

(2002) 02 MAD CK 0071

In the Madras High Court

Case No : C.R.P. No"s. 703 and 704 of 2001 and C.M.P. No. 3772 of 2001

V.S. Govinda Achari Trust

APPELLANT

Vs

Nagaratnammal @ Pattammal and Others

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17, Order 18 Rule 17A

Citation : (2002) 02 MAD CK 0071

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : G. Sugumaran, for the Appellant; P. Devadoss, for the Respondent

Judgement

1. The petitioner is aggrieved against the order of the Court below dated 29-1-2001 made in I.A.Nos.I5767 & 19893 of 2000 in rejecting its

claim to reopen the case for the purpose of marking a resolution which authorises P.W.1 to launch the suit on behalf of the plaintiff-trust.

2. The Court below was of the view that the present attempt of the petitioner by filing these applications was only to fill up a lacuna made in the

pleadings, as well as, in its evidence especially when the recording of the evidence commenced in the year 1998 and the suit was at the stage of

pronouncing of orders. I do not find any justification in the reasoning of the Court below in rejecting the petitioner"s applications for more than one

reason.

3. The petitioner filed the suit for possession as against the respondents herein. While so, it was claimed in para 3 of the plaint which is in the

following words:

The plaintiff states that the house and ground bearing door No. 29 (old), new

door No. 33, Andiappa Naicken Street, Choolai, Madras 112 is

one of the properties belonging to the plaintiff trust viz., V.S. Govindachari Trust and the said property was dedicated to Shri Shivasubramanya

Daily in Sri Angala Parameswari Temple, Choolaim Madras-112. The said property is being maintained and administered by the Managing

Trustee and the above said property is a Public Trust property and directly under the supervision and control of H.R. & C.E.Board.

4. It is therefore the stand of the plaintiff that the the plaintiff-trust which is a public trust governed directly under the supervision and control of

H.R. & C.E. Board and that the Managing Trustee only maintain and administers the Trust. The said claim was resisted by the respondents in their

written statement by specifically contending that all the trustees have not joined in filing the suit and therefore the suit was not maintainable.

5. The present resolution which is sought to be introduced on behalf of the petitioner is the one dated 2.2.1992 which is stated to have authorised

the Managing Trustee to file the suit on behalf of the trust, which authorisation is stated to have been made by all the trustees of the plaintiff-trust. It

is in the form of a resolution.

6. Be that as it may, the suit which was filed in the year 1992, after filing of the written statement on 5.11.1993, was stated to be opened up for

trial in year 1998, the evidence was closed on 22.12.1998, and was posted for arguments thereafter. In fact, after hearing arguments on 9.4.1999,

it was posted for judgment on 28.4.1999. However, on 28.4.1999, the suit seemed to have been reopened suo moto and posted to 10.6.1999.

As the suit was reopened, the petitioner appeared to have persuaded the Court to grant time for filing necessary application for impleading all the

trustees. It is unfortunate that for some reason or the other, the suit was not disposed of till August, 2000, when on 28.8.2000, the petitioner filed

an application in I.A.Nos. 15767 of 2000 to recall P.W.I, subsequently on 22.11.2000 filed another application in I.A.No. 19893 of 2000 to file

additional documents. In these two applications, the Court below has passed a common order which has been impugned in these revisions.

7. On a perusal of the plea raised by the petitioner in the plaint to the effect that the Managing Trustee of the plaintiff was maintaining the properties

of the plaintiff-trust and was also administering it, it is a sufficient plea as

provided under Order 6 Rule 2 which would enable the petitioner to contend that the Managing Trustee of the plaintiff can validly maintain the suit on behalf of the trust subject however, the said plea is substantiated by adducing appropriate evidence supporting the said stand. The resolution which is now sought to be introduced by way of a document through the present application in I.A.No. 19893 of 2000 and I.A.No. 15767 of 2000, by which the petitioner only wants to substantiate the said plea. It cannot therefore be held that there was lack of proper plea on behalf of the petitioner, so as to hold that the introduction of the present evidence through the applications now filed on behalf of the petitioner cannot be maintained. It cannot also be held that the said plea or the evidence which is now sought to be introduced would contradict with each other by virtue of application of Order 6 Rule 7. Therefore to that extent, the right of the petitioner to seek for the introduction of the present material by way of evidence, cannot be held to be unjustified or illegal so as to reject the said move of the petitioner as not maintainable in law.

8. If that be so, merely because in the suit, evidence is closed and the Court below reserved its orders once the same cannot be put against the petitioner when the petitioner is lawfully entitled to seek for appropriate direction as claimed in the present applications. In any event, the permission to be granted pursuant to the present applications preferred by the petitioner will not ipso facto mean that the stand of the petitioner is to be straight away accepted or that the plea of the respondent that the suit is not maintainable is fully rebutted by allowing such evidence. It is for the petitioners to satisfy the Court that the Managing Trustee of the plaintiff-trust is competent to maintain the suit on behalf of the trust. In other words, it is open for the respondents to raise all possible contentions that are available to it with regard to the validity or otherwise of the document which is now sought to be introduced in support of the plea raised in paragraph 3 of the plaint and with regard to the competence of the Managing Trustee of the plaintiff to maintain the suit on behalf of the trust based on the said document. In such circumstances in the interest of justice, it will have to be held that the petitioner is entitled to seek for reopening of the evidence and also for marking of the document in support of its plea relating to the competence of the Managing Trustee to maintain the suit on

behalf of the trust.

9. Mr.P.Devadoss, learned counsel appearing for the respondents relied upon Allam Gangadhara Rao Vs. Gollapalli Gangarao, :to contend that

where there is variance between the pleadings and the proof, no relief can be granted on the facts and the documents not disclosed in the plaint. I

am of the view that there can be no two opinions on the preposition so propounded on behalf of the respondents. However, since I have earlier

held that based on the plea raised in the present case and the document which is sought to be introduced, there being no variation, it will have to be

held that on that ground, there is no scope for rejecting the claim of the petitioner made in the applications before the court below. As regards the

proof of the claim so made, at the present stage, it cannot be held whether the petitioner has sufficiently established the plea raised by it by

introducing the document which he wants to rely upon by recalling the evidence and by seeking for permission to produce a document. There is

time enough for parties to raise their respective stand by way of necessary evidence before the Court below and seek for appropriate adjudication

on it. Therefore there is no scope for applying that part of the ratio decided in the said judgment at the present juncture.

10. The learned counsel then relied upon a decision reported in Mahboob Ullah Vs. Jwala Prasad Kajriwal and Another, , to contend that where

there is no proper plea alleged in the pleading, the same cannot be allowed to be raised. Here again, since I have found that there is a proper plea

made and the only question is whether the petitioner should be allowed to substantiate the said plea, at this point of time, it cannot be held that the

petitioner can be denied of that opportunity, inasmuch as, for some reason or the other, the disposal of the suit got prolonged and the proceedings

are at a stage where the petitioner can be given a last opportunity to substantiate its claim by producing necessary evidence. Therefore I am unable

to apply the ratio decided in the judgment cited to the facts of the present case.

11. The learned counsel then relied upon T. Ramachandra Murthy v. K. Ramamurthy and Ors., AIR 1980 A.P. 265 to contend that when the

matter was reserved for judgment, a party should not be allowed to fill up a lacuna at this stage. As I have held earlier, since in the present case,

though at one stage the judgment was reserved, since the same came to be

reopened suo moto and the proceedings are yet to be concluded, the said judgment can also be not applied to the case on hand.

12. Having regard to my above said reasoning, since I find that the order of the Court below cannot be sustained, the same is set aside and the petitioner's applications in I.A.No. 15767 and 19893 of 2000 shall stand allowed. Having regard to the fact that the trial of the suit has prolonged this far, in the interest of justice, the Court below is directed to dispose of the suit within two months from the date of production of copy of this order.