



C.R.P.(PD)(MD).Nos.3229 & 3230 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 14.02.2025

DELIVERED ON: 17.02.2025

**CORAM
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**C.R.P.(PD)(MD).Nos.3229 & 3230 of 2024
and CMP(MD).No.18575 of 2024**

1.Loyola Educational Trust
Represented by its
Managing Trustee Dr.M.T.Nicholas
S/o.T.Mariasingam
Loyola Institute of Technology and Science
Loyola Nagar, Thovalai-Rajavoor Road
Thovalai Taluk
Kanyakumari District 629 302.

2.Dr.M.T.Nicholas
S/o.T.Mariasingam
Loyola Institute of Technology and Science
Loyola Nagar, Thovalai-Rajavoor Road
Thovalai Taluk
Kanyakumari District 629 302.

3.S.Boustine
S/o.Soosai Marian
Loyola Educational Trust
Residing at No.10, Chidambaranathan Street
New Colony, Nagercoil-1
Nagercoil Village
Agasteeswaram Taluk
Kanyakumari District

....Petitioners/Petitioners/Plaintiffs
in both petitions



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Vs

Dr.Felix Antonio Nicholas
Represented by its Power Holder R.Savariraj
No.1/32, Rose Gardens
Agasthilingam Pillai Street
Ponnappa Nadar Nagar
Nagercoil Village, Agasteeswaram Taluk
Kanyakumari District ...Respondent/Respondent/Defendant
in both revisions

PRAYER in CRP(PD)(MD).No.3229 of 2024: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 29.11.2024 passed in I.A.No.4 of 2024 in O.S.No. 293 of 2016 on the file of the I Additional Subordinate Court, Nagercoil by allowing this civil revision petition.

PRAYER in CRP(PD)(MD).No.3230 of 2024: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 29.11.2024 passed in I.A.No.5 of 2024 in O.S.No. 293 of 2016 on the file of the I Additional Subordinate Court, Nagercoil by allowing this civil revision petition.

For Petitioners : Mr.V.Meenakshi Sundaram
in both revision petitions

For Respondent :Mr.T.Lajapathi Roy
Senior Counsel
for Mr.G.Anto Prince
in both revision petitions



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COMMON ORDER

Both the revision petitions have been filed by the plaintiffs in O.S.No.293 of 2016 on the of the I Additional Subordinate Court, Nagercoil.

(A)Factual Matrix:

2.The above said suit was filed for the following reliefs.

a)For declaration that the second plaintiff is the managing trustee of the first plaintiff trust.

b)A decree for declaration that unilateral execution of supplementary trust deed in Document No.133/IV of 2015 dated 05.05.2015 filed by the defendant is null and void.

c)A decree for permanent injunction restraining the defendant and his men from interfering with the affairs of the second plaintiff as managing trustee of the first plaintiff trust.

3.The plaintiffs' side evidence was closed, DW1 had completed of his chief and cross examination. When DW2 was in the box, the defendant has filed the following applications.

a) I.A.No.4 of 2024 for the relief under Order 11 Rule 14 read



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with Section 151 of C.P.C to pass an order directing the plaintiffs to produce the documents as per petition.

b)I.A.No.5 of 2024 was filed under Order 8 Rule 1-A of C.P.C seeking permission of the Court to accept seven documents as per petition and to mark the same.

4.The plaintiffs in the suit had filed a counter in I.A.No.4 of 2024 contending that the plaintiffs cannot be directed to produce the documents invoking Order 11 Rule 14 of C.P.C. The defendant ought to have invoked Order 12 Rule 8 and should have issued a notice to produce the documents. Only on failure, this provision could have been invoked. It was further contended that Order 11 Rule 14 of C.P.C can be invoked only by the Court and no application can be filed by any one of the parties to the suit under the said provision. It was further contended that there were no pleadings with regard to any one of the documents in the written statement. That apart, Document Nos.7 to 10 are not relevant for the purposes of disposal of the suit.

5.In I.A.No.5 of 2024, the plaintiffs has filed a counter contending that there are no pleadings to the documents mentioned in the petition and therefore, such an application is liable to be rejected. That



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apart, the applications having been filed after trial has begun, are not maintainable.

6.The trial Court after considering the submissions made on either side, had proceeded to allow I.A.Nos.4 and 5 of 2024 on the ground that those documents are related to the suit.Whether those documents are relevant to the suit or not could be found out only when the documents are marked and the questions are raised in the cross examination. The trial Court has allowed I.A.Nos.4 and 5 of 2024. Challenging the same, the present civil revision petitions have been filed.

(B)Submission of the counsels appearing on either side:

7.According to the revision petitioners, the applications filed under Order 11 Rule 14 of C.P.C is not maintainable. The said provision can be invoked only by the Court to direct a party to produce documents. In case, if the defendant wants the plaintiffs to produce the documents, notice to produce the documents should have been issued as contemplated under Order 12 Rule 8 of C.P.C.In the present case, no such notice was issued.

8.The learned counsel for the petitioners had further contended that the defendant has sought for resignation letter of R.Savariraj as



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Document No.2. In fact, the said R.Savariraj has not resigned, but he was removed from the trust board. The same is evident under Exhibit A26 which is already marked.

9.The learned counsel for the petitioners had further contended that as far as Document No.3 is concerned, the same is part of annexure to Exhibit A2. The documents mentioned in Serial Nos.4 to 6 are already part of Exhibit A21. The learned counsel had further contended that Document Nos.7 to 9 relate to the personal transactions which have nothing to do with the prayer sought for in the suit. Hence, he prayed for setting aside the order passed in I.A.No.4 of 2024.

10.The learned counsel for the petitioner had further contended that the documents mentioned in the petition in I.A.No.5 of 2024 are not supported by any pleadings whatsoever. In such circumstances, application seeking to receive the documents, without pleadings is not maintainable. He had further contended that Document Nos.5,6 and 7 are after suit and therefore, they cannot be relied upon.

11.Though an application was filed seeking permission of the Court to receive the documents, the trial Court has already proceeded to permit the defendant to mark those documents and in fact DW2 has



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already proceeded to mark those documents. Hence, he prayed for allowing both the revision petitions.

12.Per contra, the learned Senior Counsel appearing for the respondent/defendant had contended that the documents mentioned in the petition in I.A.Nos.4 and 5 of 2024 are very much relevant for disposal of the suit. The plaintiffs who claim to be the managing trustee of the trust is having custody of those documents and unless those documents are produced, it will be difficult for the Court to arrive at a finding.

13.The learned Senior Counsel had further contended that only if the documents are produced or marked before the Court through oral evidence, it could be found out whether they are relevant for the purposes of disposal of the suit or not. The plaintiffs cannot screen the documents from the Court. He had further contended that the plaintiffs cannot raise the technical plea that notice to produce was not issued under Order 12 Rule 8 of C.P.C. If the plaintiffs are having custody of the documents and they are relevant for the suit, the Court has got every power to invoke Order 11 Rule 14 of C.P.C to direct the parties to produce the documents. He had further contended that the documents annexed to the petition in I.A.No.5 of 2024 are nothing but Agenda, Minute Book and Official



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Records of the District Registrar Office. Therefore, the plaintiffs cannot have any objection whatsoever for marking of those documents. Hence, he prayed for sustaining the order passed by the trial Court.

14.I have considered the submissions made on either side and perused the material records.

(C)Discussion:

15.The suit has been filed for the relief of declaration that the second plaintiff is the managing trustee of the first plaintiff trust. A further declaration has been prayed for to declare a supplementary trust deed dated 05.05.2015 is null and void. A consequential prayer for permanent injunction has been prayed for as against the defendant from interfering with the affairs of the second plaintiff as managing trustee of the first plaintiff trust.

16.The present application in I.A.Nos.4 and 5 of 2024 have been filed while DW2 was in the box. I.A.No.4 of 2024 has been filed under Order 11 Rule 14 of C.P.C to direct the plaintiffs to produce 9 documents. It is true that the defendant has not invoked Order 12 Rule 8 of C.P.C to issue notice to produce the documents as against the plaintiffs. Considering the fact that the suit in the trial stage, this Court is not



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inclined to entertain the revision petitions on the technical grounds of non invocation of Order 12 Rule 8 of C.P.C and proceeds to decide the application on merits.

17.As far as the documents mentioned in the petition in I.A.No.4 of 2024 are concerned, the plaintiffs cannot have any objection to produce the documents found in Serial Nos.1 and 3. As far as documents found in Serial Nos. 4 to 6 are concerned, they are already part of Exhibit A21 and therefore, it may not be necessary to produce those documents. As far as Document Nos.7 to 9 are concerned, they are purely private transactions of the second plaintiff and hence, they are no way relevant for disposal of the suit. As far as Document No. 2 is concerned, it is already part of Exhibit A26. Therefore, this Court is of the opinion that I.A.No.4 of 2024 could be allowed with regard to Document in Serial Nos.1 and 3 alone.

18.As far as I.A.No.5 of 2024 is concerned, it is filed by the defendant seeking permission of the Court to receive 7 documents under Order 8 Rule 1-A of C.P.C. As far as Document Nos.2,5,6 and 7 are concerned, admittedly there is no pleadings in the written statement or in the plaint filed in the connected suits which are tried together. Therefore, the Documents mentioned in Serial Nos.2,5,6 and 7 cannot be received as



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evidence. As far as Document Nos.1, 3 and 4 are concerned, they are very much connected to the suit proceedings and there are pleadings to the said effect. Therefore, the defendant can be permitted to file the documents mentioned in Serial Nos.1, 3 and 4.

19.In the discussion made supra, I.A.No.4 of 2024 has been partly allowed directing the plaintiffs to produce the documents found in Serial Nos. 1 and 3. As a consequence, the plaintiffs should be permitted to depose for the purpose of marking these two documents. Since I.A.No.5 of 2024 has been partly allowed, the second defendant can be permitted to mark the document in Serial Nos.1, 3 and 4 through DW2 or any other competent witness.

(D)Conclusion:

20.In view of the above said deliberations, this Court is inclined to pass the following orders:

a)CRP(MD).No.3229 of 2024 is partly allowed and I.A.No.4 of 2024 is partly allowed with a direction to the plaintiffs/revision petitioners to produce the documents in Serial Nos. 1 and 3. In other respects I.A.No.4 of 2024 stands dismissed.



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b)The plaintiffs may be permitted to mark the documents as directed in I.A.No.4 of 2024 by examining a witness and he can be subjected to cross examine on the above said documents.

c)CRP(MD).No.3230 of 2024 is partly allowed and I.A.No.5 of 2024 is partly allowed permitting the defendant to mark the document in Serial Nos.1,3 and 4 alone. In other respects, I.A.No.5 of 2024 stands dismissed.

d)The documents permitted by the Court in I.A.No.5 of 2024 could be marked through DW2 or any other competent witness on the side of the defendant and he may be subjected to cross examination on the above said documents.

e)If any document which has already been marked, has been rejected by this Court, the same shall be eschewed from the evidence.

f)The trial Court shall dispose of the suit on or before 30.04.2025.



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21.Both the Civil Revision Petitions are partly allowed with the observations as stated above. No costs. Consequently, connected miscellaneous petition is closed.

17.02.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

- 1.The I Additional Subordinate Court, Nagercoil
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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and CMP(MD).No.18575 of 2024

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