

AS.(MD)Nos.115 & 123 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.04.2025

Pronounced On : 30.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)Nos.115 & 123 of 2018
and
C.M.P.(MD)Nos.5812 of 2019 & 2043 of 2024

A.S.(MD)No.115 of 2018

N.AR.Thangavel

... Appellant / Plaintiff

Vs.

1.N.Vasantharajan

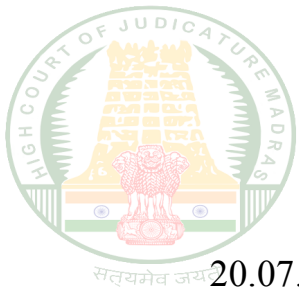
2.N.Rameshwaran
(2nd respondent in the represented by his Power Agent of 1st respondent)

3.N.Arumuga Rajan

4.P.Thanga Nachiyar

... Respondents / Defendants

PRAYER : First Appeal filed under Order 41 Rule 1 and Section 96 of the Code of Civil Procedure against the Judgment and Decree dated



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20.07.2017 passed in O.S.No.6 of 2013 on the file of District Court,
Sivagangai.

For Appellant : Mr.Natarajan,
Senior Counsel,
for M/s.Vijayakumari Natarajan

For R1 to R3 : Mr.S.Parthasarathy

For R4 : No Appearance

A.S.(MD)No.123 of 2018

N.AR.Thangavel

... Appellant / Plaintiff

Vs.

1.N.Vasantharajan
Represented by his Power Agent,
N.Rameshwaran

2.P.Thanga Nachiyar

... Respondents / Defendants

PRAYER : First Appeal filed under Order 41 Rule 1 and Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 20.07.2017 passed in O.S.No.39 of 2010 on the file of District Court, Sivagangai.

For Appellant : Mr.Natarajan,
Senior Counsel,
for M/s.Vijayakumari Natarajan



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For R1 : Mr.S.Parthasarathy

For R2 : No Appearance

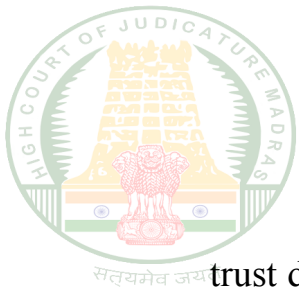
COMMON JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN J.**)

Unsuccessful plaintiff / Thangavel has preferred an appeal in A.S. (MD)No.115 of 2018 as against the judgment and decree passed in O.S.No.6 of 2013. He has preferred an another appeal in A.S.(MD)No. 123 of 2018 as against the judgement and decree passed in O.S.No.39 of 2010. By a common decree and judgment dated 20.07.2017, both suits came to be dismissed. For the shake of convenience, the parties are referred to as per their rank before the trial Court.

2.Brief case of the plaintiff in O.S.No.6 of 2013 is as follows:-

The suit has been filed for declaration that the defendants 2 & 3 are not validly appointed trustees and for consequential permanent injunction. The plaintiff's father one Arumugam created a Trust in the name of “Shri Arumugam Pillai Seethai Ammal Trust” under registered



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trust deed dated 12.03.1966. He has nominated himself, his wife and his son Nagarajan as trustees. The object of the trust is to run Educational Institutions, to construct hospitals, maternity house, orphanage for poor children, old age home and various other charities for poor people and performance of some pooja to temples. He has constructed a College in the name of Arumugam Seethai Ammal College. He died in the year 1989. His wife pre-deceased him in the year 1985. Soon after, the plaintiff and fourth defendant succeeded as trustees. The plaintiff and his deceased brother Nagarajan as trustees have been looking after the trust properties. In the year 1997, among family members an arrangement was made and in that process, the first defendant's father Nagarajan agreed to pay Rs.40,00,000/- to the plaintiff for construction of house and also to pay a sum of Rs.28,45,000/- for the difference in value of the properties. The plaintiff was forced to give resignation letter dated 30.07.1998. Even after a year or two, the amount was not paid. Thereafter, the plaintiff withdrew his resignation given on 30.07.1998, vide letter dated 27.10.2000. The first defendant's father Nagarajan died in the year 2004. As per trust deed, the eldest son of Nagarajan has to succeed as trustee. Accordingly, the first defendant had become trustee. As the first



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defendant started preventing the plaintiff from acted as trustee, the plaintiff had filed a suit in O.S.No.39 of 2010. The first defendant arbitrarily and unilaterally appointed his brother as one of the trustee, contrary to the trust deed. The first defendant nominated another brother, N.Arumugaranan as another trustee. As per trust deed only one member in a family alone should be the trustee of that family, whereas, the defendants 1 to 3 belonging to the same family, which is violation of wishes of the founder of the trust. The defendants 2 & 3 are not legally and validly appointed as trustees. Hence, the suit.

3.Brief case of the first defendant in O.S.No.6 of 2013 is as follows:-

The paternal grandfather of this defendant was one Arumugampillai. Consequent on the demise of Arumugam Pillai and Seethaiammal, new trustees was reconstituted. Because of the non-cooperation of the plaintiff, the trust could not be performed effectively. Therefore, in or about 1997 there was a partition in the family. The amounts payable as per the terms of the partition deed had no connection at all to the trust. The plaintiff had been to the Foreign Country, Malaysia and he had to stay there for quite long time. Therefore, he opted to

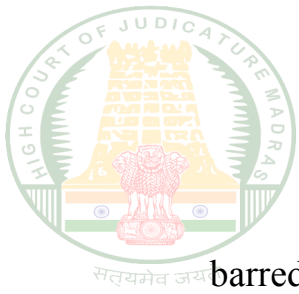


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resign from the office of trusteeship. Accordingly, the plaintiff had voluntarily retired and resigned from the office of trusteeship by submitting the letter dated 30.07.1998. The said resignation letter was accepted by the Board and he had no right or interest in the affairs of the Trust. It is utterly false to allege that the plaintiff had withdrawn his resignation letter by its subsequent letter dated 27.10.2000. The vacancy in the board of trustees created by the resignation of the plaintiff was duly filled up by the brother of the first defendant, the second defendant getting nominated as the trustee. The father of this defendant, Nagarajan died in 2004, to his place, his son, the first defendant was duly nominated as the trustee.

3.1.Considering the heavy work load in the affairs of the trust, the third defendant, the son of Nagarajan was also nominated as one of the trustees. Making some false fraudulent and untenable allegations, the plaintiff filed the suit in O.S.No.30 of 2010. As the plaintiff is not one of the trustees of the trust, he had no locus-standi to question the constitution of the Board of Trustees. The suit relates to the trust properties now of value about Rs.6 crores and more. The present suit is



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barred by Order II Rule 2 CPC. The claim made in the suit is untenable and un-sustainable.

4.The plaintiff / Thangavel filed the suit in O.S.No.39 of 2010 to declare that the plaintiff is a trustee and for consequential injunction.

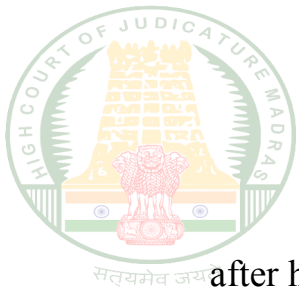
5.The defendants have filed the written statement by resisting the claim of the plaintiff.

6.Based on the above pleadings of the two suits, following issues are framed:-

i) Whether the plaintiff's brother Nagarajan induced the plaintiff by misrepresentation and fraudulently obtained a resignation letter dated 30.07.1998?

ii) Whether the claim of the defendants is true that the resignation submitted by the plaintiff was confirmed in the proceedings?

iii) Whether the claim of the plaintiff is true that as per Section 46 of the Indian Trust Act a trustee cannot remove his trusteeship (or) whether it is true that the plaintiff continued as one of the trustee even



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after his resignation?

iv) Whether the plaintiff is entitled as prayed for in O.S.No.6 of 2013?

7.The Court below conducted joint trial and recorded evidence in O.S.No.39 of 2010. On the side of the plaintiff, the plaintiff himself examined as P.W.1 and Ex.A1 to A14 were marked. On the side the defendants, the third defendant Thiru.Arumugarajan examined as D.W.1 and Ex.B1 to Ex.B4 were marked.

8.Findings of the trial Court:-

The plaintiff is not a trustee and he has not locus standi to challenge the appointment of the second and third defendant as trustees. The suit in O.S.No.6 of 2013 ought to have been obtained permission under Section 92 of Code of Civil Procedure.

9.The first defendant Thiru. Vasantharajan has filed an application under Order 41 Rule 27 read with Section 151 of CPC in C.M.P(MD)No. 2043 of 2024 in A.S.No.123 of 2018 to receive the additional documents.



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10.It is stated in the affidavit that the petitioner has traced the documents very recently and that non filing of the said documents during trial before the trial Court is neither willful nor wanton. The documents which are sought to be produced are Court proceedings between the parties and the documents executed by the first respondent's family members, in which the present first respondent is a party. The said documents would not require any further proof. In the petition, the following documents are filed to receive as additional evidence:- (i) Resolution passed in the Board of Trustees dated 16.10.1998; (ii) Judgment in O.S.No.54/1999, on the file of the Subordinate Judge, Sivagangai, dated 24.04.2000; (iii) Decree in O.S.No.54/1999, on the file of the Subordinate Judge, Sivagangai dated 24.04.2000; (iv) Registered Sale deed, dated 05.12.2002; (v) Registered Sale deed, dated 11.06.2009; (vi) Registered Sale deed, dated 08.12.2011; (vii) Registered sale deed, dated 29.05.2018; (viii) Registered Sale deed dated 13.06.2019; (ix) Registered Sale deed, dated 27.01.2022; (x) Order in C.R.P(MD)No. 2006/2016, dated 20.09.2018.



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11.The respondent / plaintiff has filed detailed counter affidavit in CMP.(MD)No.2043 of 2024 in AS.(MD)No.123 of 2018.

12.Points for determination arises in these appeals are:-

i)Whether the petition filed to receive additional documents in CMP.(MD)No.2043 of 2024 in AS.(MD)No.123 of 2018 is to be allowed?

ii)Whether the provisions of the Indian Trust Act is applicable to the suit trust?

iii)Whether the plaintiff in O.S.No.39 of 2010 is entitled to declare that the plaintiff is the trustee?

iv)Whether the plaintiff in O.S.No.6 of 2013 is entitled to declare that the defendants 2 & 3 are not validly appointed trustees?

13.Point No.1:-

In the affidavit, it has been stated that the documents executed by the first respondent / plaintiff family members and related documents are necessary in these appeals. The said documents would not require any further proof. At this juncture, it is relevant to refer the Order 41 Rule 27 of the Code of Civil Procedure, which reads as follows:-

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Rule 27-Production of additional evidence in appellate Court:-

1)the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary in the appellate Court. But if – (a) the Court from whose decree the appeal preferred has refused to admit evidence which ought to have been admitted, or

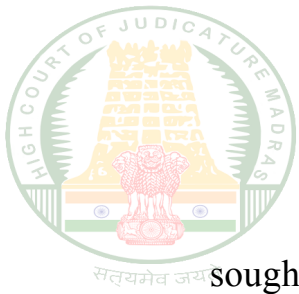
(aa)the party seeking to produce additional evidence, establishes that notwithstanding the existence of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b)the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate Court may allow such evidence or document to be produced or witness to be examined

2)wherever additional evidence is allowed to be produced by an appellate Court, the Court shall record the reason for its admission.

It is pertinent to mention that the additional evidence in appellate Court cannot be produced by a party as a matter of right, the essentials of order 41 Rule 27 of CPC have to be satisfied. The documents, which are



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sought to be produced in serial No.7 to 10 are after the decree date. The documents in S.No.2 & 3 are related to O.S.No.54 of 1999, its connected documents already marked as Ex.A14, Ex.B1 and Ex.B4. Further, the documents which are sought to be produced are not necessary to decide the issue involved in these appeals. Further, the reasons stated in the affidavit are not sufficient and not attracted the requirements mandated under Order 41 Rule 27 CPC. In view of the above, this Court is not inclined to allow the petition and the same is liable to be dismissed. Accordingly, CMP.(MD)No.2043 of 2024 in AS.(MD)No.123 of 2018 is dismissed.

14.The learned Senior Counsel appearing for the plaintiff / appellant would submit that as per clause four of the trust deed that not in derogation of the clauses in the trust deed, the activities of the trustees are bound by the rules of the Indian Trust Act 11 of 1882. The trial Court wrongly proceeds as if the appointment of Vasantharajan, the first defendant is questioned and held that after resignation of plaintiff, an appointment of Vasantharajan is correct. It is totally misconstruing the prayer in the suit, actually, the prayer is to declare that the second and

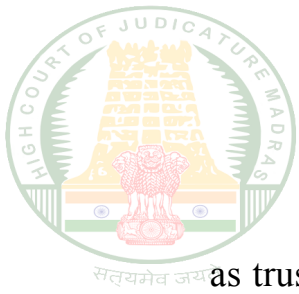


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third defendants are not validly appointed trustees. The trial Court further proceeded as if under Section 92 CPC permission of Court is required, but the Court itself accepts regarding the prayer in O.S.No.39 of 2010 permission is not necessary, whereas, the trial Court held that the prayer in O.S.No.6 of 2013 as it is for removal of trustee, permission under Section 96 is necessary. The learned Senior Counsel would submit that trial Court proceeds that the first defendant was inducted as beneficiary, it is obvious that a trustee cannot be a beneficiary of the trust. Insofar as the decree in O.S.No.54 of 1999, is no way connected in the points involved in this case. When the defendant failed to comply with the stipulated conditions, the plaintiff has withdrawn the resignation and continue to be the trustee and therefore, he can seek for declaration as prayed for.

15.The learned senior counsel further would submit that in the trust deed there is no provision relating to resignation. The trusteeship is a life time one and only after the demise of a trustee, his successor can function as trustee. The trial Court has not gone into the question with regard to the validity of the appointment of second and third defendants



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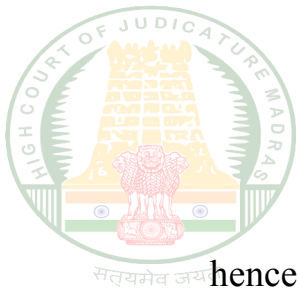
as trustees. It cannot be allowed that trustees to function contrary to the terms of the trust. In this case, all the present trustees belong to only one branch of the family of original trustee Arumugapillai, who is the author of the trust and it is against the spirit of the trust deed. When the trust deed prescribes specific line of devolution of trusteeship among family members, in-eligible members cannot be nominated as trustees. To strengthen his contentions, he has relied upon the judgment of the Hon'ble Supreme Court of India reported in *AIR 1963 SC 309, Shake Abdul Kayum & Ors VS. Mulla Ali Bhai and Ors.*, to show that trustees cannot renounce and cannot also delegate all their functions. Another judgment of this Court reported in *AIR 1931 MAD 801, Vaidhiyalinga Bandara Sannathi Avargal Thiruvaduthurai Aatheenam Vs. Temple Committee, Tinnevelly Circle and another*, to show that suit brought in individual capacity to establish individual claim as trustee does not come within the scope of the Section 92 CPC. Yet another judgement of this Court reported in *1958 1 MLJ 332, Sundaralingam Chettiyar and Ors. Vs. Nagalingam Chettiyar and Ors.*, to show that when the right to hold an office of trustee is asserted or denied and relief is asked for on that basis, that would appear to fall out side scope of Section 92 CPC.



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16.The learned counsel appearing for the respondents / defendants would submit that as per the trust deed the male trustees stood nominated a male decendant for the trusteeship and if not done, then after the life time of the male trustees, their eldest becoming trustees and in facts, if appointed male trustees has no male issues, then he will have to nominate the male issue from other family as trustees. As per the terms of the deed, the female trustee Thanganachiyar has no right to nominate the trustee after her life time. As per the family arrangements in Ex.A2 dated 30.04.1997 effected partition by allotting properties to each of the family members. The said document is not a registered one and hence inadmissible in evidence. One of the family member by name N.Arumugarajan filed a suit in O.S.No.54 of 1999. In the meanwhile, due to personal reason, one of the trustee, the appellant resigned from the membership and Vide-President of the College committee and submit Ex.A3 dated 11.02.1998 resignation letter. Further, vide Ex.A4 dated 30.07.1998 he opted to retire from the post of trustee. The said letter of resignation was produced in the trust board meeting on 16.10.1998 and the same was accepted. The appellant/plaintiff has no male issue and



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hence after his resignation, as per the terms of trust deed, the deceased N.AR.Thangavel nominated Rameshwaran, one of the sons of his brother as a trustee in his place.

17.The learned counsel for the respondents / defendants further would submit that in O.S.No.54 of 1999 the parties entered into a compromise and signed by the parties on 10.11.1999 and was presented into Court. He would submit that the appellant/plaintiff wants to take advantage of Section 46 of the Indian Trust Act. The subject matter of the suit is a public trust and that the provisions of the Indian Trust Act may not be applicable to the suit Trust. To strengthen his contention, he has relief upon the judgment in **2015 SAR Civil 779 in Charu Kishor Mehta vs. Joint Charity Commissioner, Greater Bombay Region and others**, to show that the Indian Trust Act is clear by its preamble and contents, is applicable only to private trusts and not to public trusts. The plaintiff has not filed any application under Order 2 Rule 2 CPC for splitting up of cause of action in earlier suit in O.S.No.39 of 2010 and not obtained permission. Hence, the subsequent suit in the same cause of action filed in O.S.No.6 of 2013 is hit under Order 2 Rule 2 of CPC. The trial Court after complete perusal of both oral and documentary

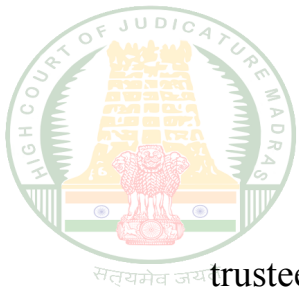


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evidence has rightly dismissed both the suits and there is no legal reason to interfere with the well considered judgment and decree of the trial Court.

18.The subject matter of the both suits is a trust by name “Shri Arumugampillai Seethaiammal Trust” and the same was established under the trust deed dated 12.03.1966 in Ex.A1. The founder of the trust is one Arumugam Pillai. The founder Arumugam Pillai, his wife Seethaiammal have two sons namely, Nagarajan and Thangavel (plaintiff) and one daughter namely, Thanga Natchiyar(fourth defendant in O.S.No.6 of 2013). As per clause three of Ex.A1 trust deed, (a) to execute the objects of the trust, the founder Arumugam Pillai, his Wife Seethaiammal and their eldest son, Nagarajan are shown as original trustees. (b) after the life time of any of the said trustee, other trustees continue to look after the objects of the trust (c) after life time of Arumugam Pillai and Seethaiammal along with Nagarajan, Thangavelu and Thanga Natchiyar will hold the trusteeship. Among the said trustees, Nagarajan and Thangavelu have to appoint one of their next male heir as trustees to function after their life time. Likewise, subsequent trustees also have to be appointed from their male heirs. If suppose, any of the



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trustees died, without appointing their heir as trustee, the elder son of the deceased trustee, would become the trustee. Thanga Natchiyar cannot appoint anybody as trustee. Among the hereditary trustee, if any of the trustee has no legal heir, he would appoint one of the sons of his next brother as trustee. It has been stipulated in clause four of the trust deed that not in derogation of the clauses in the trust deed, the activities of the trustees are bound by rules of Indian Trust Act 11 of 1882.

19.It is seen from the records that Arumugam Pillai died on 27.04.1989, Seethaiammal died on 15.09.1985 and Nagarajan died on 16.11.2004. As per the trust deed, after the life time of the founder trustee, his daughter Thanga Natchiyar to become the trustee and after demise of Seethaiammal, her younger son, Thangavel to become the trustee. As such, the trust was run by Nagarajan, Thangavel and Thanga Natchiyar were the trustees.

20.The plaintiff wants to take advantage of Section 46 of the Indian Trust Act and contended that as of right a trustee cannot be abandoned the trusteeship and it can be only by way of an order of competent Court.



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21.A cursory perusal of the trust deed, Ex.A1 dated 12.03.1966 would go to show that the said trust is a public charitable trust. In the trust deed for the purpose of implementation of the objects of the trust is to run educational institutions such as elementary school, secondary education, high school education, college education, scientific education, medical education, technological education and fine arts education to construct hospital, maternity house, orphanage for poor children, old age home and various other charities for poor people and performance of some pooja to temples.

22.It is pertinent to mention that a trust involves three elements namely, i)a trustee, ii)a beneficiary and iii)a trust property. The trustee in the eye of law, is the legal owner of the trust property, but, he holds it for the benefit of the beneficiary. The Indian Trust Act as clear by its preamble and contents is applicable only to private trust and not to public trust. The Hon'ble Supreme Court of India in a judgment reported in ***AIR 1963 SC 309 Sheikh Abdul Kayam Vs. Mulla Ali Bhai and Ors.*** wherein it has been observed that Section 1 of the Indian Trust Act 1882



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makes provisions of the Act in applicable to the public or private religious or charitable endowments. In view of the above, the subject matter of the suit is a public trust and that the provisions of the Indian Trust Act, may not be applicable to the suit trust as held in 2015 SAR Civil 779(cited supra).

23.In the meantime, there was a dispute relating to family properties, after mediation, a family arrangement in Ex.A2 dated 03.04.1997 was arrived between the Nagarajan and his family members as one part and Thangavelu and his family members as another part. As per the said Ex.A2 arrangement, schedule H is given to the family of the Nagarajan and schedule I to the family of the Thangavelu.

24.According to the plaintiff, as per Ex.A2, Nagarajan and his family agrees to pay Rs.40,00,000/- to the Thangavelu for the construction of house. A perusal of Ex.A2, wherein paragraph No.6 states that the plaintiff / Thangavelu agreed to retire from the trust and college and to relinquish his rights. In paragraph No.7, it has been stated that a sum of Rs.28,45,000/- shall be paid by the Nagarajan to the



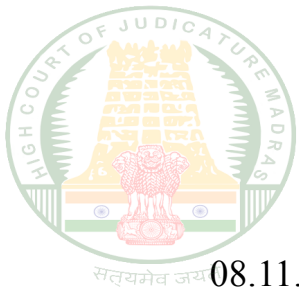
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Thangavelu as the difference in valuation of the allocation of the properties. As per Ex.A2 recitals, proposals were made for allocation of properties to individual members in separate schedule and as per the terms of the deed, creation of necessary documents were postponed.

25.Ex.A4 letter dated 30.07.1998 Thangavelu opted to retire from the post of trustee, due to personal reasons submitted his resignation. Ex.A7 withdrawal of resignation (Xerox copy) and Ex.A8 (original copy) dated 27.10.2000 addressed to the Nagarajan and copy marked to Thanga Natchiyar. Along with Ex.A7 and Ex.A8, postal acknowledgment pertaining to Thanga Natchiyar alone placed on record and there is no postal acknowledgment card pertaining to Nagarajan was placed on record. Nagarajan died on 16.11.2004 and Vasantharajan (first defendant) became the successor trustee, as per the trust deed.

26.According to the defendants, Ex.A4 letter of resignation was placed in the trust board meeting on 16.10.1998 and the same was accepted. According to the plaintiff, on 04.12.2005, Vasantharajan appointed Nagarajan's second son Rameshwarar as trustee. Further, on



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08.11.2007, Nagarajan's third son Arumugarajan was also appointed as trustee. Their appointment are contrary to the trust deed and in the meantime, 03.12.2010, Thanga Natchiyar resigned from trusteeship.

27.It is the case of the defendants that Thangavelu is unfortunate to have a male issue and hence, after his resignation, as per the terms of the trust deed, Thangavelu nominated Rameshwarar one of the sons of his brother as a trustee in his place and the same is acknowledged by him in lawyer notice dated 17.06.2009 in Ex.A12. It is also case of the defendants that Ex.A2 document is not registered and hence, inadmissible in evidence and was not acted upon, instead a regular partition suit was filed in O.S.No.54 of 1999.

28.Ex.A14 is the copy of the affidavit petition filed by the Thangavelu and his family members in I.A.No.53 of 2011 in O.S.No.54 of 1999 on the file of the Sub Court, Sivagangai praying to rectify or set aside the decree dated 24.04.2000. Ex.B1 is the copy of the proof affidavit filed by the Thangavelu in I.A.No.53 of 2011 in O.S.No.54 of 1999 on the file of the Sub Court, Sivagangai. From Ex.A14 and Ex.B1 reveals that in the partition suit in O.S.No.54 of 1999 the parties entered



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into a compromise and in fact, a written compromise was prepared and signed by the parties and was presented into Court. It is pertinent to point out, at this juncture, during the earlier memorandum of understanding, in Ex.A2 was not acted upon instead, a partition suit came to be filed in O.S.No.54 of 1999. Ex.A2 is only a Xerox copy and the original deed was not marked. In Ex.B1 wherein it has been stated that the original family arrangement document was misplaced while it was bringing into for taking a Xerox copy of the same. The parties to the compromise memo in full agreement of the terms have signed the compromise memo and their Advocates and the same was duly recorded by the Court and compromise decree was passed on 24.04.2000 and that it was ordered that the memo of compromise to part of the decree. The said compromise memo was accepted by all the parties in particularly, the plaintiff Thangavelu, his wife Thangamani and their daughter Bhuvaneshwari. By virtue of compromise in O.S.No.54 of 1999, the earlier unregistered family arrangement deed in Ex.A2 was given up and since as per the desires of the each family members and the question of compensating anybody did not arise and that Ex.A2 lost its significance by the subsequent compromise decree.

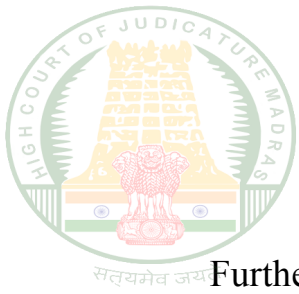


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29.As per Ex.A4 dated 30.07.1998, the plaintiff Thangavelu for his personal reasons had resigned his trusteeship voluntarily. He has also confirmed by way of registered document in Ex.B2 and Ex.B3 dated 17.03.2001 registered before the notary public at Malaysia. P.W.1 would admit the same in his cross examination. After his resignation from the trust, Thangavelu did not claim any rights in the trust. Vide Ex.A12 Lawyer notice dated 17.06.2009, for the first time proclaimed that he had withdrawn the resignation from the trust and that as if he has sent a communication Ex.A7 letter dated 27.10.2000 to Nagarajan and proclaimed that as per such withdrawal, he proclaimed as if he continues to be the trustee and further said that he has not been sent with any invitation from the trust after his withdrawal and was in complete darkness and sought that he should be informed about the trust activities and its meetings.

30.It is pertinent to mention that in the said notices, he had admitted his nomination of Rameshwarar as trustee in his place, but, ultimately sought the said Rameshwarar should not act as trustee.

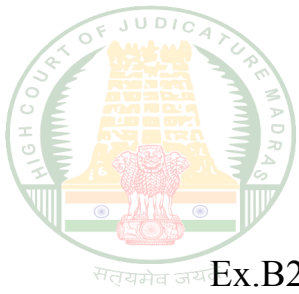


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Further, he would state that as per Ex.A2 memorandum, he was not paid the monetary amount as agreed and because of the same, he would state that he withdrew his resignation from the trust. If really non-payment of the agreed sum being the reason for his withdrawal in Ex.A7, he would have definitely stated the same in the alleged withdrawal letter in Ex.A7. But no such reasons stated therein. It is pertinent to mention that Thangavelu did not claim about the said withdrawal during the life time of Nagarajan and after 5 years of death, for the first time, spoke about the alleged withdrawal under notice in Ex.A12 dated 17.06.2009. Plaintiff in his evidence, would depose that Ex.A7 withdrawal letter was given to Nagarajan in person and also by registered post and would further state that the registered cover sent was returned as un-served.

31.The contention of the contesting defendants that Ex.A7 is a created document, if it is really be so, Thangavel would have acted legally immediately, after Ex.A7 and he would not have executed Ex.B2 & B3 documents whereby, he had confirmed his resignation of Ex.A4. The above contention of the defendants has considerable value since after Ex.A7 dated 27.10.2000, the plaintiff would not have executed



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Ex.B2 and B3 documents dated 17.03.2001 where he had confirmed his resignation of Ex.A4 letter dated 30.07.1998.

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32.Plaintiff, his wife and daughter were signatory to the compromise memo filed in O.S.No.54 of 1999 and the compromise decree was acted upon. But later on, the plaintiff wanted to redo the same by filing a petition in I.A.No.53 of 2010 after a lapse of 10 years. Ex.B1 is the proceedings in I.A.No.53 of 2010 the plaintiff was petitioner therein, in his evidence, would admit about execution of Ex.A11 which is well after the alleged withdrawal letter Ex.A7 dated 27.10.2000. In the written statement in O.S.No.39 of 2010 Thanga Natchiyar admitted that she had resigned her trusteeship on 03.12.2010. As per Ex.A1 trust deed there must be three trustees. After demise of Arumugapillai, Thanga Natciyar become the trustee along with Nagarajan and Thangavel. After his resignation, as per terms of Ex.A1, Thangavel nominated Rameshwaran as trustee since he had no male issues. The said Rameshwaran along with Nagarajan and Thanga Natchiyar, was continuing as trustees. After Nagarajan, his eldest son Vasantharajan become the trustee along with Thanga Natchiyar and Rameshwaran. Thanga Natchiyar haveing been resigned from the trust,



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Vasantharajan, Rameshwaran and Arumugarajan are continuing of the trustee of the suit trust.

33.It is pertinent to mention that the relief sought for in O.S.No.6 of 2013 is sought by an individual as against the activities of the suit trust. At this juncture, it is relevant to refer Section 92(1) of the Code of Civil Procedure, which reads as follows:-

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 [74][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 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 bee removed or a person who has ceased to be a trustee, to deliver possession*



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of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquires;

(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.

34.It is relevant to refer the judgment of the Hon'ble Supreme Court of India in a judgment reported in ***AIR 1966 SC 878 Madappa Vs. Mahanantha Devaru*** wherein it has been held that “Section 92 CPC provides that suit under Section can only be filed either by the Advocate General or two or more persons having an interest in the trust with leave of the Court because main purpose of the Section is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them”.

35.It is pertinent to mention that in a suit under Section 92 CPC trust is a necessary and proper party. Where a trust in a suit challenging



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the appointment of trustees, trust has been made as a party. The plaintiff / Thangavel may be beneficiary of the trust at the best, and in such circumstances, without resorting the provisions of Section 92 of CPC, he has filed the suit in O.S.No.6 of 2013 is not maintainable.

36.It is settled proposition that where cause of action are different in two suits, Order II Rule 2 does not apply. What Order II Rule 2 requires inclusion of whole claim arising in respect of one cause of action in one suit. The plea of bar under Order II Rule 2 CPC, can be established only if the defendant proves to the Court the identity of the cause of action as well as the identity of the parties in the two suits.

37.In the instant case on hand, it is seen from records, in the reply notice, in Ex.A13, dated 06.07.2009 wherein it has been mentioned about the suit trust and trustees. After the said notice, the suit in O.S.No.39 of 2010 was filed and even during such time, there was an occasion for Thangavel to seek relief about Rameshwaran and Arumugarjan, but failed to ask for any relief and in such circumstances, the second suit in O.S.No.6 of 2013 is hit under Order II Rule 2 CPC.



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38.It is pertinent to mention that in furtherance to the decision of resigning from the trust by the plaintiff as the first step, resigned from the college council on 11.02.1998 and the same is evident from Ex.A3 letter dated 11.02.1998. Thereafter, the plaintiff had given a letter in Ex.A4 dated 30.07.1998, thereby resigned from the trust as trustee. A careful perusal of the decision reported in AIR 1963 SC 309, which is relied on by the learned Senior Counsel for the appellant, in the said decision, there is only a passing remark, but no dictum laid down with regard to applicability of the provisions of the Indian Trust Act, in particular reference to Sections 46 & 47 of the Indian Trust Act. The said decision is more on the point of delegation as per Section 47 of the Indian Trust Act, therefore, the said decision has not relevance to the facts and circumstances of these appeals.

39.It is pertinent to mention that the suit in O.S.No.6 of 2013 is for declaration that Rameshwaran and Arumugarajan have no right to continue as trustees of the suit trust and for injunction. P.W.1-Thangavel has not let in evidence to corroborate his pleadings in the above suit and on the other hand he would address Rameshwaran as trustee in Ex.A12 Lawyer notice. Even in reply notice in Ex.A13 necessary materials were

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set out in respect of the suit trust and the trustees. The plaintiff has failed to prove his case. We are of the view that there is no reasons to interfere with the impugned decree and judgment. There is no merits in these appeals and the same are liable to be dismissed. The points are answered accordingly.

40.In the result,

i)first appeal in AS.(MD)No.115 of 2018 is dismissed,

ii)first appeal in AS.(MD)No.123 of 2018 is also dismissed,

iii)the common judgment and decree passed in O.S.Nos.6 of 2013 & 39 of 2010 dated 20.07.2017 on the file of the District Court, Sivagangai is hereby confirmed.

iv)there shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
30.04.2025

NCC : Yes / No
Index : Yes / No
gns



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To

The District Court, Sivagangai



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G.R.SWAMINATHAN,J.
and
M.JOTHIRAMAN, J.

gns

Pre-Delivery Judgement made in
A.S.(MD)Nos.115 & 123 of 2018

30.04.2025