

(2011) 08 MAD CK 0058

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 822 of 2011 and M.P. (MD) No. 1 of 2011

S.R. Trust Meenakshi Mission Hospital and Research Centre
and Others

APPELLANT

Vs

S. Ramesh, Trustee, S.R. Trust

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3
Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 39

Citation : (2011) 08 MAD CK 0058

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : S. Ramesh, for the Appellant; Lajapathi Roy, for S.M.A. Jinnah, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—This petition has been filed by the Petitioners to strike off the suit filed by the Respondent in O.S. No. 320 of 2011 on the

file of the I Additional Subordinate Court, Madurai.

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

The Respondent/plaintiff has filed a suit in O.S. No. 320 of 2011 along with an interlocutory application in I.A. No. 378 of 2011 against the

revision petitioners/defendants before the I Additional Subordinate Court, Madurai to (a) pass a judgment and decree in favour of the Plaintiff to

declare the board meeting allegedly held on 17.02.2011 of the first Defendant trust at Meenakshi Mission Hospital and the consequent removal of

the Plaintiff as a trustee of the first Defendant trust and director of academics as illegal, null and void (b) pass a decree for permanent injunction

restraining the Defendants and their men agents or persons from preventing the Plaintiff from discharging his duties in the first Defendant trust as a

trustee and director of academics as he performed prior to the meeting allegedly held on 17.02.2011. (c) Direct the Defendants to pay the costs of

the suit. (d) grant such other and further relief that this Hon''ble court may deem fit, just and necessary in the circumstances of the case.

3. It is submitted in the plaint that the cause of action arose on 20.06.2003, when the Plaintiff was appointed as trustee and on 22.07.2005 when

the Plaintiff became Director of Academics and on all the days when he was discharging his duties as trustee, vice-president of Meenakshi Mission

Hospital and Director of Academics and on 25.01.2011 when the Plaintiff filed the submitted decree memo before the District Court in O.S. No.

225 of 2010 and on 01.02.2011 when the Plaintiff sent a notice through his counsel to the Defendants not to restrain the Plaintiff from discharging

his duty as trustee in the Defendant trust by their muscle and money power. It was also submitted that the cause of action also arose on

04.02.2011, when the Plaintiff filed the suit before the District Court in O.S. No. 14 of 2011, when the Plaintiff sent a letter to the Defendant No.

2 and on 17.02.2011, when the Plaintiff sent an interim reply through his counsel to the Defendants'' counsel in person as well as post and sought

for a reasonable period of one month time to give reply to the show cause notice. On 17.02.2011, when the Plaintiff received a notice at about

11.30 a.m. from the Defendant No. 3 informing that the board meeting will be held on 17.02.2011 at 09.00 a.m, he sent a copy of the reply to the

Defendant No. 3, by fax. On 18.02.2011, the Plaintiff sent a notice through his counsel stating that the notice regarding board meeting had reached

the Plaintiff only on 17.02.2011 at about 11.30 a.m. As such, the Defendant No. 3 was requested to withdraw the resolution, if any, passed in the

absence of the Plaintiff and to conduct a fresh board meeting by giving one month notice in advance. on 19.02.2011, the Plaintiff''s counsel was

served with a notice by the Defendant No. 3 stating that the Plaintiff has been removed, unanimously, in the board meeting from his position as

trustee and Director of academics and that the property mentioned in the suit is situated within the jurisdiction of this Court in Madurai.

4. The above injunction suit came before the I Additional Subordinate Court, Madurai on 11.04.2011. The learned Judge, after hearing the

arguments of the Petitioner and after perusing the listed documents filed by the Plaintiff, granted ad-interim injunction restraining the revision

Petitioners/defendants not to prevent the Plaintiff from discharging his duties as trustee of the first Respondent trust and Director of Academics as

he performed prior to the meeting held on 17.02.2011 and the said injunction order was effective till 20.04.2011.

5. Immediately thereafter, the revision Petitioners have filed an advance hearing petition to advance the hearing of the injunction application in I.A.

No. 378 of 2011 from 20.04.2011 to 12.04.2011 or 15.04.2011. Further, the 2nd revision Petitioner/2nd Respondent has filed a counter

statement for vacating the interim order granted in I.A. No. 378 of 2011 dated 11.04.2011, in O.S. No. 320 of 2011.

6. Thereafter, the revision Petitioners have filed the above revision in CRP. No. 822 of 2011, along with stay petition in M.P. No. 1 of 2011. this

Court was pleased to grant interim stay restraining the interim order granted in I.A. No. 378 of 2011 in O.S. No. 320 of 2011.

7. The Learned Counsel for the revision Petitioners argued that the connected suit in O.S. No. 224 of 2010 dated 26.11.2010 filed by the

Plaintiffs, namely, (1) S. Brathibha and (2) Mariappa Sairam against 10 Defendants including the Respondent Dr. S. Ramesh, is pending on the file

of Principal District Judge, Madurai. In the said suit, the Plaintiffs have sought relief for (a) settlement of the selection of trustees and functioning of

the trust; (b) to declare the Plaintiff as one of the trustee in the S.R. Trust and allow the Plaintiff to function as a trustee; (c) rendition of accounts of

the trust (d) passing a decree for permanent injunction by restraining the Defendants and their men or agents or persons claiming through them from

interfering into the duties as a trustee of the suit property (e) directing the Defendants to pay the cost of this suit and (f) granting such other and

further relief as this Court may deem fit and proper under the circumstances of the case and thus render justice. The Learned Counsel further

submitted that another connected suit in O.S. No. 14 of 2011 has been filed by the Respondent herein, namely, Dr. S. Ramesh, S/o Sethuraman

and another Plaintiff P. Chinnyan, against 11 Defendants including the revision Petitioners herein.

8. The Plaintiff's prayer in the said suit viz., O.S. No. 14 of 2011 are as follows:

(a) pass a judgment and decree to declare that the clauses Nos.

7 and 8 of the trust deed providing for the autocratic removal or appointments of trustees by one person as illegal. (b) pass a decree for permanent

injunction by restraining the Defendants and their men or agents or persons from removal of the Plaintiff No. 1 as the trustee of the suit property.

(c) pass a decree and judgment of mandatory injunction directing all the Defendants to sign in the resolution books, minutes books periodically and

to send a copy of the above documents to the income tax department; (d) pass a judgment and decree declaring that the nominated trustees

(Defacto trustee) of the 11th Defendant shall have the same status and power as the registered trustees (e) pass a judgment and decree declaring

that the clause No. 5A mentioned in the trust deed of S.R. trust dated 22.07.2005 is null and void. (f) pass a judgment and decree of mandatory

injunction directing the Defendant No. 11 to submit the charity report to the board and a copy of the same sent to income tax department every

quarter. The charity report should contain details of the charity, value of the charity, number of beneficiaries etc., done by the trust in the quarter.

(g) to pass a judgment and decree declaring that the nominating power in clause No. 6 shall be null and void. (h) to pass a judgment and decree

declaring that any addition of trustee done without the knowledge, decision and signature of all the registered trustees shall be null and void and

consequently any addition or any removal of any of trustees be done only with the unanimous decision of all the trustees (i) to pass a judgment and

decree declaring that after the life time of the present president and secretary, the next president and secretary shall be elected by the board for a

tenure of five years each in office and that any one person elected by the board shall hold his office as president only for a maximum period of two

tenures and as secretary only for a maximum period of two tenures. (j) directing the Defendants to pay the cost of this suit and (k) granting such

other and further relief as this Court may deem fit and proper in the nature and circumstances of the case.

9. The Learned Counsel for the revision Petitioners further argued that the Respondent has filed the above mentioned suit in O.S. No. 320 of 2011

initially before the Principal District Judge, Madurai for the same relief. In order to prove the same, the learned Advocate submitted a copy of the

C.R.19 register entry before the Principal District Judge, Madurai. The same was withdrawn by the counsel. Subsequently, the said suit was

presented before the I Additional Subordinate Court, Madurai and an interim ex-parte order was got. All the above mentioned three suits are

interconnected and prayer in each of them is similar. All the suits have arisen only over the S.R. trust property. Therefore, the suit is not

maintainable before the learned I Additional Subordinate Court, Madurai. The Learned Counsel further argued that as per the original trust deed

dated 09.05.1985, the president has the power to appoint a trustee as per Clause 7 in the trust which is extracted hereunder: ""The president shall

be entitled to nominate and appoint any time additional trustee or remove any trustee according to his will"". The board meeting was held on

17.02.2011 and as per the above clause it was unanimously decided to remove Mr. S. Ramesh from trustee ship in the board of trustees of S.R.

Trust. He is not a trustee and he is not the Director of Academics of S.R. trust. The Learned Counsel further argued that the said suit is not

maintainable since the Respondent, Mr. Ramesh had initially filed the same case before the Principal District Court, Madurai. Subsequently, the

same suit has been filed before the I Additional Subordinate Court, Madurai. As such, the Respondent herein had chosen the jurisdiction for his convenience.

10. The Learned Counsel for the Respondent argued that before removing the Respondent from the trust, no proper advance notice had been

issued to the trustee i.e., the Respondent. He was unanimously removed from the trustee ship on the board of trustees of the S.R. trust, which is

against natural justice since the decision was a unilateral one. The Learned Counsel further argued that the 3rd revision Petitioner namely Dr.

Rajam Sethuraman is mentally insane and she is undergoing treatment in Madurai. Hence, the main revision petition is not maintainable. Therefore,

the 3rd revision Petitioner cannot represent herself in the revision petition. The Learned Counsel further submitted that a 5 member board headed

by an insane person i.e., the 3rd revision Petitioner cannot file a revision petition, since the insane person's opinion will be the opinion of the entire

board. As such, the revision petition is liable to be dismissed. The Learned Counsel further submitted that the 2nd revision Petitioner namely Dr. N.

Sethuraman, who is the president of the trust, had given a statement before the Assistant Commissioner of Police, Villivakkam, Chennai stating that

the 3rd revision Petitioner namely Rajam Sethuraman, who is his wife as well as the secretary and executive head of the board in S.R. trust, and

who is signing all the cheques is mentally insane and undergoing treatment in Madurai. This fact was suppressed by the revision Petitioners.

Therefore, the main revision petition has to be dismissed.

11. Per contra, the Learned Counsel for the revision Petitioners argued that the 2nd revision Petitioner has filed detailed additional counter

statement and had denied the allegation made by the first Respondent that the 3rd revision Petitioner is mentally insane. There is no medical

records or psychiatrist report produced in order to prove that the 3rd revision Petitioner Mr. Rajam Sethuraman is an insane person. She is a

mentally fit person and has all the capacity to proceed with the case against the Respondent.

12. In support of his arguments, the Learned Counsel for the Petitioner cited a judgment in the case of A. Chinnarajan Vs. N. S. Subbaiyah and

others, . The relevant portion of the said judgment reads as follows:

Constitution of India, Article 227 - Power of revision - Power of court - Revisional jurisdiction invoked to set aside the ex-parte order of

injunction - Court can hear injunction application itself and decide on merits when parties argue in detail on injunction application based on copies

of documents produced before Court - Revisional Court can take up main injunction application and pass orders with consent of both parties.

Contempt of Court - Right of alleged contemnor to be heard - Power of Court - Discretionary power of court to hear party in contempt - Discretion

is vested in court to decide whether party in contempt should be heard or not - Court can refuse to hear party in contempt only on occasions when

contempt impedes course of justice. - Mere allegation of contempt is not sufficient and party should place clear and cogent evidence to show that

order of court has been violated.

Code of Civil Procedure, 1908, Order 39 Rules 1 and 3 - Power to grant injunction without notice to opposite party - Recording of

reasons for passing ex parte order of injunction without notice to other side - Ex parte interim order granted by lower court without recording

reasons of as to how non-grant of injunction would defeat object of injunction petition - Lower court ordering ""Heard. Ad-interim injunction

Notice", is not in conformity with order 39 Rule 3 - Order of Lower Court granting ex parte interim injunction set aside.

13. In another judgment in the case of The Railway Co-op. Labour Contract Society Ltd v. Union of India reported in 1995 (II) CTC 38. The

relevant portion of this judgment reads as follows:

Civil Procedure Code 1908 - Order 39 Rule 1 - Exparte Mandatory Injunction - Exparte mandatory injunction obtained in application pending

suit directing public body to enter into contract by party playing fraud and without notice to Defendants. Such exparte order is null and void and

has no validity in law - contract entered into pursuant to such exparte order is declared invalid though suit was withdrawn subsequently.

Law of Pleadings - Obtaining interim order by playing fraud on Court - Plaintiff making reference to earlier suit without mentioning what the prayer

was - Obtaining exparte mandatory injunction without disclosing prayer in earlier suit would amount to playing fraud on court - Suit in earlier

prayer running counter to prayer in subsequent suit - Interim exparte order amounts to decreeing suit itself - Such Plaintiff will be precluded from

contending that the order of court is non-speaking one.

Practice and Procedure - Court dismissing interlocutory application without assigning any reason - Because of insistence of counsel to pass order

on such application - Subsequently court agreeing to pass detailed order accepting apology tendered by Senior Counsel - Court officials without

noticing the subsequent event obtained initials of Judge on original order dismissing application - Copies of order of dismissal were supplied to

Plaintiffs - Subsequently detailed order passed giving reasons for dismissing application - Contention that there are two orders in one application

not accepted - Having regard to what transpired in court no order can be said have been passed when the application was dismissed originally -

The original order dismissing application was supported by reasons given later - Original order will not be rendered invalid because reasons were

given subsequently - Subsequent order giving reasons would bear the same date of original order.

Specific Relief Act 1963 - Section 39 - CPC 1908 - Order 39 Rule 1 and 2 - Mandatory injunction - Natural Justice - Court granting Mandatory

injunction pending suit directing public authorities to award contract - Such

mandatory injunction without notice and hearing to Defendants is nullity

being in violation of principles of Natural Justices and grant of such order would amount to abuse of power vested in court - No right would flow

from such order or from any contract or from any act done in pursuance of such mandatory injunction.

14. The Learned Counsel for the Respondent further argued that the learned I Additional Subordinate Court, Madurai has original and pecuniary

jurisdiction to entertain the case. As such, the suit has been taken on his file and after hearing arguments of the counsel for the Plaintiff and after

perusal of list of documents filed along with plaint, the learned Judge on considering that the Plaintiff had a prima facie case, passed an ad-interim

injunction. The Learned Counsel submits that the said suit is a triable one, after issues having been framed. The Learned Counsel has also

expressed his view that the Plaintiff is ready to co-operate with the trial court for speedy disposal. Therefore, the Learned Counsel prays this Court

to dismiss the above civil revision petition.

15. In view of the facts and circumstances of the case, and arguments advanced by the Learned Counsels on either side and on perusing the

connected documents, this Court is of the considered opinion that (1) O.S. No. 224 of 2010 and O.S. No. 14 of 2011 are pending on the file of

the principal District Court, Madurai, regarding the same dispute in the S.R. trust. The revision Petitioners and the Respondent, namely, Mr. S.

Ramesh are also parties in the said two suits. The 3rd suit i.e., O.S. No. 320 of 2011 has also arisen for administration of the S.R. trust affairs. (2)

The Plaintiff had initially filed the suit before the Principal District Court, Madurai and the same was collected back. In order to prove this, the

revision Petitioner has produced a C.R.19 register entry of the court of Principal District Judge, Madurai. this Court does not find any reason for

the Plaintiff to withdraw the suit from the court of principal District Judge Madurai and subsequently file another suit, which is similar in nature,

before the I Additional Subordinate Court, Madurai. This clearly shows that the Plaintiff has chosen the forum to suit his convenience. This is

clearly prejudicial to the interests of the revision Petitioners. (3) The same suit i.e., O.S. No. 320 of 2011 can be tried before the Principal District

Court, Madurai along with the other two suits, namely, O.S. No. 224 of 2010 and

O.S. No. 14 of 2011, since the Principal District Judge,

Madurai has the original and pecuniary jurisdiction to try the case. (4) Regarding the question of insanity as alleged by the Respondent against the

3rd revision Petitioner, namely, Mrs. Rajam Sethuraman, this Court considers that the alleged insanity has not been proved by way of

authenticated records. As such, the civil revision petition is maintainable against the Respondent.

16. Considering all the above mentioned aspects, this Court holds that the civil revision petition is maintainable and hence this petition deserves to

be allowed.

17. In the result, the above civil revision petition is allowed. Consequently, the suit in O.S. No. 320 of 2011 along with interlocutory application in

I.A. No. 378 of 2011 pending on the file of I Additional Subordinate Court, Madurai is to be struck off. Accordingly, it is struck off. The

Respondent is at liberty to file a fresh case on the same cause of action before the Principal District Court, Madurai. Accordingly ordered.

Connected miscellaneous petition is closed. There is no order as to costs.