

IN THE COURT OF THE SENIOR CIVIL JUDGE AT SIRCILLA.

Friday, this the 03rd day of August, 2018.

PRESENT: SRI M.SRINIVAS, B.A.L.,LL.M.,
SENIOR CIVIL JUDGE,
SIRCILLA.

A.S.NO.01/2017.

Between:

D.Prabhakar Rao, S/o: surya Rao, Age: 73 years, R/o:
H.No.3-2-12, near Ralla Bavi, Shanthinagar Road, Sircilla
Town and Mandal of Rajanna Sircilla District.

....Appellant.

And

Gajabhinkari Narayana, S/o: Rajaiah, age: 58 years, Occ:
Business and Chairman of Avathar Mehr Baba Ashramam
Charitable Turst, Tettekunta village (Chandragiri Agraharam)
Vemulawada mandal, Karimnagar District R/o: H.No.5-6-93/1
Market Area, Gandhinagar, Sircilla town and mandal, Rajanna
Sircilla District.

...Respondent.

**ON APPEAL FROM THE JUDGMENT AND DECREE DATED:18-1-2017 IN O.S.NO.22 OF
2009 ON THE FILE OF THE JUNIOR CIVIL JUDGE AT VEMULAWADA.**

O.S.NO.22/2009.

Between:

Gajabhinkari Narayana, S/o: Rajaiah, age: 58 years, Occ:
Business and Chairman of Avathar Mehr Baba Ashramam
Charitable Trust Tettekunta village (Chandragiri Agraharam)
Vemulawada mandal, Karimnagar District R/o: H.No.5-6-93/1
Market Area, Gandhinagar, Sircilla town and mandal, Rajanna
Sircilla District.

...Plaintiff.

AND

D.Prabhakar Rao, S/o: surya Rao, Age: 73 years, R/o: H.No.3-2-12,
near Ralla Bavi, Shanthinagar Road, Sircilla Town and Mandal of
Rajanna Sircilla District.

...Defendant.

This Appeal suit is coming before me today for final hearing in the presence of Sri G.Prakashm, Advocate for the Appellant and of Sri.T.Laxman Rao Advocate for the Respondent, upon perusing the material papers on record, having been heard and stood over for consideration till this day, the Court delivered the following:-

:: J U D G M E N T ::

1) This Appeal is filed by the appellant/unsuccessful defendant challenging the decree and judgment dt: 18-1-2017 in O.S.No.22/2009 on

the file of Junior Civil Judge, Vemulawada for decreeing the suit in favour of the plaintiff for the reliefs of declaration and perpetual injunction. For the sake of convenience, the parties will be hereinafter in brief be referred as they were arrayed in the suit.

2) The plaintiff's case in brief is that, the plaintiff was the chairman of Avathar Mehra Baba Ashramam Charitable Trust, Tettekunta village (hereinafter in brief, for the convenient sake, be referred as "Trust") along with twenty permanent trustees including himself, got registered the trust through a document No.08/1999 dt:13-9-1999, in Sub Registrar Office, Sircilla and the objectives of trust are, to establish, run a Ashramam, community hall and accommodation to all the sections of public to have access and also to establish, run and aid free public reading rooms, libraries and free medical aid and accordingly they started construction of Ashramam including the temple in the year 2000 and completed it by the year 2004 and shifted their trust office to the Ashramam at Tettekunta village and upon their representation, government also allotted some land to the trust and when some disputes arose with regard to the temple and the land covered around it and when the revenue officials tried to interfere and alienate part of the land, the defendant joined with them for extending help in approaching the officials and Hon'ble High Court and with an assurance to get patta certificate from government and in that process, the plaintiff appointed the defendant as a chairman of Tettekunta Ashramam executive committee along with the (11) members on the auspicious day of 110th birthday of lord Meher Baba to lookafter the development activities of Ashramam, but the defendant joined with unsocial elements, caused hurdles in development of trust and filed suits and writ petitions, more particularly in O.S.No.87 of 2005 in the court of Junior Civil Judge, Sircilla against the plaintiff herein and Shiva Ravinder for perpetual injunction

wherein he also filed an I.A.No.193/2005 for temporary injunction to restrain them, however, the said I.A was dismissed on merits with an observation that the defendant was only appointed as chairman of executive committee to assist the plaintiff for development of the trust objectives.

3. Against the said dismissal order in I.A.No.193 of 2005, the defendant preferred a C.M.A No.02/2007 in this court which was also dismissed on 21/7/2005 and subsequently, the defendant not pressed the suit in O.S.No.87 of 2005 and accordingly it was also dismissed as not pressed. On 19-3-2017, the defendant tried to interfere into the affairs of the trust by way of conducting programmes independently in the capacity of chairman of trust, but it was resisted by the plaintiff and his well wishers, upon which the defendant threatened the plaintiff that he would come again with a strategic force to conduct programmes, so that the suit in O.S.No.22 of 2009 was filed in the court of Junior civil Judge, Vemulawada.

4. The gist of written statement filed by the defendants is that, on 21-3-2017, the endowment department registered Sri Avathar Meher Baba charitable trust, Tettekunta village Agraharam of Vemulawada mandal U/Sec.69 © (i) of A.P Charitable Act at serial No.8 and appointed one N.Srinivas as member of Hanuman temple Agrharam village as incharge member for Avathar Meher Baba charitable trust, Tettekunta village vide proceeding in R.C.No.B/313/2006 dt: 9-4-2007 issued by Assistant Commissioner, endowment Karimnagar directing to take responsibility of charitable trust along with the defendant and thereafter, it appointed the defendant, Assistant Commissioner and S.D.P.O., Sircilla as members of said committee for renovation of Avathar Meher Baba charitable trust, Tettekunta village, took several steps for development and the defendant also approached the Hon'ble High court for alienation of Ac.8-35 gts land

and the plaintiff being a mischievous man, caused loss to the trust by joining with the un-social elements and that the alleged trust deed possessed by the plaintiff discloses the trust is for Sircilla jurisdiction only and thus prayed for dismissal of the suit with costs.

5. Basing on the above pleading of both parties and on hearing for the learned counsels appearing for both parties, the trial court framed the following issues.

- 1) Whether the plaintiff can be declared as chairman of Sri.Avathar Meher Baba charitable trust?
- 2) Whether the defendant can be restrained from interfering into the trust activities by way of granting perpetual injunction?
- 3) Whether the court has jurisdiction to try the suit?
- 4) Whether the claim of the suit was already decided in I.A.No.193 of 2005 in O.S.No.87 of 2005?
- 5) To what relief?

6. To substantiate the case before the trial court, PW.1 was examined on behalf of plaintiff and Exs.A1 to A9 were marked. It appears from the record that though the chief examination affidavits of PWs.2 to 4 were also filed, but they were eschewed due to their non turning up for cross examination. In rebuttal, the defendant was examined as DW.1 and got marked Exs.B1 to B14.

7. Basing on the oral, documentary evidence and other material available on record, the trial court accepted the claim of plaintiff and decreed the suit declaring the plaintiff as chairman of Avathar Meher Baba charitable trust, Tettekunta village and also granted a perpetual injunction restraining the defendant and his henchmen etc., from interfering with the activities and affairs of plaintiff as chairman relating to the trust. Hence the present appeal is filed by the unsuccessful defendant.

8. In the grounds of appeal, the defendant/appellant averred that the trial Court acted erroneously in appreciating the Ex.A1/Trust deed which the plaintiff based on for filing the suit and that it was executed and registered in the office of Sub Registrar, Sircilla, whereas the trust and Ashramam are situated at Tettekunta village of Vemulawada, Mandal, so that the said document cannot be relied upon and that nowhere in Ex.A1 it is revealed that the plaintiff is chairman of Avathar Meher Baba charitable trust, Tettekunta village, as such the judgment and decree passed by the trial court is liable to be set aside. It is further averred in the grounds of appeal that, the Ex.B1/Trust deed document filed by the defendant could reveal that it is pertaining to the Avathar Meher Baba charitable trust, Tettekunta village and the same was not appreciated by the trial court in proper perspective and that the trial court also failed to consider the documents filed by the defendant. It is also averred in the grounds of appeal that the question of entertaining the jurisdiction by the trial court has not been properly discussed and decided, so that the judgment and decree in O.S.No.22 of 2009 are liable to be set aside.

9. The defendant/respondent herein filed his counter refuting the grounds of appeal and submitted that only to drag on the matter and to cause abnormal delay, the defendant filed the present appeal and that the I.A applications filed by the appellant in this appeal seeking orders for suspension of judgment and decree, were dismissed by this court and that after considering the facts and circumstances as well as the documents only the trial court passed a judgment and decree in his favour and as such, the same cannot be modified and that there are no grounds to consider the present appeal and that only for the purpose of causing obstructions and damage to the regular functions of the said trust, the appellant filed the present appeal and thus prayed for dismissal of appeal.

10. Now the substantive questions that arose for consideration in this appeal are as follows:-

- 1) Whether the trial court committed any error in appreciating the documentary evidence under Ex.A1 and Ex.B1 for the plaintiff in right perspective and documents on behalf of defendant as contended?
- 2) Whether the trial court has jurisdiction to try the suit as contended?
- 3) Whether the judgment and decree passed by the trial court dated:18-1-2017 in O.S.No.22 of 2009 is in accordance with law or warrants any interference?

11. Heard arguments by the learned counsels appearing for both parties and perused the entire material available on record.

POINT NO.1:

12) While opposing the judgment of trial court, the learned counsel for appellant/defendant vehemently argued that though the Ex.A1 did not contain any averments that the plaintiff is the chairman of said trust and though it was registered at sub registrar office, Sircilla and even though the Ashramam and trust are situated in Tettekunta village of Vemulawada mandal, the trial court relied upon the Ex.A1 and came to conclusion that the respondent/plaintiff is the chairman of Avathar Meher Baba charitable trust, Tettekunta village and that if at all the Exs.B1 to B14 filed by the appellant/defendant were considered, the defendant would have won the case. On keen perusal of Ex.A1 which is the original of trust deed at Avathar Meher Baba charitable trust, Tettekunta village, it is noticed that on 13-12-1999, it was registered in the Sub Registrar Office, Sircilla showing that the respondent/plaintiff as chairman and (19) other members, in total (20) members as trustees of Avathar Meher Baba charitable trust, Tettekunta village, commenced the activities of trust. Out of the (20) trust members, the appellant/defendant is not found. So

according to the Ex.A1, the respondent/plaintiff is the founder chairman of Avathar Meher Baba charitable trust, Tettekunta village and that with the remaining (19) trustees, he formed the permanent trust and commenced its activities and that the appellant/defendant is not at all a trust member initially when the trust was originally commenced and that he might have joined as a trust member subsequently. But no documents are found in the record to show that as to when the appellant/defendant joined as a member in the said trust.

13) The Ex.B1 which is relied upon by the appellant/defendant could disclose that it is the proceeding given by Commissioner, Endowment department, Andhra Pradesh Hyderabad dt:21-3-2007 for publication of Hindu religious and charitable trust U/Sec.69 (c) (i) of the Avathar Meher Baba charitable trust, Tettekunta village, Agraharam of Vemulawada mandal and nowhere in it, the appellant/defendant was either recognized or appointed as a chairman to the said trust. Though the Ex.B2 which is the proceeding issued by Assistant Commissioner Endowment shows the name of the appellant/defendant as a trust chairman, but it is crystal clear from its averments that, Sri.N.Srinivas, Manager of Hanuman temple Agrharam was appointed as in-charge supervising manager to supervise the trust construction works such as compound wall etc., with the help of defendant/appellant only.

14) It is also made clear from the averments of copy marking columns in Ex.B2 that the appellant/defendant was directed to hand over all the records pertaining to the trust to the said N.Srinivas manager. The remaining Exs.B3 to B14 are the communication letters pertains to trust affairs, interfering by others and for providing security as well as filing writ petitions filed by the appellant/defendant against the chairman and trust members etc... Nowhere in Exs.B1 to B14 filed by the appellant/defendant,

it is mentioned that he was appointed as chairman to Avathar Meher Baba charitable trust, Tettekunta village, except marking copies to him. It is a settled proposition of law that letters in communication between the temple trust and governmental departments or filing writ petitions in Hon'ble High Court by the appellant/defendant for the trust, as a person, does not automatically confer any right on him that he is a chairman or a trustee, unless and until he is specifically appointed by a registered document to that effect. As seen from the record, none of the Exs.B1 to B14 could contain the averments that through a particular numbered registered document, the appellant/defendant was appointed as a chairman of the trust. On the other hand, the Ex.A1 which is the original registered trust deed dt:13-12-1999, makes it crystal clear that the respondent/plaintiff is the founder chairman of Avathar Meher Baba charitable trust, Tettekunta village.

15) In addition to it, the defendant as DW.1 categorically admitted in his further cross examination in the suit as under:-

“I do not know whether the Avathar Meher Baba charitable trust, Tettekunta village, was established and registered at Tettekunta village. It is true, I was appointed as chairman of the development committee of trust at Tettekunta village by the PW.1 and trustees of the said trust. It is true, I am no way concerned with the said trust at Tettekunta village.

It is true, I am making law and order problems under the guise of three men committee chairman, as such my representation were rejected by the commissioner of endowments”.

The above said admissions of appellant/defendant as DW.1 in the said suit clinchingly prove that he is not at all the chairman of Avathar Meher Baba charitable trust, Tettekunta village and that he is no way concerned with it and that only for the purpose of development activities, the respondent/plaintiff and the other trustees being the chairman and

trustees, appointed the appellant/defendant as chairman of the development committee of trust at Tettkunta village, but not as the original chairman of the main trust.

16) The appellant/defendant specifically admitted as above in his cross examination as DW.1 that he is no way concerned with the said Avathar Meher Baba charitable trust, Tettekunta village and that he also created law and order problems under the guise of three men committee chairman, so that his representations were also rejected by the commissioner of endowment department. As per Sec.58 of the Indian Evidence Act, the admitted facts need not be proved. In the said manner, the appellant/defendant clearly admitted that he was only appointed as chairman for development committee and to lookafter the developmental activities of trust at Tettekunta village at the initial stage and that he was never be appointed as chairman of Avathar Meher Baba charitable trust, Tettekunta village.

17) It is further observed from the Ex.A2 which is the order in I.A.No.193 of 2005 in O.S.No.87 of 2005 filed by the appellant/defendant in the court of Junior Civil Judge, Sircilla that the respondent/plaintiff was only the chairman of Avathar Meher Baba charitable trust, Tettekunta village and that the appellant/defendant was only appointed as chairman by the executive committee with (11) members, to lookafter the arrangements and development activities and to assist the committee and development of trust and it was also observed in the said order that, the committee of the appellant/defendant is not participating in the developmental activities of the trust and that there was no prima facie case made out by him and accordingly, his interim injunction petition was also dismissed on merits. The appellant/defendant as DW.1 in the main suit in O.S.No.22 of 2009 also clearly admitted that he filed O.S.No.87 of 2005 on the file of Junior

Civil Judge, Sircilla against the PW.1 to restrain the PW.1 from interfering into the trust society activities and that in the said suit, he obtained interim injunction order against the PW.1 in I.A.No.192/2005 and he denied a suggestion that the said I.A was dismissed on merits. But as seen from the Ex.A2, the said I.A.No.192/2005 in O.S.No.87/2005 filed by appellant/defendant herein was dismissed on merits only and ultimately the suit was not pressed and the same is also evident from Ex.A3.

18) Further, the C.M.A No.2/2007 on the file of this court was also dismissed as not pressed. It is also apparent from the record under Ex.A4 that, against the dismissal of interim injunction order in I.A.No.193 of 2005, the appellant/defendant preferred C.M.A No.02/2007 and the same was also dismissed. In the same way, the recitals of Ex.A7 could also show that the appellant/defendant herein formed a self styled committee which was not recognized and that he is acting against the rules and the said committee is not valid, since he was taking decision without the knowledge of the manager, trust members and higher officials of the department. The another version of appellant/defendant as DW.1 in his cross examination is that, the endowment department appointed him as chairman to lookafter the administration of the said trust and that he also filed the order copies into court to that effect. As already discussed supra, nowhere in the documents filed by the appellant/defendant right from Exs.B1 to B14 it was mentioned that the endowment department appointed him as chairman to lookafter the administration of the said trust at Tettekunta village and that it was only mentioned in those documents, more particularly Ex.B1 that while appointing the manager of Hanuman temple at Agraharam it was directed to the appellant to handover all the trust records to the manager that itself does not mean that the endowment department appointed him as a chairman of the said trust.

19. It is apparent from the record that after registration of Avathar Meher Baba charitable trust, Tettekunta village at Sircilla by the respondent/plaintiff as chairman and (19) other trustees under Ex.A1 in the Sub Registrar office, Sircilla, all of them approached the District Collector, Karimnagar and upon their representation, an extent of Ac.8-35 gts land at Tettekunta village was assigned to the trust in the year 1999 itself and thereafter, the plaintiff and other trustees constructed mandir, started prayers in it and later, they took up the development activities at Tettekunta village and shifted the trust office into Tettukunta premises from Sircilla. The trial court invoked Sec. (1) of the Indian Trust Act which enables the chairman and trustees of a trust to acquire properties anywhere in India to accomplish the aims and objectives of the trust. Likewise, though initially Avathar Meher Baba charitable trust was registered at Sircilla, but by virtue of assigned land at Tettekunta village by the government, it acquired landed property of Ac.8-35 gts at Tettekunta village, constructed a Mandir in it and took up all the developmental activities and then shifted its office into the said premises at Tettekunta village, which is fully within the purview of the Sec.(1) of Indian Trust Act.

20. It is a common knowledge that though a particular temple or trust is situated at a particular place, but it can acquire properties anywhere in India and it can also receive the landed properties from the donors even from outside of its location also. For instance, even though the S.R.R temple Vemulawada is situated at Vemulawada town only, but its properties given by the donors are located at several other different places and the temple committee used to manage those properties. In view of the above discussion, it can be concluded that though the trust is situated at one place, but it can possess and manage movable or immovable properties at different places also, other than its location, in the light of Sec.(1) of

Indian Trust Act. On perusal of the pahani/Ex.A5 for the year 1990-2000, the name of Avathar Meher Baba charitable trust, Tettekunta village is mentioned as possessor and for the said trust, the original chairman is the respondent/plaintiff only. As seen from the record, the appellant/defendant did not file a single piece of document to show that the aforesaid either landed property or trust properties have been in his legal possession.

21. In view of the above detailed discussion in the forging paras and on close scrutiny of the evidence of both oral and documentary and basing on the other material available on record, this court is of the considered view that the trial court rightly considered the documents filed by the respondent/plaintiff and disbelieved the documents and contentions putforth by the defendant in right perspective and rightly declared the respondent/plaintiff as chairman of the Avathar Meher Baba charitable trust, Tettekunta village and the same is well within the legal purview. The point No.1 is answered accordingly against the appellant/defendant.

POINT NO.2:-

22. Admittedly, the disputed trust and its properties such as Ashramam and temple etc., are situated in Tettekunta village of Vemulawada mandal which is within the territorial jurisdiction of the court Junior civil Judge, Vemulawada. The contention of the appellant/defendant is that since the trust of respondent/plaintiff was originally established and registered with the sub registrar office, Sircilla, it has no jurisdiction to file the suit in Junior Civil Judge court, Vemulawada and the trust should restrict its jurisdiction to Sircilla only. As observed from the Sec.(1) of the Trust Act 1982, though the trust is registered and situated at one place, but it can possess, acquire its movable and immovable properties at different other places also, and whenever any disputes arose pertains to those properties

situated at different place other than the location of the trust, invariably the trust has to file suit only in the court where the property is situated.

23. As per the Sec.15 and 16 of C.P.C., every suit shall be instituted in the court of the lowest grade competent to try it and for the immovable property, the suit shall be instituted in a court within the local limits whose jurisdiction the property is situated. Even the explanation given U/Sec.16 of C.P.C. also discloses that, the property under this section means the property situated in India. In that context and when the plaintiff trust property is situated at Tettekunta village of Vemulawada mandal, obviously the suit for declaration and injunction should in variably be filed in the court of Junior Civil Judge, Vemulawada only, subject to pecuniary jurisdiction. Accordingly, since the Avathar Meher Baba charitable trust, Tettekunta village and its properties and Ashramam are situated in Tettekunta village only and since it is within the pecuniary jurisdiction of the court of Junior Civil Judge, Vemulawada, the respondent/plaintiff rightly filed the suit in O.S.No.22 of 2009 in the court of Junior Civil Judge, Vemulawada and there is no illegality in it. Moreover, as rightly decided by the trial court that as per Sec.9 of C.P.C, the Civil Court has jurisdiction to entertain all the civil nature excepting the suits of which their cognizance is either expressly or impliedly barred.

23. Though the appellant/defendant took a plea in the said suit that the court of Junior Civil Judge, Vemulawada has no jurisdiction to entertain the suit, but he has not filed any petition U/Order VII, Rule 11 (1) of CPC for rejection of plaint, on that ground. Therefore in view of the above discussion and on close scrutiny of the entire material available on record, this court is of the considered view that the trial court is vested with the jurisdiction to entertain the suit in O.S.No.22 of 2009. The point No.2 is answered accordingly against the appellant/defendant.

POINT NO.3:

24. In view of the conclusions and findings arrived at by this court on point Nos.1 and 2, this court is of the considered view that the findings recorded by the trial court are fully supported by oral and documentary evidence and this court is fully agreeing with the findings recorded by the trial court. There is no illegality or perversity in the judgment of the trial court, as such it does not require any interference.

25. **IN THE RESULT**, this appeal is dismissed by confirming the judgment of trial court in O.S.No.22 of 2009. There shall be no order as to costs.

Dictated to my dictation by the Stenographer, transcribed by him, corrected and pronounced by me in the open Court on this the 03rd day of August, 2018.

SENIOR CIVIL JUDGE,
SIRCILLA.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR APPELLANT:

FOR RESPONDENT.

---None---

EXHIBITS MARKED.

FOR APPELLANT:

FOR RESPONDENT.

---None---

SENIOR CIVIL JUDGE,
SIRCILLA.