

A.4247/2022

K.DHANANJAYAN AND 4
OTHERS

Vs.

M/S LOVE AND CONCERN AND
S O

Dated :
05/08/2023

Hon'ble Mr Justice K.KUMARESH BABU



WEB COPY



A.No.4247 of 2022

& A.No.250 of 2023

in C.S.No.104 of 2022

<i>Reserved on</i>	<i>12.04.2023</i>
<i>Delivered on</i>	<i>05.06.2023</i>

K.KUMARESH BABU, J.

It is seen from the records that O.A.Nos.322 and 323 of 2022 had been disposed of by this Court in and by its order dated 12.09.2022. This has neither been noted by the Registry nor had been brought to the notice of this Court by either of the counsel appearing on behalf of the respective parties. Hence, no further orders are required to be made in these applications.

(i) Application No.250 of 2023 has been filed to receive the Trust Deed dated 25.03.2002 and the proceedings of the Director of Income Tax (Exemption) dated 17.03.2003.



(ii) Application No.4247 of 2022 has been filed under Order VII Rule 11 to reject the plaint in C.S.No.104 of 2022.

2.Heard Mr.V.Chandrakanthan, learned counsel for the applicants in A.No.4247 of 2022 as well as for D1, D2, D6 to D8 in A.No.250 of 2023 and Mr.K.V.Ramesh, learned counsel for the applicant in A.No.250 of 2023 as well as for R1 in A.No.4247 of 2022 and Mr.P.T.Perumal, learned counsel for D3 to D5, D9 & D10 in both applications.

3.Mr.V.Chandrakanthan, learned counsel for the applicants in the application to reject the plaint would submit that the suit had been instituted by the Trust. He would submit that originally the Trust had entered into a Tenancy Agreement and thereafter, a Sale Agreement. He would also submit that no Trust Deed had been filed along with the plaint to show that the plaintiff legally registered the Trust under the Indian Trust Act. He would further submit that the plaintiff had not produced any authorization letter or document along with the plaint to show that



the President of the Trust is entitled to represent the Trust. Hence, the Trust has no locus standi to file a suit by itself or through Mr. John Venkatesan. He would further submit that the cause of action to file a suit beyond three years from the date of the Agreement of Sale is not available as the same is barred by law of limitation.

4. He would further submit that the Agreement of Sale is not enforceable as it was not entered into in the name of the Trust. He would also submit that the plaintiff averments do not disclose any cause of action as there was no pleadings in the plaint as to the payments made by the plaintiff. He would also rely upon a judgment of the Hon'ble Apex Court made in *Civil Appeal No.4841 of 2012* to contend that the cause of action is a bundle of facts and that every fact that is necessary for the plaintiff to prove him to get a decree to be set out in clear terms. In the present case, he would submit that the plaintiff had not pleaded as to how he is entitled for a decree and therefore there is no cause of action for the plaintiff to maintain the suit.



5.He would also rely upon a judgment of the Hon'ble Apex Court in a Special Leave Petition (*Civil*) No.4483 of 1977 to contend that this Court for doing substantial justice have to nip in the bud, a suit which is ex facie not maintainable for want of cause of action. He would also rely upon a judgment of the Full Bench of the Gujarat High Court in the case of *Atmaram Ranchhodbhai vs. Gulamhusein Gulam Mohiyaddin* reported in *AIR 1973 Guj 113* and a Division Bench judgment of the Delhi High Court in the case of *Duli Chand vs. M/s.Mahabir Pershad Trilok Chand Charitable Trust, Delhi* reported in *AIR 1984 Del 145* and a judgment of this Court in the case of *V.Chandrasekaran and 2 others vs. Venkatanaicker Trust Rep. by its Manager, Thiru E.V.K.S.Elangovan* in *S.A.No.220 of 2011* dated *29.11.2016* to contend that a Trust cannot sue by itself or be sued as it is not juristic/legal entity, only the trustees are considered to be entitled to sue.

6.Further, he would contend in the present case, the plaintiff has not produced the Trust Deed to substantiate the Trust Deed had authorized him and that



the suit had not been filed by both the trustees who are managing the Trust and therefore, he would pray this Court to reject the plaint. As regards the application filed by the first respondent herein in A.No.250 of 2023, he would submit that the said application is not at all maintainable. An attempt to bring out the Trust Deed by the plaintiff is only after the defendants have filed an application to reject the plaint.

7.He would rely upon the Indian Trust Act to contend that one trustee cannot delegate his duty to the other trustees to initiate a legal action. According to him, there is only one trustee to the Trust viz., Mrs.Chandra John and therefore, she could only initiate action on behalf of the Trust. He had specifically denied that Mr.John Venkatesan is not a trustee and therefore, he cannot represent the Trust.

8.Mr.P.T.Perumal, learned counsel for the respective respondents in both the applications would submit that the plaintiff in filing the application is trying to plugin the defects in the plaint. He would also adopt the arguments made by



Mr.V.Chandrankanthan. Adding to his arguments, he would submit that he had contended the conduct of the plaintiff in dragging on the execution of the Agreement entered upon between the parties. He would further submit that the plaintiff was never ready and willing to perform his part of the contract. He would also submit that the suit framed by the Trust represented by only one of the trustees cannot be maintainable. He would further submit that the Registry ought not to have accepted the plaint filed by the Trust without it establishing itself to be a Trust. No Trust Deed had been filed along with the plaint to substantiate the Trust is in existence and therefore, he wondered how the Registry of this Court had accepted the plaint and had issued summons in the suit.

9.Mr.K.V.Ramesh, learned counsel for the applicant in A.No.250 of 2023 and for R1 in A.No.4247 of 2022 would submit that it is not disputed by the defendants in the suit that they have not entered upon with an Agreement of Sale with the plaintiff. It is their case that the suit is first barred by limitation and that there is no cause of action for filing the suit. Apart from contending that the



plaintiff being a Trust has no locus standi to either sue or to be sued. He would submit that it is true that the Trust is not a juristic person or legal entity but it does not bar a suit being initiated by a trustee of a Trust on behalf of the Trust.

10.He would also rely upon a Division Bench judgment of this Court in the case of *Kishorelal Asera vs. Haji Essa Abba Sait Endowments, rep. its Trustees, Ibrahim Sait and others* reported in *2003 (3) CTC 209* to contend this Court had held that the Trust which had initiated the suit had been represented by all the trustees, such a suit is maintainable and had rejected the contention raised by the appellant therein has the locus standi of the Trust to maintain the suit. Further, he would submit that as per the Clauses of the Trust Deed, the President of the Trust is authorized to sue on behalf of the Trust.

11.He would further submit that the judgments rely upon by the learned counsel for the applicant in seeking to reject the plaint on the ground that the Trust cannot sue itself had given observations but if there is an authorization under the



Trust Deed itself for an individual to sue either under the capacity of a trustee or a manager, then such person is entitled to sue on behalf of the Trust. When that being the position, he would submit that the suit cannot be rejected on that ground. He would submit that the question of limitation raised is a combined question of facts and law and therefore a plaint cannot be rejected at the threshold on the question of limitation and the same would utmost one of the issues that can be tried during the trial of the suit.

12.He would contend that it would not be proper on the part of the defendants to contend that there is no cause of action for the suit. He would further contend that the plaint had read as a whole and when such a reading of plaint had been made, the plaintiff had clearly in categorical terms pleaded as to how the plaintiff is entitled to sue the defendants. Hence, he would seek this Court to permit to receive the Trust Deed as well as the income exemption granted to the plaintiff Trust as early as in the year 2002 & 2003 respectively. He would also pray to this Court to dismiss the application seeking to reject the plaint.



13.I have considered the submission made by the respective counsels appearing for the respective parties and perused the materials available on record.

14.The suit had been filed by a Trust represented by its President. It is true that the Trust Deed had not been produced at the time of filing of the suit, the same had now been produced before this Court along with an application to receive the Trust Deed and also the exemption certificate granted by the Income Tax Department.

15.A perusal of the Trust Deed would indicate that the object of the Trust is for a Public Charitable Trust and the trustees are Mr.John Venkatesh and Mrs.Chandra John. Hence, the contentions raised by the learned counsel for the defendants that John Venkatesan is not a trustee to represent the Trust is at the outset rejected. Clause 17 of the Trust Deed empowers the President shall be the Chief Executive Officer who shall be in charge of day to day affairs of the Trust. Clause 10 of the Trust Deed which enumerates the trustees also enumerates that



John Venkatesh is the Founder and President of the Trust. Clause 18 of the Trust

Deed vested power with the President of the Trust to initiate, prosecute and defend

etc and also to do other acts for and on behalf of the Trust, the suit had been filed

by the Trust represented by the President of the Trust. A judgment relied upon by

the learned counsel for the plaintiff in support of his contention is required to be

analysed. In the facts of that case, the Trust had instituted a suit and the Trust had

been represented by all the trustees. A Division Bench had also indicated that the

Court has also power to accept any of the trustees to recognize itself in a suit

concerning a property that had vested with the Trust. Here is the case where the

Trust had entered into an Agreement with the defendants, this Agreement had also

been entered only by John Venkatesan representing the Trust.

16.The defendants had also received a part payment and also put in possession of the property in the hands of the Trust. This Court while disposing of

O.A.Nos.322 and 323 of 2022 has recorded the aforesaid fact and only having

found that there is a prima facie case and balance of convenience had allowed the



application in O.A.No.322 of 2022 and disposed of the application in O.A.No.323 of 2022, wherein this Court had laid down certain conditions in disposing of the above applications.

17.A further reliance placed by the applicants seeking to reject the plaint. When examined in detail, it was shown that the Court even though had laid down a ratio espoused by the learned counsel had gone about allowing the amendment of plaint to bring the suit in conformity with the procedural law.

18.A reading of the Full Bench of the Gujarat High Court had held that unless the instrument of Trust otherwise provides, all co-trustees must join in filing a suit. In the present case, the Trust Deed produced by the plaintiff would suggest that the President who is one of the trustees is entitled to file a suit. A conjoint reading of the aforesaid judgments along with the judgments of the Division Bench of this Court reported in *2003 (3) CTC 209* would only allow me to draw upon a



conclusion that the suit can be maintained by a representative of the Trust in terms of the Trust Deed for and on behalf of the Trust.

19. Other issues raised by the learned counsel for the applicants to reject the plaint as regards to the cause of action, I am of the view that this Court while passing orders in the same dealing with injunction application has found cause of action from the pleadings of the respective parties. Hence, I am not inclined to accept the contentions that there is no cause of action as pleaded in the plaint. Further a conjoint reading of the plaint as a whole, the statements have been made by the plaintiffs as regards the cause of action.

20. Coming to the next issue of permitting the plaintiff to file the Trust Deed and the income tax certificate. When it is an admitted fact by the defendants that they had entered upon with the Trust both the Tenancy Agreement and the Sale Agreement upon which the suit had been filed, I do not see any reason to reject the said application, the defendants do not dispute the existence of the Trust.



21. In fine, the Application No.4247 of 2022 is dismissed and the Application

No.250 of 2023 is allowed.

WEB COPY

05.06.2023

pam



WEB COPY



K.KUMARESH BABU, J.

pam

A.No.4247 of 2022
& A.No.250 of 2023
in C.S.No.104 of 2022

05.06.2023