

KARN020006882021



Presented on : 17-08-2021  
Registered on : 17-08-2021  
Decided on : --  
Duration : --

**IN THE COURT OF**  
**ADDL. SENIOR CIVIL JUDGE & JMFC.,**  
**AT RAMANAGARA**

**Presided Over by Smt.Anupama Lakshmi.B., B.A., LL.B.,**  
**Addl. Senior Civil Judge & JMFC.,**  
**Ramanagara.**

**O.S. No.270/2021**

**DATED : THIS THE 24<sup>th</sup> DAY OF FEBRUARY 2022**

**Plaintiffs** : Sri.Seethalakshmana Hanumantha  
Samithi Sri.Kodandarama Temple  
Private Family Trust and Other

**-V/s-**

**Defendants** : Sri.Kodandarama Seva Samithi Trust (R)  
& Others

**Applicants** : Sri.Kodandarama Seva Samithi Trust (R)  
& Others -- (Defendants)

**-V/s-**

**Opponent** : Sri.Seethalakshmana Hanumantha  
Samithi Sri.Kodandarama Temple  
Private Family Trust and Other -- (Plaintiffs)

**Orders on IA filed under Oder VII Rule 11(c) & (d) read  
with Section 151 of CPC.,**

The applicants/defendants No.1 to 9 filed the application to reject the plaint on the ground that there is no jurisdiction and also suit is barred by law.

2. The Secretary of the defendant No.1 trust has sworn to an affidavit annexed to the said application and prayed to read the written statement as part and parcel of the affidavit and submitted that, the alleged trust relied upon by the plaintiffs is an unregistered one and the same is created by the plaintiffs to suit their convenience and to grab the suit schedule properties.

As per Section 17 of the Registration Act-1908, the registration of trust is necessary. That the trust deed relied upon by the plaintiffs is an un-registered one under which the plaintiffs have claimed movable and immovable properties. Therefore, the suit is not maintainable.

Moreover, the Court has no jurisdiction to entertain the suit. Hence, the application.

3. The opponents/defendants No.1 to 9 filed statement of objections stating that, the application is filed to drag on the matter. The Order VII Rule 11 of CPC., will be invoked, when there is no cause of action and the relief sought is not maintainable. That trust deed relied upon by the plaintiffs is registered one. Therefore, the opponents have prayed for dismissal of the application with exemplary the costs.

4. Heard.

5. The following points arise for my consideration.

1. Whether the application deserves to be allowed ?
2. What order?

6. My answer to the above points is as under:

**Point No.1** : In the Negative

**Point No.2** : As per the final order for the following:

### **REASONS**

7. **Point No.1**: The plaintiffs have instituted the suit for declaration that, the plaintiffs and their joint family members are the absolute owners in possession of the “A” to “C” and “E” schedule properties and for further declaration

that, the registered public trust namely Sri.Kodandarama Seva Samithi Trust-the defendant No.1 registered on 05-01-2008 and its trustees the defendants No.2 to 10 have no manner of right or interest over “A” to “E” schedule properties and also to collect any rents or other type of income derived from the schedule properties and for declaration that, the plaintiffs are the absolute owners of “D” and “F” schedule properties and to direct the defendants No.1 to 10 to hand over the constructive possession of the “D” and “F” schedule properties and for further declaration that, the defendants No.1 to 10 are responsible for returning the advance received from the tenants the defendants No.11 to 24 in the “D” and “F” schedule properties and for permanent injunction and for mesne profits.

According to the applicants, the suit is not maintainable for want of registration of trust deed. Apart from that, this Court has no jurisdiction to entertain the suit. The plaintiffs have produced certified copies of registered trust deed

dated:30-10-1967 and also certified copy of registered trust revocation deed dated:20-05-1970. According to the plaintiffs, the plaintiff No.1 trust is a private trust. The plaintiff No.1 trust belongs to the joint family of the plaintiffs No.2 to 7. The defendants No.2 to 10 have created public trust-the defendant No.1, registered it before the Sub-Registrar, Ramanagara as per registered trust deed dated:05-01-2008.

That the defendants No.2 to 10 had created the Public Charitable Trust on their own and not created in respect of any of the suit schedule properties. Under the said trust, the trust property is worth only Rs.9,000/-, which was contributed by the defendants No.2 to 10 at the rate of Rs.1,000/- each.

8. The plaintiffs have produced certified copies of trust deed dated:30-09-1967, trust revocation deed dated:20-05-1970, photographs, RTC extracts, amended plaint, compromise petition and order sheet in OS.No.251/2007,

copy of registered trust deed dated:05-01-2008, complaint, acknowledgment and affidavit of priest.

9. It is well settled principle of law that for rejection of plaint, the Court has to consider only the plaint averments. As per the plaint averments if suit is barred by any law and if Court has no jurisdiction then the plaint is liable to be rejected. In the present case, as per the plaint, the defendant No.1 is a registered public trust but, claim of the plaintiffs is that, the suit schedule properties belonged to the joint family to the plaintiffs. A perusal of the trust deed dated:05-01-2008 under which the defendant No.1 trust is created does not reveal the property in respect of which the trust is created. However, the RTC extracts standing in the name of the defendant No.1 shows that, land bearing Sy.No.58/1 measuring 1 acre 35 guntas stands in the name of Gurulingappa.B.R S/o Revanna Shastry for the year 2007-2008. The RTC extract for the year 2008-2009 pertaining Sy.No.58 shows that, the defendant No.1 has

been in possession of 1 acre 35 guntas in the said survey number.

As per section 92 of CPC Public charities: (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the <sup>2</sup> [leave of the Court], may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree:

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- d) directing accounts and inquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), 4 [or by any corresponding law in force in 5 [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely :

(a) where the original purposes of the trust, in whole or in part, (i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

- (d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or
- (e) where the original purposes, in whole or in part, have, since they were laid down,
  - (i) been adequately provided for by other means, or
  - (ii) ceased, as being useless or harmful to the community, of
  - (iii) ceased to be, in law, charitable, or
  - (iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

10. As per Section 92 of CPC., it is the Principal Court of original jurisdiction, which has jurisdiction to try the suit in respect of public trust in respect of the relief detailed in Section 92 of CPC. In the present case, the plaintiff No.1 is a private trust. Though, the defendant No.1 is a public trust, the plaintiffs are contending that, the suit schedule properties are the properties belonging to the plaintiffs and the defendants have no manner of right over the said properties. Such being the case, when the plaint does not disclose that the suit is barred by any law, this

Court is of the view that, the suit is maintainable before this Court. Hence, I answer **Point No.1 in the Negative**.

12. **Point No.2:** For the reasons stated above, I proceed to pass the following:

**ORDER**

IA filed by the applicants/defendants No.1 to 9 under Order VII Rule 11(c) and (d) read with Section 151 of CPC., is rejected.

*(Dictated to the Stenographer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the **24<sup>th</sup> day of February 2022.**)*

Dictated on : 24-02-2022  
Transcribed on : 24-02-2022  
Checked on : 24-02-2022  
Signed on : 24-02-2022

**(SMT.ANUPAMA LAKSHMI.B)**  
**Addl. Senior Civil Judge & JMFC.,**  
**Ramanagara.**