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C.A.No. 8029-8030 OF 2001

ITEM No.108

Court No. 9

SECTION XII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal Nos. 8029-8030 of 2001

N.S. SIVAM & ORS.

Appellant (s)

VERSUS

R. DHANRAJ & ORS.

Respondent (s)

(With appln.(s) for amending the cause title and office report)

Date : 24/09/2003 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. K. Rajendra Chaudhary,Sr.Adv.  
Dr. R. Prakash,Adv.

For Respondent (s)Mr. K. Ramamoorthy,Sr.Adv.  
Mr. V. Prabhakar,Adv.  
Ms. Revathy Raghavan,Adv.

Mr. Rakesh K. Sharma,Adv.

Mr. S. Rajappa,Adv.

Mr. V. Ramasubramanian,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard the learned counsel for the parties from 11.15 a.m. to 11.55 a.m.

Application for amending the cause title is ordered.

The civil appeals are disposed of.

No costs.

[ T.I. Rajput ][ Shelly Sengupta ]  
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8029-8030 OF 2001

N.S. Sivam & Ors. ...Appellant(s)

Versus

R. Dhanraj & Ors. ...Respondent(s)

O R D E R

The appellants herein filed a Scheme Suit under Section 92 of the Code of Civil Procedure, 1908 for framing a scheme for the management and administration of the Trust and its properties.

In the said suit, the appellants sought leave. A learned Single Judge of the High Court, in the said suit, looking to the averments made in the plaint and the situation of the Trust properties, came to the conclusion that the Trust properties are not situate within the original territorial jurisdiction of the High Court at Madras. In that view, the learned Judge refused to grant leave and dismissed the suit. The appellants filed appeals before the Division Bench of the High Court challenging the said order of the learned Single Judge. The Division Bench of the High Court, while accepting the view expressed by the

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learned Single Judge, affirmed his finding as to the jurisdiction but also proceeded to record a finding on the basis of the documents filed by the appellants themselves that the Trust being a private Trust, a suit could not be entertained. Hence, these appeals by the plaintiffs. The learned senior counsel for the appellants contended that having regard to the plaint averments and taking note of the fact that a bank account of the Trust is operating at Madras and money of the Trust is deposited in the said account and as such part of the Trust properties being at Madras, both the learned Single Judge as well as the Division Bench of the High Court were wrong in refusing leave and recording a finding that no part of the Trust properties is situate within the original territorial jurisdiction of the High Court. He further contended that the Division Bench of the High Court committed serious error in recording a finding that the Trust was a private Trust without there being an issue and without there being any opportunity to the appellants to support their case by way of evidence. According to the learned counsel, this finding, therefore, cannot be sustained.

In opposition, the learned senior counsel representing the seventh respondent made submissions supporting the impugned order. According to him, the impugned order is perfectly justified. He added that the learned Single Judge as well as the Division Bench of the High Court were right in holding that no part of the Trust properties is situate within the original territorial jurisdiction of the High Court and as such the leave sought for by the appellants could not be granted. As regards the

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second finding recorded by the Division Bench of the High Court, the learned counsel tried to support it too on the ground that it is on the basis of the documents produced by the appellants themselves that the Division Bench of the High Court took the view that the Trust was a private Trust.

Having seen the plaint averments and having the benefit and advantage of the findings recorded by the learned Single Judge as well as by the Division Bench of the High Court that no part of the Trust properties is situate within the original territorial jurisdiction of the High Court, we find it difficult to disagree with the said finding recorded in the impugned order. As far as the second ground is concerned as to whether the Trust is a private Trust or a public Trust, we find force in the submission of the learned counsel for the appellants. The learned Single Judge did not decide on that question specifically. The Division Bench of the High Court could not have recorded a finding at that stage of consideration as to whether leave should or should not be granted. Such an issue is essential to be decided in the suit after it is raised in the suit based on the pleadings of the parties. In this view of the matter, the appeal has to be partly allowed. The impugned order, as far as the refusal to grant leave on the basis that the Trust properties fell outside the original territorial jurisdiction of the High Court, is upheld. The finding that the Trust was a private Trust, recorded by the Division Bench, is vacated and to that extent the impugned order stands modified.

In view of the submissions of the learned counsel for the parties, it shall be open to the app

ellants to file a suit in any one of the three districts where the Trust

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properties are situate, namely, Vallupuram, Tiruchirapalli and Virudhunagar districts, within a period of twelve weeks from today. When such a suit is filed, the respondents shall not raise the question as to the jurisdiction of the court in the afore-mentioned three districts where the suit will be filed. The suit, being O.S. No. 264 of 1999, filed by the seventh respondent, pending in the court of the District Munsif, Aruppukottai, shall also be tried together by the same court along with the suit that may now be filed by the appellants, as stated above.

It would be open to the parties to seek appropriate interim orders in those suits.

At this stage, the learned counsel for the seventh respondent brought to our notice that the wife of the first appellant and wife and the son of the third respondent along with others have filed one more suit, being O.S. No. 261 of 2003, on the file of the District Munsif, Aruppukottai, and submitted that that suit may also be transferred to the court where the appellants will now file the suit. It shall be open to the seventh respondent to seek transfer of the said suit so that all disputes pertaining to the same Trust can be resolved by one court.

The civil appeals are disposed of, subject to what is stated above.

No costs.

.....J.

[SHIVARAJ V. PATIL]

.....J.

[D.M. DHARMADHIKARI]

New Delhi,

September 24, 2003.