

(2004) 10 MAD CK 0016

In the Madras High Court

Case No : A. No. 3712 of 2004 in A. No. 3191 and 3192 of 2004 and O.A. No. 725 of 2004 in C.S. No. 697 of 2004

E.V. Ananthara and Another

APPELLANT

Vs

Rajas Educational Trust and Others

RESPONDENT

Date of Decision : 07-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148A(2)(4)
Madras High Court (Original Side) Rules, 1956 — Rule 3

Citation : (2005) 1 CTC 285

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : K. Ravichandrababu, for K. Vijayakumar and K. Kannan, for R. Yasohvardhan, for the Appellant; R. Yashod Vardhan, for K. Kannan and K.T. Jayakumar, for K. Ravichandrababu, for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—The applicants/defendants have filed this application to revoke the leave granted in Application Nos. 3191 & 3192 of 2004.

2. The brief facts of the case are as follows:

The respondent-plaintiffs filed Application Nos. 3191 and 3192 of 2004 praying leave of this Court under Clause 12 of the Letters of Patent Act,

on the ground that cause of action arise at Chennai since the Principal office of the plaintiff-Trust is situate at No. M97/B, 30th Cross St., Besant

Nagar, Chennai-90. The respondent-plaintiff have filed the suit for the relief (i) to remove the respondents/defendants from the post of Trustees

permanently from the first plaintiff-trust and (ii) for the permanent injunction restraining the respondent/defendants and their men from in an manner

interfering with the plaintiffs peaceful management of the trust and the educational institute called P.V. Polytechnic College and the properties belonging to the trust.

3. The contention of the applicants/defendants is that the principal office of the Trust has long before transferred from Chennai to Tindivanam, that the parties have filed suits at Principal District Munsif Court and Principal Sub Judge at Tindivanam and therefore this Court has got no jurisdiction and the leave granted should be revoked.

4. Leave to sue was granted on the affidavit filed by the plaintiffs that the principal office of the Trust is situate at Besant Nagar, Chennai. But even as early as 12.6.2001, as seen from Page 1 of the typed set of papers filed by the defendants, the Trust has passed a resolution holding that the

Principal Office shall be at P.V. Polytechnic, Tindivanam, Gingee Road, Pelakuppam Village & Post, Tindivanam Taluk, Villupuram District and

there is no branch office for the Trust. The same has been duly intimated to the Government. The Commissioner of Income Tax, Trichirappalli has

also accepted the same as seen from the letter dated 15.6.2001, copy of which is enclosed at page 5 of the same typed set. The defendants in this

suit have filed O.S.No. 121 of 2000 on the file of the Principal Sub Judge, Tindivanam, which has been subsequently renumbered as O.S.No. 14

of 2000 on the file of the Fast Track Court No. I, Tindivanam, praying for the relief of removing, the defendants 1 and 2 therein from the office of

the Trust and to render true accounts, whereunder in the cause of action paragraph it was mentioned that the cause of action arose at Tindivanam

where the Trust properties are situate. The second respondent-plaintiff has also filed a suit in O.S.No. 341 of 2004 on the file of the Principal

District Munsif Court, Tindivanam for the relief of a declaration that they are entitled to the office of the management of the P.V. Polytechnic for a

period of 2 1/2 years and to grant permanent injunction to restrain the first and second defendants therein from interfering in any manner in the

administration of the trust by the plaintiffs.

5. Even on 24.1.2004, the respondents-plaintiffs counsel has sent a notice to the second defendant addressing as Chairman of the Raja's

Educational Trust at Tindivanam as seen from page 59 of the typed set of papers and also at page 64 of the typed set of papers. The above

documents i.e., Resolution dated 12.6.2001, proceedings of the Income Tax Department dated 15.6.2001 and Lawyer's notice dated 24.1.2004

and pendency of the two suits one at Principal District Munsif Court and another at Fast Track Court-I, Tindivanam filed by the contesting parties

against each other would clearly show that the Trust is functioning at Tindivanam only.

6. Yet another important point to be noted is that a Caveat Petition No. 1546 of 2004 was already filed by the defendants on 9.8.2004. But no

notice was given to the caveator while moving the applications for leave to sue. In this matter leave to sue was granted on 25.8.2004. The caveator

was put on notice only on 7.9.2004 before filing the Original Application No. 725 of 2004 for interim injunction. Thus it is seen that before moving

the applications for leave, no notice was given to the caveator. Section 148-A(2) & (4) of the CPC read as follows:

(2) Where a caveat has been lodged under Sub-section (1), the person by whom the caveat has been lodged shall serve a notice of the caveat by

registered post, acknowledgment due, on the person by whom the application has been, or is expected to be, made under Sub-section (1).

(3) xx xx xx xx xx

(4) where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of

the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

7. Thus, if an application is moved, during the currency of lodging of a caveat, the applicant is expected to serve a copy of the application made by

him and also with copies of any paper or document which has been or may be, filed by him in support of the application on the caveator as

required u/s 148-A(4) CPC. But in the present case, the respondents/plaintiffs have not given any copy of the application for leave to sue on the

applicants/defendants.

8. Admittedly, the plaintiffs are not in possession of the property i.e., Trust and not in the administration of P.V. Polytechnic College at

Pelakuppam Village, Tindivanam as seen from the affidavit of the Principal of the said College (page 136 of the typed set). It is the settled position

of law that the party who is not in possession is not entitled for an injunction.

However, rights of the parties in pursuance of an earlier agreement to have administration on rotation basis shall be decided in the respective suits filed by the parties which are pending before the Fast Track Court-I and the Principal District Munsif Court at Tindivanam. As far as this case is concerned, leave granted earlier is liable to be revoked since the same has been granted only on the assertion made by the plaintiffs in the affidavit that the principal Office of the Trust is situate at Besant Nagar, Chennai, which is factually incorrect. Therefore Application No. 3712 of 2004 to revoke the leave is allowed since this Court has no jurisdiction to entertain the suit and consequently, A.Nos. 3191 and 3192 of 2004 whereby the leave was granted are dismissed. Consequently, O.A. No. 725 of 2004 for interim injunction is also dismissed.

9. Applications are ordered accordingly. No cost.