
(2012) 02 MAD CK 0281

In the Madras High Court

Case No : A.S. No. 316 of 2011 and M.P. No's. 1 and 2 of 2010

Sivabakkiyam Muthusamy Trust

APPELLANT

Vs

S. Sivasankaran and S. Gunasekaran

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 14

Tamil Nadu Civil Courts Act, 1873 — Section 12, 4, 4(1)

Citation : (2012) 2 CTC 89

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : R. Subramaniam for P. Valliappan, for the Appellant; T.R. Rajaraman, for T. Dhanyakumar for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This Appeal is filed by the Plaintiffs as against the judgment and decree dated 28.2.2011 passed by the Additional District Judge (Fast Track Court), Namakkal, in O.S. No. 142 of 2008, which was filed for declaration and other consequential reliefs. The parties, for convenience sake, are referred to here under according to their litigative status and ranking before the Trial Court.

2. The epitome and the long and short of the relevant facts absolutely necessary and germane for the disposal of this Appeal would run thus:

(i) The Appellants herein, as Plaintiffs, filed the Suit as against the Defendants seeking the following reliefs:

...the Plaintiffs therefore prays:

(a) for a declaration that the Supplementary Deed of Trust dated 3.1.2005 is void and inoperative in law.

(b) for removal of the Defendants from the office of the management of the Plaintiff-Trust by directing them to handover the management to the legally

constituted trustees-Dr. S. Natesan and Dr. N. Kavitha (Amended as per order in I.A. No. 30 of 2009 dated 23.3.2009).

(c) for directing the Defendants to render a true and faithful account of all the income, receipts and expenditure of the trust properties and institutions including the school during their management from 3.1.2005 and upto the date of handing over the management to the legally constituted trustees-Dr. N. Natesan and Dr. N. Kavitha (Amended as per order in I.A. No. 3019 of 2009 dated 23.3.2009).

(d) for surcharging Defendants for the funds and moneys misappropriated or taken un authorisedly from the Plaintiff-trust and its educational institution, and direct them to reimburse the same to the Plaintiff-trust.

(e) for payment of costs of the Suit.

(ii) The Defendants resisted the Suit by filing the Written Statement. Whereupon issues were framed.

(iii) During trial, on the Plaintiffs side, the First Plaintiff examined himself as PW1 and Exs.A1 to A5 were marked. On the Defendant's side, the First Defendant examined himself as DW1 and no document was marked.

(iv) Ultimately, the Trial Court dismissed the Suit.

3. Being aggrieved by and dissatisfied with the judgment and decree of the Trial Court, this Appeal has been filed by the Plaintiffs on various grounds.

4. While hearing the Appeal, this Court suo motu raised the point as to the jurisdiction of the District Judge to pronounce the judgment on this case, in view of the amendment made to the Tamil Nadu Civil Courts Act, 1873 (with effect from 25.5.2010) as per Tamil Nadu Civil Courts and the Chennai City Civil Court (Amended) Act, 2010 (Act No. 19 of 2010).

5. Whereupon both sides in unison would concur with the view expressed by me that the District Judge, as on the date of pronouncement of the judgment, was having no jurisdiction to handle the matter in view of Section 4 of the Act No. 19/2010 and the said Section in the amendment Act contemplated the transitory provision. Even, pending cases also should have been transferred by the District Judge to the Sub-Court concerned for proceeding further with the matter. But, without knowing the salient features of the amendment, the District Judge simply dealt with the matter and pronounced the judgment.

6. For better clarity, I would like to extract hereunder the amended Section 12 of the Tamil Nadu Civil Courts Act, 1973:

Section 12. Jurisdiction of District Judge or Subordinate Judge in original Suits-
The jurisdiction of a District Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original Suits and proceedings of a Civil nature, of which the amount of value of the subject matter exceeds Rs. Ten lakh rupees. The jurisdiction of a Subordinate Judge extends, subject to the rules contained in

the Code of Civil Procedure, to all like original Suits and proceedings, of which the amount or value of the subject- matter exceeds Rs. one lakh rupees, but does not exceed Rs. Ten lakh rupees.

Jurisdiction of District Munsif- The jurisdiction of a District Munsif extends to all like Suits and proceedings, not otherwise exempted from his cognizance, of which the amount of value of the subject matter does not exceed Rs. One lakh rupees.

Section 4 of Act No. 19/2010 (the transitory provision) would run thus:

Section 4(1) All Suits pending in a District Court on the date of the commencement of this Act and which would be within the cognizance of the Subordinate Court under the provisions of the Tamil Nadu Civil Courts Act, 1873 (Central Act III of 1873), as amended by this Act, shall stand transferred to the Subordinate Court having jurisdiction over the subject matter.

(2) All Suits pending before an Additional Judge or a Principal Judge or in the High Court on the date of the commencement of this Act and which would be within the cognizance of the Chennai City Civil Court under the provisions of the Chennai Civil Court Act, 1892 (Central Act VII of 1892), as amended by this Act, shall stand transferred to the Assistant Judge, Additional Judge or the Principal judge, having jurisdiction over the subject matter.

7. It is not in controversy that the Suit was valued as under by the Plaintiffs:

8. In my considered view such a judgment is non-est in the eye of law for more than one reason. Any judgment rendered by a Judge, who has got no jurisdiction, would result in nullity. However, if there is only error in exercising the territorial jurisdiction only, at a later point of time objection cannot be raised to it. But this case is not of that nature. Had really the matter been transferred to the Subordinate Court concerned and the said Court pronounced the judgment, then either of the aggrieved parties would have had the opportunity of filing Appeal before the District Court and thereafter Second Appeal before the High Court. Now by the judgment of the District Judge, one right of Appeal to District Court is lost, over and above that, the chance of Second Appeal has got extinct.

9. At this juncture, I recollect the decision of the Honourable Apex Court in A.R. Antulay Vs. R.S. Nayak and Another, , certain excerpts from it would run thus:

55..... Four valuable rights, it appears to us, of the Appellant have been taken away by the impugned directions:

(i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.

(ii) The right of revision to the High Court u/s 9 of the Criminal Law Amendment Act.

(iii) The right of First Appeal to the High Court under the same Section.

(iv) The right to move the Supreme Court under Article 136 thereafter by way of a Second Appeal, if necessary.

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58. We are clearly of the opinion that the right of the Appellant under Article 14 regarding equality before the law and equal protection of law in this case has been violated. The Appellant has also a right not to be singled out for special treatment by a Special Court created for him alone. This right is implicit in the right to equality.

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73.....There was prejudice to the Accused in being singled out as a special class of Accused for a special dispensation without room for any Appeal as of right and without power of the revision to the High Court. There is prejudice in that.....

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91. It is the settled position in law that jurisdiction of Courts comes solely from the law of the land cannot be exercised otherwise.....

10. A mere poring over and perusal of the precedents of the Honourable Apex Court would leave no doubt in the mind of the Court that the judgment of District Court should necessarily be set aside and the matter remitted back to the appropriate Court, namely, the Sub-Court, Thiruchengode, which Court has to deal with the matter further as per law and render judgment and accordingly, it is ordered. Both the parties are directed to appear before the Sub-Court, Thiruchengode, on 1.3.2012. The Appeal is disposed of accordingly. However, there is no order as to costs. Connected Miscellaneous Petitions are closed.