffs/appellants are entitled to?

11. The first point for consideration is whether the plaintiff is bound to get permission under Section 92 of CPC for filing the suit. The said provision is extracted hereunder:

“92. Public charities.—(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is



WEB COPY



A.S.(MD)No.161 of 2019

situate to obtain a decree :—

- (a) removing any trustee;*
- (b) appointing a new trustee;*
- (c) vesting any property in a trustee;*

[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property];

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely:—

(a) where the original purposes of the trust, in whole or in part:—



WEB COPY

(i) have been, as far as may be, fulfilled; or
(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down:—

- (i) been adequately provided for by other means, or*
- (ii) ceased, as being useless or harmful to the community,*

or

- (iii) ceased to be, in law, charitable, or*
- (iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]*



12. The Section 92 states if there is any breach of trust and Court direction is necessary for administration of trust, then Section 92 permission ought to be obtained. The allegation by the defendants is that there is breach of trust and hence the Congress Committee appointed the defendants as trustees, hence the defendants are directed to take over the administration of the plaintiff trust. When the allegation of the defendants is that there is breach of trust, then it is the defendants who ought to have instituted the suit after getting permission from the Court under Section 92.

13. Further the provision states that for removing the trustees, appointing new trustees etc., Section 92 permission ought to be obtained. If the defendants want themselves to be appointed as trustees after removing the existing trustees, then it is for the defendants who ought to obtain permission under section 92 for filing the suit. If permission is granted then the defendants ought to seek a prayer to appoint themselves as trustees. But the defendants taking the direction from the Congress Committee and trying to take over the management of the Trust is highly illegal besides being violative of all laws. Literally the defendants are taking the law in their own hands. Infact the act of the defendants is punishable under criminal laws.



14. On the other hand, when the defendants try to interfere in the affairs of the Trust, the Trust through its trustees are entitled to seek remedy. The plaintiff had rightly approached the Court for declaration and injunction. Further for the prayer of declaration and injunction, it is not necessary for the plaintiff to seek permission under section 92. Therefore, the first point for consideration is held in favour of the plaintiffs.

15. When the “founder members” Gomathi Sankara Diksthadar, Marimuthu Konar and K.N.Harihara Iyer have executed a registered Deed of Trust dated 20.10.1954, then the Trust gets distinct legal identity separate from its founders members and trustees. Infact this legal recognition ensures that the Trust can own property, enter into contracts, sue, and be sued in its own name. It provides a formal structure that legitimizes the Trust’s existence and operations. A registered trust enjoys perpetual succession and its existence is not affected by changes in trustees or the death of its members. This continuity ensures that the Trust can pursue its objectives without interruption, providing long-term stability and reliability. Therefore, if the subsequent nomination of the trustees are not registered then the same would be a curable defect and this will not give any right to the defendants to interfere in the administration of the Trust.



16. On the other hand, the defendants claim themselves that they were directed to be act as trustees by the Congress Committee formed by Congress Party. When the Trust is having a separate legal entity, it is unknown how the Congress Committee, which is only a “committee” can appoint the defendants as trustees. It is pertinent to state that the “Committee” is not nominated as trustee in the existing Trust so as to appoint any new trustees.

17. By interfering in the administration and management of the Trust, which is a separate legal entity, the defendants are interfering in the affairs of the plaintiff without any power or right. Infact the defendants have no respect for the Indian Trust Act, wherein the provision states if the Trust is registered it has separate legal entity. The Congress Committee is not having separate legal entity, at the most it is only a committee. Therefore the defendants are third party to the Congress Ponvizha Mandapam Trust, since the registered Trust is having a separate legal entity. In such circumstances, the plaintiffs are entitled to be declared as trustees and the property belongs to the Trust. Even though the previous legally nominated trustee Sangamuthu Thevar had appointed the present trustees namely Gopal etc. was not registered, the same would be only procedural lapses. If the defendants want to raise question regarding their appointment, the defendants ought to file separate suit and cannot usurp the trusteeship by threat.



A.S.(MD)No.161 of 2019

Consequently the plaintiffs are entitled to declaration and injunction and the 3rd point for consideration is answered in favour of plaintiffs/appellants.

18. This Court had already held that the defendants are third party. Further the name of the committee is “Congress Committee” and the committee is formed by Congress Party which is a political party registered under People Representative Act. The name of the Trust is “Congress Ponvizha Mandapam” registered under Indian Trust Act having separate legal entity. The word “congress” has confused the defendants and the same had driven the defendants to create problems in the Trust. Therefore, this Court is of the considered opinion that the 1st plaintiff Trust does not belong to Congress party and the Trust is an independent entity. Further the defendants are not appointed by the independent entity but was appointed by the Congress Committee and therefore the defendants are not having any right to interfere with the administration and management of the Trust. Hence the 2nd and 4th points for consideration are held against the defendants.

19. As held supra if the appointment of present trustees are not registered, then the same is mistake and the same can be rectified. The plaintiff Trustees are permitted to rectify the defects / mistakes. Further the plaintiff are directed to



A.S.(MD)No.161 of 2019

consider to delete the clause which permits to sell the trust property on their own.

All trust properties ought to be protected and only the Civil Court has jurisdiction to grant permission to sell the property and that too for the benefits of the Trust. It is seen that the 1st respondent herein has died and the learned Counsel appearing for the appellants has filed a memo to that effect. The said memo is recorded.

20. This Court is of the considered opinion that the present Trustees are educated and are having respectable position in the society. Hence the allegation against the plaintiffs by the defendants are highly malicious and the same cannot be permitted.

21. With the above observation the first appeal is allowed. The Judgment and Decree dated 31.10.2018 passed in O.S.No.65 of 2017 on the file of the 3rd Additional District Court, Tirunelveli is set aside and the suit is decreed as prayed for. No costs.

16.12.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Tmg



A.S.(MD)No.161 of 2019

To

1. The 3rd Additional District Court,
Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.161 of 2019

S.SRIMATHY, J.,

Tmg

Judgment made in

A.S.(MD)No.161 of 2019

16.12.2024