
(2011) 02 MAD CK 0304

In the Madras High Court

Case No : C.R.P. (PD) No. 543 of 2009 and M.P. No. 1 of 2009

David Livingston

APPELLANT

Vs

David Viswanathan, Gurupatham and Manoharan Mangladas

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Constitution of India, 1950 — Article 227

Tamil Nadu Societies Registration Act, 1975 — Section 36

Citation : (2011) 2 CTC 65 : (2011) 2 LW 19 : (2011) 2 MLJ 792 : (2011) 8 RCR(Civil) 1928

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; T. Dhanyakumar, for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order of the learned Subordinate Judge, Namakkal dated 18.12.2008 made in I.A. No. 604 of 2008 in O.S. No. 419 of 1992.

2. The following are the allegations contained in the affidavit filed by the 5th Defendant:

2(a). The suit has been filed by the Respondents against this Petitioner and other Defendants for framing a scheme and the same is pending. The Petitioner is present secretary of the first Defendant society. It was registered on 23.9.1967 under the Societies Registration Act 21 of 1860 (hereinafter referred to as "Act") under Registration No. 127/67. Presently, the society is running as per the provisions of the Tamil Nadu Societies Registration Act, 1975 and the same is supervised by the District Registrar of Co-operative Societies, Namakkal District.

2(b). In the plaint, it is alleged that the office bearers of the Trust resigned on 19.7.1988 and from 16.10.1988 onwards the other office bearers are acting against the interest of the Trust and they are selling the Trust properties to various persons and hence the properties of the Trust have to be safe guarded and a governing body has to be formed to manage the Trust. The suit has been filed u/s 92 of CPC Since the 1st Defendant Trust is not a public Trust, the case cannot be filed u/s 92 of CPC If any irregularity or mismanagement is alleged, the District Registrar of Co-operative Societies is empowered to initiate inquiry u/s 36 of the Act. Civil Court has no jurisdiction to try the suit and hence the suit is liable to be dismissed. There is no cause of action arising u/s 92 CPC Hence, the present suit is barred by law i.e., u/s 36 of the Act, and the same may be rejected.

3. The following allegations are found in the counter filed by the second Plaintiff:

The petition is not legally maintainable. It is to be noted that the petition has been filed by the Petitioner in his individual capacity. The registration of the Trust has been admitted in the petition. The 1st Defendant Trust is a public Trust and it has been registered under the provisions of Tamil Nadu Co-operative Societies Act. Whenever any dispute arise as regards administration of the Trust, the affected persons can invoke Section 92 of CPC and file a suit. The object of the Trust is religious and charitable purpose and hence it has to be treated as public Trust. On that basis the suit has been filed u/s 92 CPC It is not correct to state that u/s 36 of the Act, the District Registrar alone has got powers to hold enquiry as to the allegations made in the plaint. The suit was filed in the year 1992 and the petition has been filed belatedly. Hence the petition has to be rejected.

4. After hearing both sides, the learned Sub-Judge, Namakkal, dismissed the application by observing that the scope of the suit would not come under the purview of Section 36 of the Act, that filing of the suit u/s 92 CPC is sustainable and that there is no ground available to reject the plaint. Hence, the unsuccessful Petitioner is before this Court with this revision.

5. It is the bottom line contention of the learned Counsel for the Petitioner Mr. R. Subramanian that inasmuch as the Act contains a specific provision u/s 36, empowering the District Registrar of Co-operative Societies to hold inquiry into all affairs of the societies concerned, invoking Section 92 of CPC and filing of suit is not at all sustainable.

6. Per contra, the learned Counsel for the Respondents 1 and 2 Mr. T. Dhanyakumar would contend that the reading of Section 92 CPC and 36 of the Act would clarify the position, that when the averments available in the plaint are scrutinised carefully, it would show that the District Registrar cannot exercise his power u/s 36 of the Act and hence there is no need to disturb the findings recorded by the Court below.

7. For better appreciation of the point in issue, it is profitable to extract the relevant provisions viz., Section 92 of CPC and Section 36 of the Act:

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 situate to obtain a Aectee,-

(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 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.

The Tamilnadu Societies Registration Act, 1975:

36. Power to Registrar to inquire into the affairs of registered society:

(1) The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one-third of the members of that registered society, or, if so moved by the District Collector hold or direct some person authorised by the Registrar by order in writing in this behalf to hold, an inquiry, into the constitution, working and financial condition of that registered society.

8. Before ascertaining the applicability of the provisions, it is also advantageous to take stock of the pleadings available in the plaint. It is stated in the plaint that the first Defendant Trust has been registered under the Societies Registration Act, 1860, on 9.10.1967. It is further stated therein that the affairs of the societies shall be administrated by the Governing Body as provided in the Article,

that the said governing body has been misused the powers of the society, that it has alienated the Trust properties and no proper and genuine accounts have been maintained to know where the monies have gone, that the 3rd Defendant has stated that the members regret the abuse of the Trust and the grave irregularities committed and requested the members of the Church atleast to pardon them and not to take any action, that when the church members questioned the accuracy of the accounts and about the sale consideration of the properties which were not included in the accounts, the office bearers claimed that they kept a separate independent account apart from the accounts of the society, that even though a van has been claimed to have purchased for Rs. 30,500/-, no van was purchased, that the sales of the properties are invalid, null and void and that the Defendants 2 to 12 continue to style themselves as the real and true office bearers of the 1st Defendant Trust and are continuing in their high-handed activities of disposing of the Trust properties of the society indiscriminately. So, there has been real confusion in the administration of the Trust and the entire object of the Trust appears to be frustrated as there has been indiscriminated and unlawful sales relating to Trust properties, especially the property of Namakkal Church which itself is worth now more than 2 crores of Rupees, that in the interest of the Trust an Interim Receiver also to be appointed for the effective management and preservation of the Trust properties pending disposal of the suit, it is further pleaded.

9. The suit has been filed for framing a scheme for the preservation and protection of the 1st Defendant Trust, interdicting the Defendants 2 to 12 from claiming to be the members of the Governing body of the 1st Defendant and restraining the Defendants 2 to 12 from deals with the schedule properties without the permission and sanction of the Court.

10. Section 92 CPC would come to play when the direction of the Court is deemed necessary for the administration of a Trust as regards all the affairs of the Trust. Section 36(1) of the Act empowering and enables the District Registrar of Co-operative Societies to hold an inquiry into the constitution, working and financial condition of the registered society. When the reliefs offered by both the statutes to an aggrieved party are carefully considered, it has to be observed that the scope of Section 92 CPC is larger than Section 36 of the Act. When mismanagement, mal-administration and irregularities in a large scale in any trust is alleged by a party concerned, definitely u/s 36 of the Act, District Registrar could not decide the dispute. Section 92 has been brought to the statute book specifically for all the affairs as regards various branches of administration as enumerated in the provision as above. The District Registrar cannot travel beyond his powers vested on him u/s 36 of the Act which deals with respect to constitution, working and financial condition of the society. Framing of a scheme and grant of permanent injunction restraining the Defendants from alienating Trust properties without sanction of the Court would never come within the ambit of Section 36 of the Act. Only a Civil Court, exercising original jurisdiction shall have the power to decide the disputes u/s 92

of CPC In such view of this matter, it is held that the Civil Court alone has got jurisdiction to try the matter. Even if the parties invoke Section 36 of the Act, it would not serve any purpose. So, the parties cannot be driven to follow Section 36 of the Act to apply before the District Registrar to get the grievances redressed as pleaded in the plaint. It is to be noted herein that the Petitioner had not preferred any appeal from the order passed u/s 92 of CPC in this case. The petition has been filed when the suit is in part-heard stage.

11. Much was said about the powers exercisable by this Court under Article 227 of the Constitution of India. Only when the grounds as formulated by Honourable Supreme Court are available in the order passed by a subordinate Court, the High Court can interfere with the same challenged before it under Article 227 of the Constitution of India. It is also well settled that the contentious issues or facts could not be decided in a proceeding under Article 227 of the Constitution by the High Court. In this regard, the principles contained in a decision of the Supreme Court reported in *Surya Dev Rai Vs. Ram Chander Rai and Others*, have to be followed, which are as under:

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction through available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

12. As far as the facts of the present case are concerned there is nothing to infer any of the 3 grounds in the order challenged before this Court. The Court below has exercised jurisdiction vested in it. It has not failed to exercise jurisdiction which is available to it and no grave injustice has occasioned to the Petitioner by the order challenged. The order has been passed on weighing merits of the matter. In these circumstances, there is no scope for this Court to interfere with the order impugned under Article 227 of the Constitution of India.

13. In the light of what are stated above, this Court is of the considered opinion that u/s 92 of C.P.C., the suit is very well maintainable and it cannot be held that the suit is barred by law viz., by Section 36 of the Act and hence the order challenged before this Court is does not warrant any interference from this Court, which deserves to be confirmed and accordingly it is confirmed. The revision suffers dismissal.

14. In fine, the Civil Revision Petition is dismissed. Connected Miscellaneous Petition is closed. No costs.