
(1909) 12 MAD CK 0019
In the Madras High Court

Sri Venkatachellapathy Sabyya Vyavasaya Co.	APPELLANT
Vs	
Kanakasabapathi Pillai (Dharmum) and Others	RESPONDENT

Date of Decision : 10-12-1909

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1910) 20 MLJ 146

Hon'ble Judges : Sankaran Nair, J;MANUTN00351909.htm, J;Benson, J;Arnold White, J

Bench : Full Bench

Judgement

Arnold White, Kt., C.J.—This is a petition u/s 25 of the Provincial Small Cause Courts Act, 1887, against the decision of the Subordinate

Judge of Tuticorin on the preliminary objection that the suit being one "" relating to a trust "" within the meaning of Article 18 of the Second Schedule

to the Act, it was not triable on the Small Cause side of the Court. The Subordinate Judge allowed the preliminary objection.

2. The suit is by a limited liability company brought in the name of the "" President "" of the company, for "" subscriptions "" alleged to be due to the company under its articles of association and rules, from defendants Nos. 2 to 4 as members of the company.

3. Defendants Nos. 2 to 4 are described in the plaint as the trustees of a ""Dharmam"" or charitable trust, the trust itself being the 1st defendant. The claim is made against the defendants Nos. 2 to 4, as trustees, and alternatively in their private capacity. The plaintiff asks for payment of the

amount claimed from the 1st defendant, i.e., apparently out of the trust property, and alternatively by defendants Nos. 3 to 4 personally. The 2nd

defendant pleads that the trust funds are in the possession of defendants Nos. 3

and 4 and that they are liable. He denies his personal liability. The 3rd defendant pleads, inter alia, that he and defendants 2 and 4 are not the trustees of the "Dharmam." and that the properties of the "Dharmam" are managed by the entire body of the caste of which defendants Nos. 2 to 4 are members. The 4th defendant pleads, inter alia, that defendants Nos. 2 to 4 are not the sole trustees and that the trust property is managed by the whole caste.

4. It seems to me that the suit is one relating to the liability of the defendants, either as trustees, or in their personal capacity, to pay to the company the "subscriptions" alleged to be due from them as "members," and that it is not a "suit relating to a trust" within the meaning of the words of the 2nd Schedule of the Act. In my opinion the fact, that in order to decide the question raised in the suit it may be necessary to determine whether the trust property is liable, does not make the suit one "relating to a trust." The defendants are not sued because they are trustees, but because, as the plaintiff alleges, they are liable under the articles of association of the company to pay the subscriptions claimed. It may be that, as a result of a decision in this suit questions may arise for determination as between the defendants Nos. 2 to 4 and their cestui que trust (if any) but this, in my opinion, does not make the suit one "relating to a trust" as between the plaintiff and defendants Nos. 2 to 4.

5. The words "suit relating to trust" are, no doubt, wider than the words in the corresponding enactment in the Presidency Small Cause Courts Act, 1882, which are "suits to enforce a trust" but the introduction of the words "including a suit, etc.," in Article 18 of the 2nd Schedule to the Provincial Small Cause Courts Act, seems to me to indicate that the words "suits relating to a trust" should be construed in a restricted sense.

6. If the words "suit relating to a trust" are susceptible of the general interpretation which the Subordinate Judge has placed upon them, the later words of the paragraph "including, etc.," would seem to be unnecessary.

7. I think the view I have indicated is borne out by the authorities see *Sundaralingam Chetty and Anr. v. Mariyappa Chetty and Anr.* ILR (1902) M. 200. In *Krishnyyyar v. Sundararaja Iyengar* ILR (1897) M. 245, where it was held the suit was not cognisable by a Small Cause Court, the suit was by a trustee against his predecessor in office for loss to the cestui que

trust by the defendant's negligence, i.e., breach of trust. In *M.V.*

Subramania Iyer v. Pandi Doraiswamy Tevar and Ors. ILR (1902) M. 368, where it was held the suit was not cognisable, the plaintiff's cause of

action, if any, was to enforce the performance of the trust in so far as the trust related to him.

8. I think the Small Cause Court had jurisdiction, that the order of the Subordinate Judge on the preliminary objection should be set aside, and that

the case should go back to the Subordinate Judge to be dealt with by him as a Small Cause suit. The costs in this Court are to abide the result.

C.R.P.'s. 752 to 757 follow.

Benson, J.

9. I find it difficult to hold that these suits are not "suits relating to a trust" within the meaning of Article 18 of the Provincial Small Cause Courts

Act.

10. The 1st defendant is the trust itself. Defendants Nos. 2 to 4 are sued as trustees, and it is the trust property which the plaintiff seeks to make

primarily liable for the sums claimed, the claim against defendants Nos. 2 to 4 personally being only an alternative claim. I do not think that the

cases cited by the petitioner's pleader support his contention that such suits as those now in question do not "relate to a trust" nor do I think that

the words at the end of Article 18("including a suit, etc.") can be read so as to restrict the generality of the preceding words" suits relating to a

trust.

11. The present suits, on the face of the complaints, involve the question of the liability of the trust property, and this directly raises the question of the

trustees' right to deal with the trust property in the way they have done.

12. I therefore think that they relate to a trust and are not triable by a Small Cause court.

13. I would dismiss the petition with costs.

Arnold White, Kt., C.J.

14. As my learned brother differs, the point of law, which is stated in the judgment, will be referred to Mr. Justice Sankaran Nair u/s 98 of the Civil

Procedure Code.

Sankaran Nair, J.

15. N. Rajagopalachariar for A.S. Balasubramania Aiyar, contended that the real test is whether the object of the suit is to enforce any provisions of the trust, i.e., the carrying out of the trust.

16. S. Srinivasa Aiyar referred to British Electrical Traction Coy. v. Inland Revenue Commissioners (1902) 1 K.B. 441 as to the meaning of the words "relating to."

Sankaran Nair, J

17. On the 17th February 1910, delivered the following

18. I agree with the Chief Justice. The orders of the Sub-Judge will be set aside and he will be directed to restore the suits to his file and dispose of them in accordance with law. It is open to him, if he thinks fit, to act u/s 23, Small Cause Courts Act. The parties will bear their own costs in this Court. The costs in the lower Court to be provided for in the final decree.