

(2010) 11 MAD CK 0329

Madras High Court (Madurai Bench)

Case No: C.R.P (NPD) MD. No. 2275 of 2008

Sri Varamangai
Nachiyammal Trust

APPELLANT

Vs

NIL

RESPONDENT

Date of Decision: Nov. 3, 2010

Acts Referred:

- Trusts Act, 1882 - Section 34

Hon'ble Judges: R.S. Ramanatha, J

Bench: Single Bench

Advocate: J. Anandavalli, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Ramanatha, J.

Heard the learned Counsel appearing for the revision Petitioner.

2. Aggrieved by the order passed in the Trust O.P. No. 1 of 2008, on the file of the Principal District Judge, Madurai, in refusing to grant permission to the Petitioner to sell the schedule mentioned property, this Civil Revision Petition is filed.

3. The case of the Petitioner is that under a registered Trust Deed, dated 18.04.1927, Sri Varamangai Nachiarammal Trust, settled an extent of 3 acres 93 cents in S. No. 103/4, situate in Anaiyur Village, Madurai Taluk, for the purpose of doing charity namely to distribute Prasadam after offering the same to Sri Sundararaja Perumal of Alagarkoil, the Presiding deity of Alagarkoil, when he enters river Vaigai during the Tamil month Chitrai and also provided that out of the 3 acres and 93 cents, one acre of land can be sold by the Trust for constructing Mandapam for doing charity during those days and from out of the income from the remaining extent, the Dharmam as stated above should be performed. After meeting the expenses for

Dharmam, the balance can be utilized for maintaining the building that may be constructed later and also for the purchase of utensils for doing Dharmam.

4. As per Settlement Deed, one acre of land was sold and a land was purchased in Shenoy Nagar, Madurai, for doing Mandagapadi and as the temple authorities told that Mandagapadi cannot be performed in the property purchased at Shenoy Nagar, Madurai, that was sold and one acre of land was purchased in Puthupatti village, Madurai North Taluk and Mandagapadi is being performed as per the wishes for the said Lord in that property. It is stated that the remaining extent of 2 acres and 93 Cents in old R.S. No. 103/3, Current S. No. 3/4B2 is situate in 2nd bit, at Naiyur village, Madurai North Taluk and it has become fallow and no cultivating activities are going on and the neighbouring lands are converted into house sites and the buildings have come up and there was no income from the said land and the trustees are performing Mandagapadi from their own money for the past five years and every year, the expenses are raising due to escalation of prices and in these circumstances, the trustees found it difficult to fulfill the wishes of the Founder as per the Settlement Deed and therefore, approached the District Judge, Madurai, by filing Section 34 of the Trust Act, seeking permission of the Court to sell the land of an extent of 2.93 acres and the sale proceeds can be deposited in the nationalised Bank and from that income and interest income, the charity can be performed.

5. During trial, the Petitioners examined four witnesses to speak about the character of the land, which is lying fallow without any agricultural operation.

6. The learned District Judge refused to grant permission and dismissed the application holding that the expenses that may be incurred for performing of the charity, even according to the Petitioner, is only Rs. 8,000/-per year and even according to the Petitioner, one Cent of land can be sold for Rs. 20,000/-and therefore, considering the expenses that has to be incurred by the trustees, the entire extent of land is not necessary to be sold and the land value is escalating every year and no necessary averments were made regarding the income from the one acre of property purchased in Puthupatti and therefore, no valid reason was given. Aggrieved by the same, this Civil Revision Petition is filed.

7. Ms. J. Annandavalli, the learned Counsel appearing for the revision Petitioners submitted that it is proved by the Petitioners that no agricultural operations are being carried out in the petition mentioned property and the tenants, who originally cultivated the property, are originally given evidence to that effect and revenue records also prove the same and therefore, it is proved by the revision Petitioners that no income is forthcoming from the land for spending for charitable purpose as per the Settlement Deed and for the past five years, the trustees are spending money from their pocket and therefore, the petition filed by the revision Petitioners is bona fide and only for the purpose of performing the charities, they wanted to sell the same.

8. I have given my anxious consideration to the submission made by the learned Counsel appearing for the revision Petitioners.

9. u/s 34 of the Indian Trust Act, any trustee may apply to a principal Civil Court of original jurisdiction for its opinion, advise or direction on any present questions respecting the management or administration of the trust property. Therefore, for the proper administration of the Trust property, this Civil Revision Petition is filed by the trustees.

10. As rightly contended by the learned Counsel appearing for the revision Petitioners, it is seen from the evidence of PW1 to 4 and Ex.P4 and P8, the lands are lying fallow and no cultivating activities are carried on in that land. It is also stated by the witness that in and around the petition mentioned property, buildings have come up and therefore, the property cannot be used as agricultural property and it is a potential house site and therefore, it will fetch more value, if it is sold as a house site. It is also admitted that the property is situate within 6 Kms from Aarapalayam Bus Stand and 5 Kms from Madurai-Natham main Road and adjacent to 30 feet Kulamangalam road having access to Aanaiyur. This Court appointed an Advocate Commissioner to inspect the property and the learned Advocate Commissioner also submitted a report stating that no cultivation activities are carrying on in that land and he made enquiries with the cultivating tenants of that property and they also informed that there was no cultivation for the past five years. The learned Advocate Commissioner also stated in his report that the property cannot be utilised for cultivation and the adjacent properties are developed into house sites and according to the sale deeds, in respect of adjacent properties sold in the year 2008, the land value per square feet comes to Rs. 57/-and according to him, the market price is around Rs. 1,10,000/-per Cent. Therefore, it is seen from the report of the learned Advocate Commissioner and from the oral and documentary evidence that the land cannot be used for cultivation and no cultivating activities are being carried on in the adjacent lands and they are treated as house sites and the land is also potential house site. Therefore, considering the nature of the land now available, we will have to see whether the permission sought for by the revision Petitioners can be given or not.

11. It is stated by the revision Petitioner that every year, they are spending Rs. 8,000/-approximately for performing charity and even assuming that in course of years, due to escalation of price, the expenses may go upto 12,000/-per year in future. Therefore, to raise money of Rs. 12,000/-per year, a sum of Rs. 2,00,000/-can be deposited in a Nationalized Bank and from that interest, amount of Rs. 14,000/-per year can be received. The extent of land now sought to be sold is 2 acres and 92 cents and even as per the averments made in the petition, one Cent of land can be sold for Rs. 20,000/-and as per the Commissioner's report, the market value is Rs. 1,10,000/-per Cent and as per the guideline value, the market price of the land is Rs. 57/-per square feet. Therefore, as rightly held by the learned District Judge

that for the performance of the charity of the Trust, such an extent of land need not be sold and this expense can be met either from the income from the one acre of land purchased in Puthpatti. Admittedly, the revision Petitioners have not given the details of income that they are getting from one acre of land purchased in Puthupatti where they are performing Mandapadi.

12. The learned Counsel appearing for the revision Petitioners, Ms. J. Annandavalli, submitted that if a portion of the land is sold it may not fetch good market value and if the entire extent is sold it may fetch the good market value and only for that purpose, the entire land is sought to be sold. I am not able to accept the contention of the learned Counsel appearing for the revision Petitioners for the simple reason that considering the expenses to be incurred by the Trust for performing the charity, not more than 5 cents of property are to be sold and therefore, for that purchase the entire extent need not be sold as the land value will increase every year.

13. Further, as rightly held by the learned District Judge, the revision Petitioners have not given any details about the income from Puthupatti property and whether any portion of that land in Puthupatti was sold to meet the expenses to be incurred for the purpose of charity.

14. Further, in my opinion, the revision petition is bereft of details and if really the revision Petitioners wanted to make use of the property, they would have applied to the District Judge to invoke the doctrine of cypress by stating various projects for which the sale proceeds can be used and by applying principles of cypress the amount that may be made available from the sale of the entire property can be used for other related purpose, as per wishes of the said Lord. Therefore, I also concur with the view of the learned District Judge that for meeting the expense of Rs. 8,000/-or 10,000/-per year and for performing the charity, the entire extent of 2 acres and 93 Cents need not be sold and the revision Petitioners have also not stated the income received from the other properties and the possibility of selling some portions of that property for meeting the expense for performing the charities.

15. Hence, I do not find any merit to interfere with the order of lower Court and the Civil Revision Petition is dismissed. No costs.