
(2013) 09 MAD CK 0176

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 979 of 2012

S.A. Kannan, V. Thiyagarajan and Palanisamy

APPELLANT

Vs

K.S. Jegaraj

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 2 MLJ 42

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : B.R. Sankaralingam in both, for the Appellant; N.S. Sivakumar for R.3, R. 5 to R. 10 in CMA No. 1017/12, for the Respondent

Final Decision : Dismissed

Judgement

G.M. Akbar Ali, J.—The appellants filed an Original Application under the Indian Trust Act before the Principal District Court, Salem in the matter of Appavoo Chettiar Trust. The petition was filed under Sec. 74 of the Act r/w Sec. 92 of CPC with a prayer to appoint the appellants as trustees and also for a declaration that a sale deed dated 23.7.2007 is null and void. The respondents filed an application in IA No. 156 of 2009 under order 7 Rule 11 of CPC to reject the main petition in O.P.No. 239/2008, as the suit itself is not maintainable.

2. The appellant filed a counter and the issue before the learned Additional District Judge, Salem was, whether Appavoo Chettiar Trust is a private trust or public trust and whether the appellants have complied with the requirements under Sec. 92 of CPC and whether the Original Petition is to be rejected under Order 7 Rule 11 of Civil Procedure Code.

3. After an elaborate enquiry, the learned Additional District Judge, Salem found that the Appavoo Chettiar trust is a private trust and appointment of trustees are very much settled in the Will of the testator and even assuming that it is a public trust, the appellants have not obtained leave to file an application under Sec. 92 of CPC and allowed the application to reject the Original Petition.

4. Against the said order, the appellants have filed appeal in CMA No. 979 of 2012 against the fair and decreetal order dated 23.12.2010 made in IA No. 156 of 2009 and also filed appeal in CMA 1017 of 2012 on rejection of the original petition. Since the impugned order in CMA 1017 of 2012 is a consequential order passed in I.A. No. 156 of 2009, which is impugned in CMA No. 979 of 2012, both the appeals are taken up together and they are disposed of by a common judgment.

5. The main contention by the appellants in both the appeals is that invoking of the provision under Order 7 Rule 11 of CPC is incorrect. The brief facts which are necessary to dispose of the above appeals are as follows:

6. One Appavoo Chettiar executed a Will dated 22.1.1947 which was registered in the year 1950 and thereby created a trust in respect of the properties mentioned in the Will. He has set out certain philanthropic activities from the income to be derived from the properties. He has appointed one Subramania Chettiar and Rajagopal Chettiar as Executors of the Will and also to carry out the Trust activities.

7. The above said Trustees carried out the wishes of the testator till their life time. After their demise, their sons, viz., Ramalingam, Palanisamy and Shanmugam took charge of the properties. However, a dispute arose between the family members of the said Ramalingam and Shanmugam and suits were filed in OS Nos. 36 of 2004 and 10 of 2005.

8. Both the suits were dismissed with a direction to the parties to take appropriate proceedings to implement the Will executed by the Appavoo Chettiar. Alleging that the respondents are alienating the properties, the appellants, who claim to be the legal heirs of the original trustees, have filed an application to appoint them as trustees and for the consequential relief"s.

9. Such petition was filed on 17.9.2008. However, the second respondent filed an application under Order 7 Rule 11 of CPC to reject the petition on the ground that while the Appavoo Chettiar trust belongs to Agaram Vellan Chettiar community, the appellants do not belong to the said Community and they are in no way connected with the family of the beneficiaries and thereby there is no locus-standi for them to file an application for appointment of trustees.

10. The application was resisted by the appellants stating that the appellants are not beneficiaries and the petition itself is not maintainable and the provisions under the CPC cannot be invoked.

11. As the merit of the matter has to be looked into only in the application filed under the provisions of the Indian Trust Act, as stated earlier, the trial court has allowed the application to reject the Original Petition and dismissed the original petition in O.P.No. 239 of 2008

12. Mr. B.R. Sankaralingam, learned counsel for the appellants pointed out that the trial court has misconstrued the provisions of the Trust Act and the appellants

never claimed that the Appavoo Chettiar is a public trust and the application itself is filed under Sec. 74 of the Indian Trust Act which is applicable to Private trust and trustees.

13. The learned counsel pointed out when there is a vacancy in the office of the trustee, due to death or discharge, Sec. 74 provides appointment of trustees at the instance of the beneficiaries.

14. The learned counsel pointed out that the only objection by the respondent is that the appellants are not beneficiaries under the Trust and therefore, they have no locus-standi to file an application which has to be proved or disproved only in a detailed enquiry and the petition cannot be thrown out at the threshold under order 7 Rule 11 of CPC.

15. The learned counsel pointed out that Order 7 Rule 11 CPC is not applicable as the application is filed under a special enactment. He further pointed out that the reasoning of the trial court holding that the appellants cannot maintain a petition under Secs. 73 and 74 of the Trust Act and further observing that the appellants have to file an application to obtain the leave of the court under Sec. 92 of CPC, are erroneous.

16. On the other hand, Mr. N.S. Sivakumar, learned counsel for the respondents pointed out that the appellants are in no way connected with trust properties or to the family of the testator and they cannot maintain an application for appointment of trustees.

17. Heard and perused the materials available on record. Order 7 Rule 11 of CPC reads as follows:

Order 7 Rule 11. Rejection of plaint Rejection of plaint. The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- 1 [(e) where it is not filed in duplicate];
- 2 [(f) where the plaintiff fails to comply with the provisions of Rule 9];
- 3 [Provided that the time fixed by the Court for the correction of the valuation or

supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

18. However, the original petition is filed for appointment of trustees under secs. 73 and 74 of the Indian Trust Act which reads as follows: 73. Appointment of new trustees on death, etc., Whenever any person appointed a trustee disclaims or any trustee, either original or substituted, dies, or is for a continuous period of six months, absent from (India) or leaves (India) for the purpose of residing abroad, or is declared an insolvent, or, desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by -

(a) the person nominated for that purpose by the instrument of trust (if any); or

(b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee, the number of trustees may be increased. The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will, but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Appointment by Court: Wherever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee u/s 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

19. One Appavu Chettiar had executed a Will dated 22.1.1947. He died issueless in the year 1949 leaving behind his two wives.

20. Though the said document is named as a Will, in paragraph-3 it is categorically stated that it is a trust deed. The beneficiaries are his two wives

and his elder brother's children and their children, who were destitute and in need of monetary benefits. For better appreciation, the recitals are reproduced.

VERNACULAR (TAMIL) PORTION DELETED

21. The above two recitals would show that it is a private trust for the benefit of the prescribed persons and the connected objectives. The rights of his two wives are also specified in paragraph-7. Paragraph-8 specifies the beneficiaries, who are the children of his elder brother one Palani Chettiar. Their names are also mentioned in paragraph 1 of the deed.

22. Though there are six schedules (a to f) of properties mentioned in the deed, schedule A alone is set apart for the trust activities. For the present, we are not concerned with schedule B,C,D,E and F properties. Suffice it to say that it is a private trust created with an object of the benefit of the legal heirs of the testators family.

23. The Will cum Trust Deed was also a subject matter in O.S. Nos. 36 of 2004 and 10 of 2005 before the Additional Sub Court, Salem. Attempts were made to establish that the Will cum Trust is not genuine and there was also a subsequent Will dated 8.11.1974 executed by one Sriranga Ammal, the second wife of the testator. However, the learned Subordinate Judge held that the Will dated 22.1.1947 is a trust deed as far as A schedule property is concerned. The disputing parties were directed to approach the appropriate court for the implementation of the Will executed by Appavoo Chettiar. No appeal has been preferred.

24. The appellants, who have not even disclosed who they are and in what way they are connected either with the trust or with the trust property, have alleged that the legal heirs of the Rajagopal Chettiar and Subramania Chettiar, who were appointed as executor trustees of the Will, are indulging in misappropriating the trust properties by way of alienation. They would state that they have sent a notice to the respondents to act in accordance with the judgment of the Principal Court, Salem to implement the Will of Appavoo Chettiar. Since no action has been taken and the legal heirs of the family members are acting in violation of the objectives of the Will, they are filing the present petition to appoint them as trustees to the Appavoo Chettiar Trust. They have not even disclosed any cause of action, leave alone to clarify in what way they are connected with the trust properties or family of Appavu Chettiar.

25. Having filed an application under Secs. 73 and 74 of the Act, which governs a Private Trust, they have not come up with a case that it is a public trust and as a member of a public, they can move the court in trust matters.

26. Appavoo Chettiar Trust, created under the above said deed, is a private trust and only the beneficiary can sue either for the execution of the trust under Sec. 59 of the Act or can file a suit under Sec. 63 of the Act, if any of the trust properties goes to the hands of the third parties inconsistent with the objective

of the trust and such beneficiary alone can file an application under Sec. 74 for the appointment of any new trustee.

27. When there is no cause of action for any proceedings, a civil court has ample power to reject such proceedings in limine. Therefore, the learned District Judge has rightly allowed the application to reject the Original Petition and dismissed the original petition in O.P.No. 239 of 2008. I have no reason to interfere. In the result, both the civil miscellaneous appeals are dismissed and the fair and decreetal order dated 23.12.2010 made in I.A.No. 156 of 2009 in Trust O.P.No. 239 of 2008 passed by the learned I Additional District Judge, Salem is confirmed. No costs.