
(1997) 04 MAD CK 0012
In the Madras High Court
Case No : S.A. No. 604 of 1993

Sri Ramakrishna Ashramam Trust, Public Charitable Trust	APPELLANT
Vs	
Sri Ramakrishna Tapovanam, Thimpparaithurai and three others	RESPONDENT

Date of Decision : 28-04-1997

Acts Referred:

Trusts Act, 1882 — Section 88

Citation : (1997) 04 MAD CK 0012

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : A.L. Somayaji, for Mr. C. Ravichandran, for the Appellant; G. Subramaniam, for the Respondent

Judgement

S.S. Subramani, J.—Plaintiffs in O.S. No. 459 of 1991. on the file of District Munsifs Court. Karur are the appellants. Suit filed by them

was one for declaration that they are the owners, founders and educational agency of the scheduled educational institutions, and also for granting a

permanent injunction restraining the defendants and their men from in any way interfering with the administration of the educational institutions run

by the plaintiffs.

2. Subject matter of the suit are two Schools. i.e., (1) The Vivekananda Higher Secondary School (Boys) at Pasupathipalayam. Karur Taluk, and

(2) Sri Saradha Girls Higher Secondary School at Pasupalhipalavam. Karur Taluk.

3. Material averments in the plaint may be summarised as follows:-

First plaintiff is a Public Charitable Trust represented by its Managing Trustee. Second Plaintiff, namely. Swami Almananda is a Disciple of Swami

Chidbavanandha. He is a Sanyasi. He had his training under Swami

Chidbavananda of Tinipparailhurai. After obtaining Sanyasam he moved to Pasupalhipalayam at Karur. He started his Mission work, to spread the message of Sri Ramakrishna, It is said that second plaintiff founded Sri Ramakrishna Ashramam at Pasupathipalayam. Karur Town. Karur Taluk. He also established six Educational Institutions. They are: (1) The Vivekananda Primary School having Standards 1 to 5, in Pasupathipalayam: (2) The Vivekananda English School having Standards 1 to 5. in Pasupathipalayam: (3) The Vivekananda Higher Secondary School (Boys); (4) The Vivekananda Matriculation Higher Secondary School at Pasupathipalayam. Karur Taluk: (5) Sri Saradha Girls Higher Secondary School at Pasupathipalayam. Karur Taluk and (6) Sri Saratha Nikethan College of Science for Women at Sri Sarathapuri. Karur. The Vivekananda Primary School was established in the year 1977, The Vivckananda English School and English Medium as primary were established in the year 1980. The Vivekananda Higher Secondary School (Boys) was established in the year 1981. The Vivekananda Matriculation Higher Secondary School was established in the year 1984. The Saratha Girls Higher Secondary School was established in the year 1986. The Sri Saratha Niketan Collage of Science for Women was established in the year 1987. It is said that the Primary Schools are unrecognised Schools The Vivekananda Matriculation Higher Secondary School is an unaided recognised Matriculation School. The Vivekananda Higher Secondary School (Boys) and Sri Saratha Girls Higher Secondary Schools. Pasupathipalavam are aided schools, recognised under the Tamil Nadu Private Schools Regulation Act. The College is a recognised self-financing College affiliated to Bharathithasan University, Tiruchirappalli. It is said that all the schools and college have been established and administered by second plaintiff. The funds for the Educational Institutions and the Ashramam have been donated by the Devotees of the Ashramam and the general public. The second plaintiff has also been the Correspondent and Secretary of all the Educational Institutions ever since they were established, It is said that the first plaintiff-Trust was founded for the purpose of administering the Ashramam. the Schools and College, and it was being administered by second plaintiff. It is further said that late Swami Chidbavananda was the Founder of 1st defendant-Society. He attained

Mahasamadhi in the year 1986. It is claimed that Swami Chidbavananda encouraged the second plaintiff in his Missionary work, it is said that out of his reverence to his Guru, second plaintiff established Vivekananda Higher Secondary School and Sri Sarada Girls Higher Secondary School at Pasupathipalavam. In the application for recognition submitted to the Educational Department, the Educational Agency was shown by him as 1st defendant-Society. It is further said that the first defendant never contributed any money for the establishment of the Schools. The plaintiffs represent the educational agency of the School, and the first defendant has no title or interest over the Ashramam and the Educational Institutions established by second plaintiff. It is said that due to difference of opinion between second plaintiff and the President of the 1st defendant-Society on spiritual matters, etc. the defendants began to interfere with the administration of educational institutions established and administered by plaintiffs. According to plaintiffs, such interference is unlawful. The cause of action for the suit is said to be a communication sent on behalf of the first defendant, addressed to the Headmaster and Headmistress of the scheduled schools and to the Chief Educational Officer and District Educational Officer, wherein the second defendant was appointed as Secretary of the Schools. In these correspondence, first defendant has claimed himself to be the Educational Agency. According to plaintiffs, the said claim is untenable. Even though there was an attempt for amicable settlement, the same was not fruitful. First plaintiff is a Trust. Though it came long back, a Deed was executed only on 19.5.1987. There were three Trustees, namely, second plaintiff, the Managing Trustee, and defendants 3 and 4. Defendants 3 and 4 have now become hostile to the Trust and, according to plaintiffs, they are now acting against the interest of the Trust and say that there is no such Trust, and so they have been impleaded as defendants in this suit, and plaintiffs have claimed the relief's aforementioned.

4. In the written statement filed by the first defendant it is said that the claim of the plaintiffs is denied. It is further said that second plaintiff and defendants 3 and 4 are three Sanyasis and they are monastic members of the first defendant and they have no source except from the first defendant to contribute any money towards creation of a trust for any purpose. Further, second plaintiff and defendants 3 and 4 cannot create an

independent trust when they themselves are members governed by the Rules and Regulations of the first defendant-Society. Sri Ramakrishna Seva

Asramam was established after 20.8.1976 at Karur by 1st defendant after obtaining lands measuring about 11 acres, on a perpetual lease basis,

and the lease deed was taken in the name of the first defendant. It is in that land, the educational institutions are constructed. It is said that the

second plaintiff along with five others were admitted as monastic members of first defendant-Society. Till the date of filing the written statement

second plaintiff continued to be a monastic member and, therefore, bound by the Rules and Regulations of the Society. On his admission as such,

he was deputed to Thiruvudagam Branch of the 1st defendant, He worked at Thiruvudagam till the end of 1976. He was thereafter transferred

to Karur Branch of the 1st defendant. At that time, the Vivekananda Kalvi Nilayam was functioning at Pasupathipalayam. established by the 1st

defendant in the leasehold lands. It is said that Sri Ramakrishna Asramam at Pasupathipalayam was established by the 1st defendant in 1976 in the

leasehold lands. At the time, second plaintiff was appointed as Correspondent of Sri Vivekananda Kalvi Nilayam High School by 1st defendant as

per resolution passed by the Governing Body. After various subsequent Resolutions, second plaintiff was acting as Correspondent of the proposed

Matriculation School, and later he was also acting as a Secretary-cum-Correspondent of both the Schools on behalf of the Society. It is also

contended that huge amounts have come to the hands of the Society from various sources, and it is through those funds, the building was

constructed, and educational institutions are being run. It is said that since the second plaintiff was acting as agent or servant of the first defendant,

he cannot claim an independent right of himself. The suit is mischievous. Further, the maintainability of the suit is also challenged on the ground that

all the Trustees have not joined in filing the suit. It is also said that the first plaintiff-Trust came into existence on the wrong advice procured by

second plaintiff. Defendants 3 and 4, who got better advice did not contribute any amount as recited in the deed. It is; therefore, their case that no

Trust described as first plaintiff, came into existence.

5. In the additional written statement filed by the second defendant, he said that second plaintiff misguided defendants 3 and 4, and they happened

to sign a document, which never came into existence. At any rate, the document is void ab initio. It is further said that the defendants 3 and 4 have

also executed a registered deed of cancellation long ago, i.e., before the institution of the suit

6. Defendants 3 and 4 filed a memo adopting the contentions of other defendants.

7. Plaintiffs filed a reply statement reiterating the plaint allegations and also disputing the various contentions raised in the written statement

8. The trial Court took oral and documentary evidence. On the side of plaintiffs. Exs.A-1 to A-112 were marked, and, on the side of defendants.

Exs.B-1 to B-97 were marked. Witnesses on the side of the defendants produced Exs.X-1 to X-25. Second plaintiff got himself examined as

P.W.1 and two other witnesses were also examined. On the side of the first defendant, the present Secretary" was examined as D.W.1. One more

independent witness was examined as D.W.2.

9. The trial Court, as per judgment dated 31.4.1992. came to the conclusion that the claim put forward by plaintiff cannot be sustained. Trial

Court found that the second plaintiff was acting as Secretary-cum-agent of the first defendant-Society, and he himself has applied for recognition of

these Schools only in the name of the first defendant. Since he was acting on behalf of the first defendant, he was in a position to produce all these

documents, and even the documents produced by him stand only in the name of the first defendant. It was further held that the schools were

established in the leased premises obtained by the Society, and the second plaintiff has nothing to do with the Schools, except for the fact that he

was the Correspondent-cum-Secretary. It further came to the conclusion that the first plaintiff-Trust could not have come into existence and the

document is invalid. When second plaintiff and defendants 3 and 4 were members of the Society and were, therefore, governed by the Rules and

By laws of the same, they cannot act in detriment to the Society. Further, defendants 3 and 4. though initially worked along with defendants 2nd

plaintiff, did not contribute any amount as provided therein, and the Trust also did not come into existence. Plaintiffs also relied on Ex.A-26. an

assignment of lease alleged to have been executed by defendants 3 and 4. Trial Court held that the document cannot be admitted in evidence. At

any rule, the assignment also did not take place, and even subsequent to Ex.A-26, rent was being paid only by the Society and not by the first plaintiff-Trust. The principle of estoppel" was also applied against the second plaintiff in claiming an independent right against the Society. The suit was dismissed.

10. When the matter was taken in Appeal, the lower appellate Court also did not think of interfering with the findings entered by the Trial Court, and. all the findings of the trial Court were found to be correct, and based on settled legal principles. Appeal was dismissed. It is against the concurrent judgments, plaintiffs have preferred this Second Appeal.

11. At the lime of admission of the Second Appeal, the following substantial questions of law were raised for consideration:-

1) Whether the Courts below erred in finding that the respondents 3 and 4 were misguided and therefore, they executed the Trust Deed Ex.A-1 on

19.5.1987?

2) Whether the Courts below erred in holding that the first appellant which is an independent trust is the branch of the first defendant ?

3) Whether the Courts below are correct in not relying on Ex.A-26 under which the lease granted under Ex.A-2 has been made over in favour of the appellants for a collateral purpose ?

4) Have not the Courts below erred in rejecting the recitals in Ex.A-1, a registered trust deed and held that respondents 3 and 4 have not contributed to the Trust ?

5) Have not the Courts below erred in considering the resolutions referred to in Exs.B-2 to B-12 when the original resolutions have not been exhibited in the Court ?

6) Whether the Courts below have not committed an error in finding that the appellants have not established the suit institutions were founded and administered the suit institutions ?

12. The concurrent findings of the Courts below are challenged in this Second Appeal. Naturally, interference by this Court is expected only if

learned Senior counsel for the appellants is in a position to establish that on the basis of the evidence adduced, the conclusion arrived at by the

Courts below is perverse, or he must show that any material part of the evidence

was omitted to be considered, or any irrelevant piece of evidence

was given more importance than it deserved. No argument was put forward in that regard by learned Senior Counsel for the appellants.

13. The admitted facts are: the Scheduled Schools were recognised in the name of the first defendant-Society, and even for the recognition in the

name of the first defendant, necessary application was filed by the second plaintiff himself, who was then the Correspondent of the Schools. It was

also admitted that all the official records stand in the name of the first defendant, and even the correspondence for the same was taken only by the

second plaintiff. It is also not disputed that second plaintiff was acting as Correspondent-cum-Secretary of these educational institutions. The

Schools have been constructed in a leasehold premises, and the lease deed was also taken in the name of the first defendant. It is in this

background, we have to consider how far the plaintiffs' case could be sustained in this case.

14. Under the Tamil Nadu Recognised private Schools (Regulation) Act, 1973, "educational agency" is defined u/s 2(3) as follows:-

2. In this Act, unless the context otherwise requires-

(1) and (2) XXX

(3) educational agency" in relation to-

(a) am minority school, means any person who, or body of persons which, has established and is administering or proposes to establish and

administer such minority school: and

(b) any other private school, means any person or body of persons permitted or deemed to be permitted under this Act to establish and maintain

such other private school.

Chapter II of the said Act deals with Establishment. Permission for Establishment and Management of Private Schools. That also has to be in the

name of the educational agency. Section 6 deals with the grant of permission. Chapter IV deals with School Committee and its constitution and

functions. Sections 15 and 16 under Chapter IV deal with the Constitution of School Committee and appointment of Secretary of the School

Committee. Section 30 of the Act deals with the sending of property statement to educational agency. Rules have also been framed under that Act.

Rule 12 deals with, constitution of School Committee, and Rule 13 deals with the Duties of the Secretary of the School Committee. Rule 13 (3)

says that the Secretary of the School-Committee shall function for and on behalf of the School Committee and the educational agency. Rule 13(4)

says that the Secretary shall act on the basis of the resolutions passed at the meetings of the School Committee. It is the duty of the Secretary to

maintain accounts. From these provisions, it is clear that under the said Act. the educational agency is recognised for the purpose of the Act. The

proprietor of the school and the entire correspondence is done by the Secretary of the School Committee. To the outer world, the Secretary is the

Spokesman of the educational agency and he acts as an agent of the educational agency. It is not disputed by second plaintiff that he was acting as

Secretary -cum-Correspondent. Various Exhibits produced on the side of the defendants show that each and every resolution was signed by the

second plaintiff and the minutes also prepared by him. In fact, he was appointed as Correspondent and Secretary on the basis of Resolutions

passed by the Committee itself, and that too for the very school for which he claims proprietorship, or as a person who established and maintained

the same. To prove such establishment as alleged by him. absolutely no evidence has been let in. except the oral evidence of P.W.1. Though

various documents have been filed, all of them stand only in the name of the first defendant-Society. The production of these documents may not

be of such importance in this case. for. second plaintiff was acting as Secretary-cum-Correspondent, and he had the custody of those documents.

15. The explanation offered by the second plaintiff that he applied for recognition in the name of the first defendant-Society only because of his

respect for his Guru can never be believed. First defendant is not his Guru. First defendant is only a Society formed by the Guru. If the explanation

is accepted, the application must be in the name of his late Guru. namely. Swami Chidbavananda. Both the Courts below have concurrently found

that the second plaintiff is only a son of the first defendant, and only, in that capacity, he was managing the School. If he was an agent or servant,

what is his relationship so far as the first defendant is concerned.

16. In Southern Roadways Ltd., Madurai Vs. S.M. Krishnan, their Lordships said thus:-

An agent holds the principal's property only on behalf of the principal. He acquires no interest for himself in such property. He cannot deny principal's title to property and non-suit the principal on the necessary title as agent. Nor he can convert it into any other kind or use. His possession is the possession of the principal for all purposes. When he receives any such property he is bound to keep it separate from his own and that of others.

Their Lordships further said thus-

in all cases of general agency, the relation may be generally fiduciary, but in other kinds of agencies, the relation may vary with the confidence which the principal chooses to repose in the agent. It may also depend upon the power which the agent exercises over the subject matter under the terms of the contract of agency or by virtue of the incident of law and usage of the business which the relationship implies. Thus the fiduciary element in agency, though the key to much of the law governing this relation, is not the essential element in the relation.

In that case, their Lordships followed an early decision of the same Court reported in *Smt. Chandrakantaben Modi and Narendra Jayantilal Modi*

Vs. Vadilal Sapalal Modi and Others, wherein, paragraph 19. their Lordships have dealt with the matter. Their Lordships followed an earlier

English decision, which reads thus:-

...Another English case of *Williams v. Pott*, arising out of the circumstances similar to the present case was more interesting. The agent in that case was the real owner of the estate but he collected the rents for a considerably long period as the agent of his principal who was his mother. After the agent's death his heir claimed the estate. The mother (the principal) had also by then died after purporting by her will to devise the disputed lands to the defendants upon certain trusts. The claim of the plaintiff was dismissed on the plea of adverse possession. Lord Romilly, M.R. in his judgment observed that since the possession of the agent was the possession of the principal, the agent could not have made an entry "as long as he was in the position of the agent for his mother, and that he could not get into possession without first resigning his position as her agent which he could have done by saying: "The property is- mine; I claim the rents. and I shall apply the rents for my own purposes"" The agent had thus lost his

title by reason of his own possession as agent of the principal....

17. At this juncture, it is better to take note of the decision reported in *A Peirce Leslie and Co. Ltd. Vs. Miss Violet Ouchterlony Wapshare and*

Others, wherein the provisions of Section 88 of the Trusts Act, 1882 were also considered by the Supreme Court. The relevant portion of the said

decision reads thus:-

It is a settled rule of equity that a person bound in a fiduciary character to protect the interests of another person should not put himself in a

position where his interest and duty conflict. If by availing himself of his fiduciary character or by entering into any dealings under circumstances in

which his interests, are or may be adverse to those of such other person he gains for himself a pecuniary advantage, he must hold for the benefit of

such other person the advantage so gained....

So even if the owner says that he is only an agent and deals with the property as such, he cannot thereafter contend that he is the owner. It is

because of the principles enunciated in Section 88 of the Trusts Act. If the person is bound to protect the interest of another and gains any

advantage, that advantage also must go to the person whose interest he is bound to protect. So, even if by chance second plaintiff can contend that

he is the owner, since he was acting throughout only as an agent of the first defendant-Society, his claim for ownership cannot be put forward.

18. Learned Senior counsel for the appellants submitted that when first plaintiff-Trust was formed, defendants 3 and 4 also joined with the second

plaintiff. Ex.A-26, even though unregistered, is an assignment of the lease where the school building stands, and, therefore, even the lease has now

become the property of the first plaintiff. He further contended that even though defendants 3 and 4 have now taken their stand, their non-

examination was not given much importance by the Courts below. According to learned Senior Counsel, an adverse inference has to be drawn. I

do not think that this argument can be put forward when the legal position between second plaintiff and first defendant-Society is established.

Defendants 3 and 4 are also members of the same Society, and whatever could be put forward against second plaintiff can be put forward against

defendants 3 and 4 also. If they have acted against the Society, that will not give a right to the second plaintiff to hold that the school belongs to

him. If two persons commit an illegality, that will not become legal, and the same cannot be a basis for claiming title. It was contended that the non-examination is vital so far as the case of the first defendant is concerned. Even if an adverse inference can be drawn, what is the legal consequence of that adverse inference. If, on the admitted documents that are filed, a conclusion could be reached, that conclusion could not be washed away by their non-examination. An adverse inference can only be to this extent, i.e., defendants 3 and 4 were also acting against the Society. That will not prove the case of second plaintiff any way. Regarding Ex.A-26 also, the executants are defendants 3 and 4 What is their legal authority. If they are the members of the first defendant-Society, they cannot put forward an adverse claim against their own Society Plaintiffs have miserably failed to prove that defendants 3 and 4 had the authority To assign the lease. Courts below did not treat Ex.A-26 as an assignment of lease since the document was unregistered. Learned Senior counsel also wanted to rely only on Ex.A-26, to prove that it is an admission on the part of defendants 3 and 4. It is well-settled that admission will not confer title. Both the Courts below have further come to the conclusion that Ex.A-26 was also not acted upon, since Ex.A-1 Trust has failed, and even after Ex.A-26. rent was being paid to the owner only by first defendant-Society.

19. Courts below have rightly come to the conclusion that the second plaintiff has no claim as put forward and as a Sanyasi. he should not have put forward such a claim. A person who is bound to promote the interest of the Ashramam and who says that he was brought to this World by his Guru, is now acting against own interest. The confidence reposed on the second plaintiff was really misused by him. The Courts below have rightly dismissed his claim. In the result, the Second Appeal is dismissed with costs. C.M.P. No. 5613 of 1997 to receive additional documentary evidence is also dismissed as I find no valid ground to entertain the same.