
(2012) 11 MAD CK 0341

In the Madras High Court

Case No : C.R.P. (PD) (MD) . No. 2269 of 2012 and M.P. (MD) No. 1 of 2012

M. Subramaniam

APPELLANT

Vs

ADS Educational Trust

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11, Order 7 Rule 11(d)

Citation : (2013) 3 LW 403

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : J. Anandhavalli, for the Appellant; Prasanna Vinoth for Respondents 1 and 2 and Mr. C. Muthusaravanan for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

S. Palanivelu, J.—This Civil Revision Petition has been filed by the petitioner to set aside the fair and decretal order dated 22.08.2012 passed in I.A. No. 1639 of 2011 in Trust OP No. 4 of 2011 on the file of the Principal District Judge, Thiruchirappalli. The allegations contained in I.A. No. 1639 of 2011 are as follows (for the sake of convenience the rank of the parties are taken as in I.A.):

2(a). The petitioner is the first defendant in the suit. The first respondent Educational Trust by name ADS Educational Trust is running an Engineering College known as Sri Angalamman College of Engineering and Technology. The first respondent is represented by the Managing Trustee and Honorary Chairman of the Trust and the third respondent is Vice Chairman. The second respondent is not a Trustee, is not entitled to represent the first respondent. He is a third party. He is not entitled to use the seal of the Trust or the college. The same respondent is venturing on forgery and fabricated and concocted documents and filed a suit in O.S. No. 1072 of 2010 on the file of the Principal Sub Court, Trichy and also filed an application in I.A. No. 643 of 2010 for temporary injunction. The maintainability of the suit was challenged by the petitioner in I.A. No. 76 of 2011

under Order 7, Rule 11 CPC praying for rejection of the plaint. The Principal Sub Judge by order dated 03.03.2011 rejected and struck off the plaint, allowing I.A. No. 76 of 2011 and dismissing I.A. No. 643 of 2010.

2(b). The first respondent filed another suit in O.S. No. 652 of 1996 on the file of the Principal District Court, Trichy for permanent injunction restraining the defendants from in any way interfering with the management and administration of the Trust and the college by him. The suit in O.S. No. 652 of 1996 was renumbered as O.S. No. 485 of 2005 and the same was decreed as prayed for after contest.

2(c). The Trust Deed dated 01.06.1985 and the Additional Trust Deed of 16.12.1987 are the trust documents. The extension deed of 16.12.1987 is irrevocable document. The alleged cancellation deed, dated 06.09.2001 is a rank forgery and it was a concocted fabricated document. It is a creation by the second respondent. He also created the document by forgery resolutions dated 11.11.2010, 29.11.2010 and 03.12.2010.

2(d). Having frustrated in all his attempts, he has filed frivolous and vexatious Trust O.P. after rejection of the plaint in O.S. No. 1072 of 2010. It is against the provisions of Trust Act and Specific Relief Act. His attempt is to paralyse the Trust and the institution, when he is not a Trustee. The issues involved in the above said Trust OP have already been decided in the suit and hence, the judgment and decree dated 03.03.2011 in O.S. No. 1072 of 2010 is binding on the parties to the case and hence, the present Trust OP which is subsequent to the above said suit is not maintainable, in view of the fact that the Trust OP is barred by res judicata. Unless the judgment and decree in O.S. No. 1072 of 2010 is set aside by the competent court, the present Trust OP cannot be entertained at all. Having allowed the suit to be dismissed on merits, it is not open to the second respondent to file the present Trust OP, since it is barred by law. He is not entitled to agitate the same matter, which was already decided by Court in O.S. No. 1072 of 2010.

2(e). The respondents 1 and 2 have no cause of action for filing the Trust OP. In view of the above, the Trust OP No. 4 of 2011 has to be struck off from the file.

2(f). In the counter filed by the second respondent, the allegations are same. The petition is not maintainable in law and on facts. The second respondent denies all the allegations in the affidavit. It is denied that the petitioner and the third respondent are Managing Trustees of ADS Educational Trust and the third respondent is alone managing the Trust. The petitioner ceased to be a Managing Trustee in view of the Cancellation Deed dated 06.09.2001. He has appointed the second respondent as Managing Trustee. On 11.01.2010 the second respondent was appointed as Life Time Trustee and Managing Trustee of ADS Educational Trust by virtue of resolution dated 11.11.2010 of the Board of Trustee and from the date he is acting as the Managing Trustee.

2(g). The second respondent states that he was not a party to the earlier

proceedings and hence, the decision in those proceedings are not binding on him. The Principal Sub Judge, Trichy, in O.S. No. 1072 of 2010 has held that appointment of the second respondent as Trustee could be confirmed by the District Court which alone has got special jurisdiction to that effect under the Trust Act and hence, the Trust O.P. No. 1 of 2011 is filed. The plaint in that suit was rejected on the ground of lack of jurisdiction. The issues involved in the Trust OP cannot be decided by the Principal Sub Court and the order passed by it, is not binding on the second respondent. It cannot also operate as res judicata, since it was not decided by the competent Court. The third respondent has a prima facie case and that he is a Trustee and it is supported by valid documents. Hence, the Trust OP cannot be rejected under Order 7, Rule 11 or u/s 151 CPC. The petition is devoid of merits. Hence, the same may be dismissed.

2. The learned Principal District Judge after hearing both sides dismissed the application directing the Trust OP No. 4 of 2011 be struck off from the files under observation that the second respondent is not a party in O.S. No. 1072 of 2010, that the appointment of the second respondent could be confirmed only by the District Court which alone has got the special jurisdiction and the right of the second respondent herein to maintain the Trust OP has to be decided after the main petition.

The order is carried by the petitioner in this revision challenging the order passed by the learned Principal District Judge, Trichy.

3. Point for consideration: Whether sufficient grounds are available to strike off the Trust OP No. 4 of 2011 from the file of the Court?

4. Point: Mrs. J. Anandhavalli, learned Counsel appearing for the petitioner would submit that inasmuch as the issues raised in the Trust OP by the respondents against the petitioner and another were already taken up and decided on the basis of the merits and other circumstances of the case in O.S. No. 1072 of 2010 by the Principal Sub Court, Trichy. The allegations raised by the petitioner in O.P. and the prayer in the present Trust OP are akin to the allegations and prayer containing in the earlier plaint in O.S. No. 1072 of 2010. Since the said suit was rejected or struck off from the file by the competent Court, that is to say the Principal District Court the respondents in OP are precluded from questioning of competency and hence, the petitioners in OP are barred from levelling the same allegations and praying similar relief in this case and since it is the question of law, the ingredients in Order 7, Rule 11 CPC are attracted and hence as prayed for the Trust OP has to be struck off.

5. Contending on the other side of the coin, Mr. G.R. Swaminathan, learned Counsel for Mr. Prasanna Vinodh, learned Counsel appearing for the respondents 1 and 2/petitioners in Trust OP would submit that in the earlier case, the Managing Trustees were decided and the allegations raised in this OP have to be appreciated on proper perspective, according to the circumstances adverted to in this OP, that by no stretch of imagination, it could be stated that the Trust OP No.

4 of 2011 is barred by res judicata, that there is no valid ground available for the petitioners to pray for rejection of OP and that even though the order challenged before this Court is sought, it faces maintainability that only if the proceedings are taken up in main OP, the rights of the parties could be decided and hence, nothing warrants this Court to disturb the findings and the conclusions of the Court below.

6. This Court has gone into the import of the pleadings and prayers containing in both the proceedings viz., in O.S. No. 1072 of 2010 and in O.P. No. 4 of 2011. The appointment of the Trustees on the basis of the clauses available in the Trust Deed and the subsequent records modifying the Trustees is warranted by circumstances have been elaborately dealt with in O.S. No. 1072 of 2010. To begin with, the Trust was founded by one Paramasivam who created the same by virtue of a registered Trust Deed dated 01.06.1985 under the name and style of ADS Educational Trust. At the inception, there were three other Trustees besides the founder by name Durairajan, Arunachalam and Saraswathi Ammal who were appointed as Life Time Trustees. By a separate Deed registered on 11.10.1985 the founder Paramasivam was appointed as Managing Trustee. Subsequently another registered document dated 16.12.1987 came into existence by means of which qualifications for appointment of an outsider as Trustee was watered down.

7. By means of the above said Deed, the first respondent in O.P. and one Chelliah Pillai and his brother were appointed as Trustees. Even though the Trust Extension Deed was registered in 1987, it was not acted upon since Chelliah Pillai did not have the requisite qualification as required in the Trust Deed and the first respondent in the Trust OP and Chelliah Pillai did not take part in the administration of the Trust institution till 1996, as per the allegations in the OP. The second respondent in OP cancelled the Trust Extension Deed by means of a Registered Cancellation Deed dated 06.09.2001. The Founder, Paramasivam died on 16.10.1989. Thereafter the registered Deeds dated 05.10.1990, 16.12.1987 came to existence.

8. In 1991 the first plaintiff started Sri Angalamman College of Engineering and Technology and the second petitioner in OP was appointed as Administrative Officer on 01.05.1991. It is alleged in the OP that the first respondent barged into the administration of the first petitioner Trust in 1996 claiming trusteeship under the Trust Extension Deed dated 16.12.1987. He involved in swindling the financial resources of the first petitioner Trust. In order to put an end to the mismanagement of the Trust funds by the first respondent, the second respondent in OP executed a cancellation deed on 06.09.2001 cancelling the appointment of the first respondent as a Trustee under the Trust Extension Deed dated 16.12.1987. Further, in the Trust OP various allegations against the first respondent have been levelled about his mismanagement and misappropriation of funds.

9. The prayers in Trust OP goes as under:

(a) for a declaration that the first respondent ceases to be the Managing Trustee in view of the cancellation deed dated 6.9.2001 registered as document No. 109 of 2001 on the file of SRO Trichy.

(b) for a permanent injunction restraining the respondents herein from interfering with the affairs and management of the first petitioner Trust by the second petitioner along with other validly appointed/to be appointed Trustee, pending disposal of the above original petition and thus render justice.

(c) to declare that the second petitioner is the validly appointed Trustee and is entitled to manage and administer the first petitioner trust, its institutions and properties.

10. Insofar as the allegations in O.S. No. 1072 of 2010 are concerned, the present petitioner in OP filed a suit against these respondents in OP and also arraying one P. Muthiah as first defendant. In the plaint also the history of the Trust have been detailed as pleaded in Trust OP. In this plaint also allegations of maladministration, mismanagement and misappropriation of funds of the Trust on the part of the present first respondent are seen. In the plaint, the following relief is prayed for:

a) a permanent injunction restraining the second defendant, his men, agents or servants or anyone acting through or under him, from entering the premises of the first Plaintiff Trust or its college namely "Shri Angalamman College of Engineering and Technology at Siruganur, Mannachanallur Taluk, Tiruchirappalli District" or interfering with the administration and affairs of the first Plaintiff managed by the second Plaintiff.

11. This Court carefully scrutinised the prayer claims in both the suit and the Trust OP. It is able to find out similarity in the allegations, causes of action and the prayers are same. In both the proceedings, the second petitioner in OP has prayed for permanent injunction against the respondents in OP from interfering with the management of the first petitioner Trust by the second petitioner in OP. In addition to this prayer, in the present OP, two declarations have been prayed for.

12. Adverting to the order passed by the learned Principal Sub Judge, Trichy, in the earlier proceedings it is seen that the learned Judge has properly appreciated the merits of the case in O.S. No. 1072 of 2010. The first petitioner in OP filed a plaint in the suit. The second defendant in suit filed an application under Order 7, Rule 11 CPC. The second petitioner in OP as plaintiff filed an application under Order 39, Rule 1 and 2 CPC praying for temporary injunction. The learned Sub Judge has passed a common order in both the interlocutory application on 03.03.2011. The conduct, competency and locus standi of the present second petitioner in the OP have been elaborately discussed by the learned Principal Sub Judge.

13. It is profitable to extract the relevant portions in the common order passed

by the learned Principal Sub Judge to appreciate of the facts available in the present revision. They are as follows:

25. The petitioner/second defendant and fourth respondent/third defendant in this petition have vehemently contended that the Second respondent/Second plaintiff has got no locus standi to represent ADS Educational Trust in view of the earlier decisions rendered by various courts in earlier suit proceedings in favour of the petitioner. The decision of the Courts submitted by the petitioner/second respondent would show that the ADS Educational Trust is under the management of the petitioner and fourth respondent and the petitioner has also obtained an Order of permanent injunction to safeguard his right of management of ADS Educational Trust. When the said orders of the Court have not been challenged or superseded by any subsequent orders of the Competent Courts, the right of management of the petitioner/second defendant cannot be questioned now by the second plaintiff. And further appropriate proceedings have already been taken and pending in the District Court as already discussed in the earlier paragraph. The Trust Extension Deed Ex. P2 is found to have been executed only in pursuance of the Resolution passed by the existing Trustees including the Founder Trustee on 10.12.1987. The same is also found in the recitals of the Ex. P2 Trust Amendment Deed also. Unless and until the Trust Amendment Deed dated 16.12.1987 which is marked herein as Ex. P2, is challenged and held as invalid and void by a competent Court, the validity of Ex. P2 cannot be overlooked now. Since the petitioner/second defendants was appointed as Trustee in pursuance of Ex. P2, which is still a valid document, the right of the second defendant to manage the trust is not illegal. While so, the fourth respondent/third defendant Prasanna Venkatesan has got no right to take a decision on his own without consulting the other Trustees and cancel the earlier Trust Extension deed or induct anyone as a Trustee for ADS Educational Trust. Though the fourth respondent/3rd defendant seems to have been inimical with the petitioner/Second defendant at some point of time and had even taken several legal proceedings against him, that alone will not entitle the Second respondent/Second plaintiff to claim a Trusteeship in the Trust.

26. If the fourth respondent/third defendant had not acted on his own and did something, the Second respondent/Second plaintiff would have got disturbed. In fact the fourth respondent/fourth defendant had filed O.P. No. 5 of 2007 to discharge the first respondent in that petitioner (who is the petitioner herein) from the Trust and to appoint the Second defendant/Second plaintiff of this suit as a Trustee. He had also filed a suit against the Petitioner/Second defendant before the District Munsif Court, Tiruchirappalli in O.S. No. 705/07 for the relief of Permanent Injunction. He had even lodged a police complaint against the petitioner/Second defendant at one point of time. The relevant documents pertaining to the above said proceedings have been marked as Ex. R37 to Ex. R40. But, now all of sudden the fourth respondent/third defendant had somersaulted and joined with the petitioner/Second defendant and left the Second respondent/Second plaintiff at lurch. Even if the Second respondent/

second plaintiff is affected to some extent due to the selfish actions of the fourth respondent/third defendant, he can have any cause of action only against the fourth respondent/third defendant for damages or otherwise. But, the unilateral actions of fourth respondent/third defendant has got no validity in the eye of law so as to confer a Trusteeship upon the second plaintiff. Even if at any possibility, if the action of the fourth respondent could be ratified and the appointment of the second plaintiff as a Trustee could be confirmed, it can be done only by the District Court which alone has got the special Jurisdiction to that effect under the Trust Act.

27. Though there is no second opinion that the interest of the Public Trust should be protected against any proved mismanagement, the person who sues on behalf of the Trust should have the locus standi to represent the Trust or any he should be other person who is competent to raise such an issue before the Competent Court as per the Indian Trust Act. The plaintiff has not proved that he is a validly appointed trustee nor he is the beneficiary.

14. The right of the first respondent in OP flows from Trust Extension Deed marked as P2 in the original suit proceedings. It is dated 10.12.1997. Subsequently, by means of cancellation deed dated 06.09.2001 the Trust Extension Deed was cancelled by the second respondent in the OP. The learned Sub Judge has observed that Ex. P2 found to have been executed only in pursuance of the resolution passed by the six existing trustees including the founder trustee on 10.12.1997 and the same is also mentioned in Ex. P2 and hence unless the trust amendment deed Ex. P2 is challenged by the opposing party viz., the second petitioner in OP that it is invalid or void before the competent Court, the validity of Ex. P2 cannot be overlooked, that the first respondent in OP was appointed as Trustee by virtue of Ex. P2 it is still a valid document, his right to manage the Trust is not illegal. While so, the second respondent in OP has no right to take a decision on his own without consulting the other Trustees and cancel the earlier extension deed.

15. As an epilogue, the learned Principal Sub Judge has observed that second plaintiff (second petitioner in OP) has not proved his locus standi to file the suit and he cannot also sustain the cause of action and continue to maintain the suit and proceed to strike off the plaint in O.S. No. 1072 of 2010.

16. Pertinent it is to state that the second petitioner in OP has allowed the above said order to become final. He has neither taken revision nor appeal before any superior forum. The findings recorded by the learned Principal Sub Judge, touching merits of the case are against this petitioner, the second petitioner in OP. The above said extraction of the portion of the order in the suit would candidly show the rights of the second petitioner in OP and the first respondent in the OP. Since no appeal nor revision has been taken from the order in I.A. No. 643 of 2010, it has to be necessarily held that the second petitioner in OP has no locus standi to file the Trust OP and that the second respondent in OP has no right to cancel the Trust Extension Deed which is found to be a valid document

by the Court. In this context, it has to be necessarily observed that the issues available to be discussed in the present Trust OP are similar with the issues already decided in the earlier suit proceedings and hence, the present Trust OP No. 4 of 2011 is barred by the principles of res judicata.

17. The learned Counsel for the petitioner would place reliance upon a decision of this Court in (2008) 3 MLJ 821 (M. Somasundaram and another v. District Collector-cum-Accommodation Controller, Chennai and others) wherein this Court has dealt with the import of Order 7, Rule 11 CPC and Order 2, Rule 2 CPC. It is held therein that one of the most abuse of process of Court is re-litigation may or may not be barred by res judicata, but when the same issue is sought to be again reagitated, it amounts to abuse of process of Court. The following are the three conditions to be satisfied by the defendant in the suit to invoke Order 2, Rule 2 CPC viz., a) The previous and second suit must arise out of the same cause of action; b) Both the suits must be between the same parties; and c) The earlier suit must have been decided on merits. Taking advantage of Order 2, Rule 2, it is argued that when the first suit was instituted by the second petitioner in OP, he has not reserved any right to put forth any other prayer on the same cause of action and hence, he is legally barred from filing this Trust OP. In the present Trust OP two declarations have been prayed for in addition to the similar reliefs of permanent injunction in both suits. Hence, when viewing from this angle, Order 2 Rule 2 is in operation. Since he did not show any right to pray for declarations in proceedings to be initiated at a future date, presently, he cannot pray for declaration as found in Trust OP.

18. Learned Counsel for the petitioner cited another judgment of this Court reported in Sathiyamurthy Vs. R. Pavunambal and V. Shanmugam, . In this decision also the applicability of Order 2, Rule 11(d) CPC and bar of suit by principles of res judicata have been discussed.

19. Learned Counsel for the respondent relied upon a decision of the Apex Court reported in Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, wherein their Lordships have referred to earlier decisions and set out the circumstances where the principles of res judicata are to be applicable. The following are the relevant portions:

9. In Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy,

A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit.....Similarly, by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.

10. In Richpal Singh and Others Vs. Dalip,

A salutary and simple test to apply in determining whether the previous decision

operates as res judicata or on principles analogous thereto is to find out whether the first Court, could go into the question whether the respondent was a tenant in possession or mortgagee in possession. It is clear in view of language mentioned before that it could not. If that be so, there was no res judicata. The subsequent civil suit was not barred by res judicata.

11. In Pandurang Mahadeo Kavade and Others Vs. Annaji Balwant Bokil and Others, , it was held that in order to operate res judicata it must be established that the previous decision was given by a Court which had jurisdiction to try the present suit, and the plea of res judicata would not be available if the previous decision was by a Court having no jurisdiction.

20. In order to make the principles of res judicata applicable, it must be shown that the earlier decision was taken by the Court of competent jurisdiction and if the Court which decided the earlier case does not have jurisdiction then the principles of res judicata will not be made applicable.

21. In Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others, their Lordships have dealt with the circumstances where Order 7 Rule 11 CPC could be invoked for striking off the plaint. The following are the relevant portions of the judgment:

The plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under O. 7, R. 11. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on area in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the instant case, the averments made in the plaint, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under O.7, R. 11 cannot be exercised for rejection of the suit filed by the plaintiff appellants. Similarly, the Court could not have taken the aid of S. 10 of the Code for stay of the suit as there is no previously instituted suit pending in a competent Court between the parties raising directly and substantially the same issues as raised in the present suit.

22. In the same decision, earlier decision of the Supreme Court is referred to. In para 10 it is observed that under Order 7, Rule 11 CPC, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action. It is further

observed as follows:

Rejection of the plaint in exercise of the powers under Order VII, Rule 11 of the Code would be on consideration of the principles laid down by this Court. In *T. Arivandandam Vs. T.V. Satyapal and Another*, this Court has held that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue; the Court should exercise its power under Order VII, Rule 11 of the code taking care to see that the ground mentioned therein is fulfilled.

23. As decided in the case of *Arivanandam* above, since the present Trust OP is a vexatious and meritless in the sense of not disclosing a clear right to sue, it paves way for the Court to proceed with the striking off the plaint under Order 7, Rule 11 CPC. When the principles laid down in the above said decision are applied to the facts and circumstances of the present case, in the earlier proceedings the second petitioner in OP has been decided that he is not having locus standi to file the suit. Since the order has become final, the observations stare at the first petitioner in OP. In this case, the second petitioner in OP has not disclosed a clear right to sue and hence, there is no impediment for this Court to invoke Order 7, Rule 11 CPC. Further, the point of res judicata is a legal one, it could also be considered by this Court to reject Trust OP. To sum up, the second petitioner in OP has no locus standi to file the Trust OP. He has not disclosed his clear right to sue or filing a Trust OP. The issues which are to be decided in the present Trust OP were subsequently in issue in the earlier suit and the same were decided which has been allowed to be final by the second petitioner in the Trust OP. The present Trust OP is barred by the principles of res judicata. Since the present Trust OP seeks claim in the present Trust OP is barred by law that is to say by res judicata and under Order 7, Rule 11(d), the Trust OP has to be rejected and struck off from the file. In such view of this matter, the order challenged before this Court is liable to be set aside and it is accordingly set aside. The revision petition deserves to be allowed. The point is answered accordingly.

In fine, the Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.