

(2012) 05 SC CK 0057

In the Supreme Court Of India

Case No : Civil Appeal No. 4368 of 2012 (Arising out of Special Leave Petition (Civil) No. 11825 of 2008) and Civil Appeal No's. 4372-4386 of 2012 (Arising out of Special Leave Petition (Civil) No's. 6283-6297 of 2008)

Sinnamani and Another

APPELLANT

Vs

G. Vettivel and Others

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 1, Order 6 Rule 17, Order 6 Rule 2, Order 6 Rule 3, Order 6 Rule 5
Succession Act, 1925 — Section 295
Trusts Act, 1882 — Section 49, 59, 61, 62, 65

Citation : AIR 2012 SC 2372 : (2012) AIRSCW 3488 : (2012) 3 ALLMR 981 : (2012) 4 AWC 3415 : (2012) 3 CTC 571 : (2012) 3 JCR 86 : (2012) 3 JLJR 294 : (2012) 5 LW 749 : (2012) 3 PLJR 286 : (2012) 3 RCR(Civil) 235 : (2012) 5 SCALE 235 : (2012) 5 SCC 759

Hon'ble Judges : K.S. Panicker Radhakrishnan, J;Dipak Misra, J

Bench : Division Bench

Advocate : P.S. Narsimha, T.V. Ratnam, Sriram P., Munawwar Naseem, V. Prabhakar, Revathy Raghavan and Jyoti Prashar, for the Appellant; Vijay Hansaria Ashok Mathur and S. Rajappa, for the Respondent

Final Decision : Disposed Of

Judgement

K.S. Panicker Radhakrishnan, J.—Leave granted.

2. These appeals arise out of a common judgment of the High Court of Madras at Madurai dated 11.9.2007 declining to convert the Trust OP No. 96 of 2002 as a civil suit and be tried accordingly.

3. Trust OP No. 96 of 2002 was filed by the Appellants who were beneficiaries of six trusts before the Principal District Judge, Thoothukudi under Sections 61, 62, 65, 66 and 92 of the Trust Act read with Order VI Rules 1 to 3, 5 to 7 and 26 of the CPC for the following reliefs:

- a. To call upon the Respondents 1 to 12 to restore the corpus and accretions gained by the six trusts detailed in the schedule from the date of their incorporation till the date of realization.
- b. To trace the fissipations effected on the schedule Trusts by the I Defendant and his associate companies.
- c. To appoint a receiver for all the properties of the I Defendant and through lifting the corporate veil on the company held by the I Defendant including Mountain Spinning Mills.
- d. To trace the fissipations on the Schedule Trusts and bring the properties and monies to the Petitioner's Court account from whichever source they are available.
- e. To call upon the I Defendant to account from the late of creation of the six schedule trusts as to bring the proceeds to the Court.

4. During the pendency of the OP, Respondent Nos. 1 to 14 and 16 filed interlocutory applications separately under Order VII Rule 11 CPC requesting the court to reject the said Trust O.P. on common grounds. The sum and substance of those grounds were as follows:

- (a) there is no cause of action disclosed against the Respondents.
- (b) the said Trust O.P. is barred u/s 9 of the Code of Civil Procedure, since the relief sought for are to be agitated only by means of a suit.
- (c) the reliefs prayed for in the Trust O.P. is barred by limitation; and
- (d) lastly, the said Trust O.P. is liable to be rejected on the ground that the same has not been properly valued for the purpose of paying the Court Fees.

5. Matter was hotly contested before the Principal District Judge, Thoothukudi and the applications filed under Order VII Rule 11 CPC was allowed vide common judgment dated 17.10.2005. Aggrieved by the same, the Petitioners in Trust O.P. approached the Hon'ble High Court by way of an appeal AS 49 of 2006 and the Respondent. Nos. 1 to 14 and 16 in the Trust O.P. filed appeal Nos. 50 to 64 of 2006 u/s 96 of the Code of Civil Procedure, and the 11th Respondent in the Trust O.P. filed M.P. No. 4 of 2007. The maintainability of the appeals was successfully questioned by the Respondents before the High Court, but the High Court converted those appeals as revision petitions and were heard along with M.P. No. 4 of 2007. The High Court vide judgment dated 11.9.2007 dismissed all the revision petitions and allowed M.P. No. 4 of 2007 and held that the District Court was justified in allowing the applications filed under Order VII Rule 11 CPC rejecting the Trust O.P. and it was also ordered that the Trust O.P. could not be converted as a civil suit. However, it was held that the order of rejection of the Trust O.P. would not stand in the way of the Petitioners in Trust O.P. filing a fresh suit in accordance with law. Aggrieved by the judgment of the Madras High Court these appeals have been preferred.

6. Shri P.S. Narsimha, learned senior Counsel appearing for the Appellants submitted relying upon Section 49 of the Trust Act that the Court has a duty to control the affairs of the Trust and its trustees under its discretionary powers when they are being mismanaged. Learned senior Counsel pointed out that while invoking Section 49 of the Act the Court should not stick on to hyper technicalities in respect of forms and procedures, it is the duty of the principal civil court even to act suo motu whenever it is brought to the notice of the court that there is a misconduct or any other mal practice committed by the Trustees. Learned Counsel also submitted that in the event of the Court coming to the conclusion that by some improper advice given, the Appellants have misdirected themselves in filing the Trust O.P., the same can always be converted into a civil suit.

7. Shri Vijay Hansaria, learned senior Counsel appearing for the Respondents, on the other hand, supported the findings recorded by the courts below. Learned senior Counsel also placed reliance on the judgment of this Court in P.A. Ahammed Ibrahim Vs. The Food Corporation of India, and submitted that the Trust O.P. cannot be converted as a civil suit.

8. We have perused the Trust O.P. filed by the Appellants in the lower court which is not in the nature of a plaint. The expression "Original Petition" as such is not defined either in the Trust Act or in the Code of Civil Procedure. However, Rule 3(9) of the CPC defines Original Petition as follows:

3(9). 'Original petition means a petition whereby any proceeding other than a suit or appeal or a proceedings in execution of a decree or order, is instituted in a court.

9. Section 2(14) CPC defines the term 'Order' which reads as under:

2(14). "Order" means the formal expression of any decision of a civil court which is not a decree;

10. A comprehensive reading of the above-mentioned provisions will make it clear that the Trust O.P. filed by the Appellants before the Principal District Judge cannot either be construed a suit or equated to be a suit. The final order passed in the Trust O.P. cannot also be construed as a decree as defined in Section 2(2) CPC It can only be an "order" as defined in Section 2(14) CPC The term "suit", as such is not defined in the Code of Civil Procedure. However, Section 26, CPC gives an indication as to the manner in which suit has to be instituted. Section 26 reads as under:

26. Institution of suits:

(1) Every suit shall be instituted by the presentation of a plaint or in such other matter as may be prescribed.

(2) In every plaint, facts shall be proved by affidavit.

11. A suit can be instituted by presentation of a plaint and Order IV and VII CPC

deals with the presentation of the plaint and the contents of the plaint. Chapter I of the Civil Rules of Practice deals with the form of a plaint. When the statutory provision clearly says as to how the suit has to be instituted, it can be instituted only in that manner alone, and no other manner. The Trust Act contains 9 chapters. Chapter 6 deals with the rights and liabilities of the beneficiaries, which would indicate that the beneficiaries of trust have been given various rights and those rights are enforceable under the law. Section 59 of the Act confers a right upon the beneficiaries to sue for execution of the trust which would indicate that the beneficiaries may institute a suit for execution of the trust. Therefore, the above-mentioned provisions would show that in order to execute the trust, the right is only to file a suit and not any original petition. Under the Trust Act also for certain other purposes original petitions can be filed. Section 72 of the Trust Act provides for a trustee to apply to a principal civil court of original jurisdiction by way of petition to get himself discharged from his office. Similarly, Section 73 of the Act empowers the principal civil court of original jurisdiction to appoint new trustees. Few of the provisions of the Act permit for filing of original petitions. The above facts would clearly indicate that the Trust Act provides for filing of a suit then suit alone can be filed and when it provides for original petition then original petition alone can be filed and there is no question of conversion of original petition to that of a civil suit or vice-versa, especially in the absence of a statutory provision under the Trust Act. A similar question came up for consideration before this Court in *P.A. Ahmad Ibrahim v. Food Corporation of India* (supra) wherein, while interpreting Section 20 CPC the Court held as follows:

Further, before applying the provisions of Order VI Rule 17, there must be institution of the suit. Any application filed under the provisions of different statutes cannot be treated as a suit or plaint unless otherwise provided in the said Act. In any case, the amendment would introduce a totally new cause of action and change the nature of the suit. It would also introduce a totally different case which is inconsistent with the prayer made in the application for referring the dispute to the arbitrator. Prima facie, such amendment would cause serious prejudice to the contention of the Appellant that the claim of the Respondent to recover the alleged amount was barred by the period of limitation as it was pointed out that cause of action for recovery of the said amount arose in the year 1975 and the amendment application was filed on 30.3.1986. Lastly, it is to be stated that in such cases, there is no question of invoking the inherent jurisdiction of the Court u/s 151 of the CPC as it would nullify the procedure prescribed under the Code.

12. Certain legislations specifically provide for conversion of original petition into a suit. Section 295 of the Indian Succession Act is such a provision. The Trust Act, however, contains no such enabling provision to convert the original petition into a suit.

13. In the above facts situation, we find no infirmity in the judgment rendered by

the courts below. We, therefore, hold that the Trust O.P. cannot be allowed to be converted into a suit. However, it is made clear that the rejection of the Trust O.P. under Order VII Rule 11 shall not operate as a bar for the Appellants to file a fresh suit in accordance with law. Hence, the appeals are disposed of as above. There will be no order as to costs.