

RAMESH AND ANOTHER
v
CHETTIAR

COURT OF APPEAL
AMARATUNGA, J. AND
WIMALACHANDRA, J.
C.A.L.A. 349/02
D.C. MATALE 2/002.MISC.
OCTOBER 3, 31/2003
JULY 20, AND
SEPTEMBER 2, 2004

Trusts Ordinance, sections 101 (1), 102, 104(1) (a)–(h), 102(1) and 102(2) – Locus standi – Action filed against trustee – Failure to comply with the provisions of section 102(3) – Is it fatal – Is it a condition precedent?

The plaintiff-petitioners instituted action against the defendant who was a trustee of a Kovil Trust. The District Court refused the application for an interim injunction. The plaintiff-petitioners sought leave to appeal against the said order.

The defendant-respondent contended that the plaintiffs have no status and/or *locus standi* to institute action as they have not complied with sections 102(1) and 102(3).

Held:

- (i) Section 101 applies to all types of charitable trusts and section 102 to religious trusts. The plaintiff's action is with regard to a religious trust and accordingly section 102 applies.

- (ii) It appears that the plaintiffs have not submitted the plaint, to the Government Agent before filing it, to obtain a certificate from the Government Agent – Section 102(3).
- (iii) The plaintiffs have no legal right or status to institute this action as they have failed to comply with section 102(3). It is a condition precedent to obtain the approval of the Government Agent concerned to file action in terms of section 102(3).

APPLICATION for leave to appeal from an order of the District Court of Matale.

Cases referred to:

1. *Kurukkal v Kurukkal* (1982) – 2 Sri LR 562 at 567
2. *Siththiravelu v Ramalingam and others* – 61 CLW 31
3. *Murugesh v Sellaiah* – 57 NLR 463

A.R. Surendran for plaintiff-petitioners.

S. Mandaleswaran for defendant-respondent.

Cur.adv.vult

October, 29 2004

WIMALACHANDRA, J.

This is an application for leave to appeal from the order of the District Judge of Matale dated 20.08.2002. When the matter was taken up for inquiry into the question of granting leave to appeal, the defendant-respondent (hereinafter referred to as the defendant) raised a preliminary question of law, in that, whether the plaintiffs-petitioners have the right to file action in terms of section 102(1) and/or 101(2) of the Trusts Ordinance, against the defendant, who is one of the lawful trustees of the temple. The facts as set out in the petition are briefly as follows:

The plaintiff-petitioners (hereinafter referred to as the plaintiffs) instituted an action in the District Court of Matale against the defendant who was a trustee of the Sri Kathiresan Kovil Trust. The said Sri Kathiresan Kovil Trust was created by deed No. 1889 dated 24.12.1964. This Trust specifically provides that the Nattukottai Nagarathars of Matale is the only sect of Tamils from whom a trustee can be appointed to the said Kovil Trust. The plaintiff's position is that the defendant does not belong to the Nattukottai

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Nagarathars sect as his mother was not from the Nattukottai Nagarathars sect. In this action the plaintiffs sought the removal of the trustee (defendant) on the following grounds:

- (i) the defendant has no legal status to act as the trustee of the said Trust.
- (ii) the defendant was wrongfully and unlawfully alienating movable and immovable properties belonging to the said Trust.
- (iii) the defendant was illegally misappropriating moneys belonging to the said Trust and he failed to keep any record of the transactions he carried out in respect of the Trust.

The plaintiffs also sought an interim injunction restraining the defendant from entering the office of the said Kovil and disposing the properties, both movable and immovable, belonging to the said Trust in terms of prayer (5) of the plaint.

When the matter was supported on 25.6.2002, the learned District Judge issued an enjoining order and notice of interim injunction. Thereafter the defendant filed a statement of objections, objecting to the grant of the interim injunction. Thereafter the Court fixed the matter for inquiry and after the inquiry, the learned Judge by his order dated 20.8.2002, refused the plaintiff's application for an interim injunction. It is against this order the present application for leave to appeal has been made by the plaintiffs.

When the matter was taken up before this Court for inquiry relating to the question of granting leave to appeal, the defendant raised a preliminary question of law that the plaintiffs have no status and/or *locus standi* to institute this action against the defendant in terms of the provisions of sections 101(1) and 102(3) of the Trusts Ordinance.

The learned Counsel for the defendant submitted that since the plaintiffs have not complied with the provisions of sections 102(1) and 102(3), they are not entitled to institute this action in the District Court.

It is apparent that the plaintiffs have not complied with the requirements of section 102(3), in that the two plaintiffs have not obtained the necessary report from the commissioner.

It is the position of the plaintiffs that the Court is not barred by sections 101 and 102 of the Trusts Ordinance and that the provisions of these sections would not preclude the plaintiffs from maintaining their action for the reason that the action is based on the ground that the defendant is not entitled to hold the office of trustee as he has not been properly appointed. Moreover, the plaintiffs allege that they have filed the action with a serious complaint of misappropriation and wrongful and illegal alienation of funds and properties belonging to the said Kovil Trust. 60

I cannot agree with the aforesaid submissions made by the learned counsel for the plaintiffs in his written submissions, as the aforesaid allegation made by the plaintiffs will have to be proved at the trial. At this stage the Court cannot act on mere allegations. In any event the question of law before Court is, whether the Court has the power to entertain the plaintiffs' action when it is apparent that the plaintiffs have failed to comply with the provisions of section 102(3) of the Trusts Ordinance. 70

It appears that section 101 of the Trusts Ordinance applies to all types of charitable trusts and section 102 to religious trusts. These sections provide the manner of bringing an action by the beneficiaries where there is a breach of trust, or for the dismissal of the trustee or demanding accounts etc. in a charitable trust (sec. 101) or in a religious trust (sec. 102). Admittedly, the plaintiffs' action is with regard to a religious trust, and accordingly section 102 applies.

Dr. L.J.M. Cooray in his book "The Reception in Ceylon of the English Trust" at page 172 has made the following observation. 80

"An action under 102 must according to sub section 3, be preceded by a petition presented to a specified administrative officer, who must appoint a commission to inquire into the subject matter of a person's complaints, and report that they call for the consideration of the court."

In the case of *Kurukkal v Kurukkal* ⁽¹⁾, Samarakoon, C.J. has made the following observations with regard to sections 101(1) and 102 of the Trusts Ordinance.

"Section 101(1) deals with all kinds of charitable trusts and empowers persons having an interest in the Trust to 90

institute an action in Court with the prior permission of the Attorney-General. Section 102 deals with religious Trusts and empowers two persons interested in the Trust to institute an action in Court provided they first obtain the necessary certificate from the Government Agent in terms of sec. 101(3). But for these provisions the two categories of persons mentioned in these sections would not have the legal status and right to institute such actions. Furthermore they have no right or power to institute actions as and when they please. They must first obtain the approval of the Government Officers mentioned.”

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In the case of *Siththiravelu v Ramalingam and others*(2) it was held that in an action instituted under section 102 of the Trusts Ordinance, where the certificate given by the Government Agent is not in terms of section 102(3), the court has no power to entertain the action. A decree, granted in an action which the Court has no power to entertain, is a nullity and is not a valid decree.

Section 102(3) of the Trusts Ordinance reads as follows:

“No action shall be entertained under this section unless the plaintiffs shall have previously presented a petition to the Government Agent of the Administrative District in which such place or establishment is situate praying for the appointment of a commissioner or commissioners to inquire into the subject-matter of the plaint, and unless the Government Agent shall have certified that an inquiry has been held in pursuance of the said petition, and that the commissioner or commissioners (or a majority of them) has reported-

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(a) that the subject-matter of the plaint is one that calls for the consideration of the court; and

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(b) either that it has not proved possible to bring about an amicable settlement of the question involved, or that the assistance of the Court is required for the purpose of giving effect to any amicable settlement that has been arrived at”.

In the instant case, the plaintiffs have not submitted the plaint, which was filed in Court, to the Government Agent before filing it, to obtain a certificate from the Government Agent.

It is apparent that the plaintiffs have not complied with the requirement of section 102(3) of the Trusts Ordinance. 130

The learned counsel for the plaintiffs relied on the case of *Murugesu v Sellaiah* (3). In my view the decision in that case is not helpful to the plaintiffs in the instant case. The learned counsel also submitted that sections 62 and 63 are applicable to charitable trusts and he relied on the illustration (B) to section 63 to prove his ground that one of the several beneficiaries can bring an action under section 62(a) of the Trusts Ordinance.

I regret that I cannot agree with the aforesaid submissions of the learned Counsel for the plaintiffs. In the aforesaid case of *Murugesu v Sellaiah (supra)* H.N.G. Fernando, A.J. (as then he was) at page 467 held, worshipers of a temple are entitled to avail themselves of the remedies provided for beneficiaries in Chapter X of the Trusts Ordinance. 140

Chapter X of the Trusts Ordinance deals with charitable trusts. Section 102 of Chapter X deals with actions by persons interested in religious trusts.

Furthermore, in the case of *Murugesu v Sellaiah (supra)* the action was instituted by the two plaintiffs in respect of a share in the temple land and not in respect of the management of the temple or for the removal of any trustee of the trust or in respect of the matters set out in sections 102(1)(a) to (j) of the Trusts Ordinance. The two plaintiffs in the case of *Murugesu v Sellaiah (supra)* had not filed the action as the beneficiaries of the temple concerned. This is borne out by what H.N.G. Fernando A. J. (as then he was) said at page 465; 150

“The two plaintiffs in this case, who claim to be the sons of one Vyramuttu Velupillai, sought a declaration of title to a half-share of a certain land situated at Polikandy.....”

In that case the question was whether Kandavanam purchased the property for himself, as alleged by the plaintiffs, or in trust for a religious charity, as alleged by the defendants. 160

In the instant case, it is to be observed that the substantive reliefs claimed by the plaintiffs attract section 102 (1)(a) to (h) of the Trusts Ordinance. Admittedly the said Sri Kathiresan Kovil Trust is a religious trust and the plaintiff's claim that they are worshipers of the Sri Kathiresan Kovil at Matale. The plaintiffs have filed this action against the defendants *inter-alia* for a declaration that the defendant is not the lawful trustee of the said Kovil and for the removal of the defendant from the office of the trustee.

In the circumstances the plaintiffs' action comes under chapter 170 X of the Trusts Ordinance. The plaintiffs have no legal right or status to institute this action as they have failed to comply with the provisions of section 102(3) of the Trusts Ordinance. It is a condition precedent to obtain the approval of the Government Agent concerned to file action in terms of section 102(3). The question of the validity of the appointment of the defendant as trustee is a matter to be decided at a later stage. In these circumstances the plaintiffs have no *locus standi* or *status* to institute this action against the defendant.

For these reasons the preliminary objection raised by the defendant 180 is upheld and the application for leave to appeal is refused. The respondent is entitled to recover the costs of this inquiry from the plaintiffs.

AMARATUNGA, J.

I agree

Application refused.