

BEFORE THE ADDITIONAL MASTER IV,
HIGH COURT, MADRAS
C.S.No.104 OF 2022

Date: 06.03.2024

Time : 11.20 A.M.

Name : Mr. John Venkatesan (PW1)

Cross examination by Mr. P.T. Perumal, the counsel for the defendants 3 to 5, 9 & 10.

Solemnly affirmed:

Q58: (Ex.P11, Trust Deed is shown to the witness) In page no.8 clause 8 it is stated that it is Public Charitable and Religious Trust. Is it correct?

A: Yes.

Q59: You have also obtained exemption from Income tax department stating that it is a Public Charitable and Religious Trust. Is it correct?

A: Yes.

Q60: Is it correct that every year you are filing the income tax returns of the plaintiff trust before the Income tax department?

A: Yes.

Q61: While filing Income tax returns, are you enclosing the minutes of the Board meetings?

A: No.

Q62: Have you filed at any time to till date any copy of the minutes of the meeting or resolution filed before the Income tax department?

A: I have submitted only the accounts nothing else.

Q63: Since you are the president of the trust, you need not file all those

minutes. Is it correct?

A: I did not file, since it was not required.

Q64: (Ex.P2 , Sale agreement dated 07.05.2018 is shown to the witness)
Have you taken the signature of your wife as one of the purchaser in Ex.P2, Sale Agreement?

A: Wife's signature not obtained. Power is solely vested in me alone as the President.

Q65: So you are under the strong opinion in respect of schedule properties, all decisions can be taken and executed only by you on behalf of the trust. Is it correct?

A: Yes.

Q66: (Ex.P11, Trust Deed is shown to the witness) In clause 18 in Ex.P11 , in 18 (1) under the power of the President it is stated that you can 1) execute and encash Cheques and bills.

A: Yes.

Q67: (Ex.P11, Trust Deed is shown to the witness) In the very same paragraph it is stated you can initiate all suits and legal proceedings on behalf of the trust and you can sign pleadings. Is it correct?

A: Yes.

Q68: There are 5 sub clauses under clause 18, whether in any of the clauses it is stated that you have powers to execute any sale agreement on behalf of the Plaintiff's trust and to purchase any property.

A: No.

Q69: Have you executed any resolution to purchase the schedule property

at any point of time?

A: No. As a President I had the Power to purchase the property. Witness adds: Clause 6 (d) All assets that may be purchased or acquired from out of the said funds and assets.

Q70: According to clause 6(d) you believe that you have the absolute power to purchase properties. Is it correct?

A: Yes.

Q71: I put it to you that you are wrong, this does not give any power to you alone, it only says properties can be purchased out of the Trust funds.

A: I deny.

Q72: (Ex.P11, Trust Deed is shown to the witness) Clause 16 describes the power of Board of Trustees, is it correct?

A: Yes. There is no Board of Trustees, so there is no need.

Q73: (Ex.P11, Trust Deed is shown to the witness) In Ex.P11 Clause 16 (1) says "To purchase or acquire by lease or in any other manner any movable and immovable property of any kind considered by the trustees to be useful for the objects of the trust". According to this clause 16 (1), the decision to buy any property useful for the trust must be decided by the Board of Trustees. Is it correct?

A: Yes, at the same time if there is a Board of Trustees. Since there is no Board of Trustees a resolution is not necessary.

Q74: (Ex.P11, Trust Deed is shown to the witness) In Ex.P11 Clause 25 says "Any resolution in writing signed by all the Trustees shall be binding on the Board as though as it has been passed at a meeting of the Board of Trustees". According to clause 25, there must be a Board of Trustees, it must be functioning full time and required resolution have to be passed, such resolution must be in writing and it must be signed by all the trustees. Is it correct?

A: Yes. Board of trustees will come into picture only if the President thinks it requires.

Q75: (Ex.P11, Trust Deed is shown to the witness) In Ex.P11 Clause 10 says “ Author and President hereby appoints MRS. CHANDRA JOHN as trustee of the trust and shall hold office for life. The first trustees and office bearers shall be as follows:

i) MR. JOHN VENKATESAN : Founder and President

ii) MRS. CHANDRA JOHN : Trustee.

A: Yes.

Q76: Still your wife Mrs. Chandra John is remaining a trustee. Is it correct?

A: Yes.

Q77: Did you inform your wife that you are going to purchase the schedule property by writing?

A: No.

Q78: Does she know what is going on subsequent to the date of signing the Sale agreement in respect of subject property till date?

A: She knows everything.

Q79: I put it to you that there is no resolution by the Board of Trustees to purchase the property, there was no written information to the Board of Trustees, there is no written consent received from the other Trustee and the only other trustee is not a signatory to the Ex.P2 Sale Agreement. Therefore the Sale Agreement Ex.P2 executed on behalf of the Trust is null and void and invalid according to law.

A: I deny.

Q80: I put it to you that in law this defective Ex.P2, Sale Agreement is not executable and not legally enforceable against the defendants claiming

specific performance.

A: I deny.

Q81: (Plaint is shown to the witness) Whether you have stated in the plaint that this suit is filed on behalf of the plaintiff Trust, since you are authorized to file it by Board Resolution?

A: No.

Q82: Whether you have stated anywhere in the plaint that there are 2 trustees in the plaintiff trust and both have decided to purchase the suit schedule property?

A: No.

Q83: (Plaint is shown to the witness) Please go through list of documents in page no.16 in the plaint. Whether you have stated about the trust deed of the plaintiff trust, Board resolution to purchase the property, Board resolution authorizing you to file this specific performance suit or whether you have enclosed any of these documents along with plaint? (The learned counsel for the plaintiff has raised objection)

A: No.

Q84: I put it to you that no suit can be numbered without trust Deed without originals of the Board resolution particularly a resolution authorizing one of the Trustees to file the suit therefore the numbering of the suit itself is defective and the plaint ought to have been rejected in limine.(The learned counsel for the plaintiff has objected that these grounds was not raised in the petition for rejection of the plaint)

A: I deny.

Q85: Have you stated any where in the plaint that there are 2 trustees, yourself and your wife, and you are the President and you are only entitled to file the suit and your wife knows everything in respect of this litigations.

A: No, no need for that.

Time: 12.20 P.M.

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be true and correct and signed before me.

ADDITIONAL MASTER-IV