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OSA No. 47 of 2019



Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07-09-2026

DATE OF DECISION : 23-09-2026

CORAM

**THE HONOURABLE MR JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE GK.MUTHUKUMAAR**

**OSA No. 47 of 2019
and
CMP No. 4873 of 2019**



Case QR

CNR:{HCMA010354512019}

1. D.Venkatesh
S/o. Late Dyapaiaha
No.209, D.G. Complex, Surya City
Iggalur Village, Attibele Hobli
Chandapura Post, Anekal Taluk
Bangalore District
2. Smt.Lavanya
W/o. D.Venkatesh
No.209, D.G.Complex, Surya City
Iggalur Village, Attibele Hobli
Chandapura Post, Anekal Taluk
Bangalore District
3. Diwakar Gowda
S/o. D.Venkatesh
No.209 D.G.Complex, Surya City
Iggalur Village, Attibele Hobli
Chandapura Post, Anekal Taluk
Bangalore District
4. Smt.Gopamma
W/o. Late Nanjappa
No.209, D.G. Complex, Surya City
Iggalur Village, Attibele Hobli
Chandapura Post, Anekal Taluk
Bangalore District



5. Manjunath
S/o. Late Nanjappa
No.209, D.G.Complex, Surya City
Iggalur Village, Attibele Hobli
Chandapura Post, Anekal Taluk
Bangalore District

6. Smt.Kalavathi
W/o.Srinivas, D/o.Late Nanjappa
Chokkarasanapalli Village
Kagganuru Post, Hosur Taluk
Krishnagiri District

7. Ramya
D/o. Late Nanjappa
No.209, D.G.Complex, Surya City
Iggalur Village, Attibele Hobli
Chandapura Post, Anekal Taluk
Bangalore District

8. Mrs.Bayyamma @ Bharathi
W/o. Dyapaiha,
Sonapanahalli Village
Kodainur Post, Malur Taluk
Kolar District

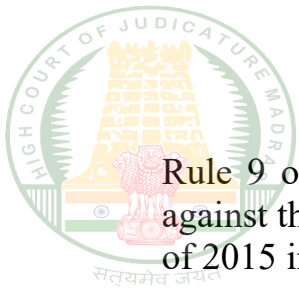
Appellants

Vs

1. M/s.Achievers Agri India Pvt.Ltd.,
Rep.by its Managing Director
S.Sivakumar
Registered Office at Subam Towers
Second Floor, Mayyannur Main Road
Near Five Road, Salem 636 004
2. The Official Liquidator as
Provisional Liquidator of
M/s. Achievers Agri India (P) Ltd.,
(In Liquidation) High Court, Chennai 600 104

Respondents

Memorandum of Grounds of Original Side Appeal under Order XXXVI,



Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent, against the fair and decretal order dated 29.01.2019 made in Com.Appln.No.986 of 2015 in C.P.No.54 of 2015.

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For Appellants: Mr.K.V.Subramanian
Senior Counsel for
Mr.Abdul Wahab M.A.

For Respondents: Mr.Gopalakrishnan
Official Liquidator for R2
R1 – (Company under Provisional
Liquidation)

JUDGMENT

P.Velmurugan J.

This original side appeal is directed against the fair and decretal order dated 29.01.2019 passed in Comp.A.No.986 of 2015 in C.P.No.54 of 2015.

2. The appellants filed the Comp.A.No.986 of 2015 praying to declare the order dated 21.04.2015 made in C.P.No.54 of 2015 as inapplicable insofar as the appellants' properties, namely, the School and the Land comprised in Khuski Survey No.160/1 measuring an extent of 1 Acre 26 Guntas out of 1 Acre 32 Guntas, another property bearing Khuski Survey No.153 measuring 8 Guntas and Tari of 13 Guntas in all 21 Guntas and another property bearing Tari Survey No.154/1 measuring 16 Guntas and another property bearing Tari Survey No.154/2 measuring 10 Guntas, totalling 2 Acres 33 Guntas, all the said lands situated at Iggalur Village, Attibele Hobli, Chandpura Post, Anekal Taluk, Bangalore District, State of Karnataka, as the same do not belong to the 1st



respondent and consequently hand over the possession of the properties back to the appellants, since they are the absolute owners of the aforesaid properties.

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3. The case of the appellants is that one Mr.S.Sivakumar, the Managing Director of M/s.Achievers Agri India Pvt. Ltd., claiming himself to be the forerunner in the field of developing education in Tamil Nadu, had approached the appellants with a proposal to start a school and the appellants also entered into a lease of the property for a period of 99 years for the purpose of running a school in the said lands in favour of M/s.Achievers Vidhya Kendra Foundation (in short 'the Kendra Foundation') and the said Kendra Foundation was jointly started by the appellants and Sivakumar. As per the lease deed, the Kendra Foundation has paid a sum of Rs.1,48,500/- towards full ground rent and deposited a sum of Rs.5,00,000/- towards lease advance amount and the school was constructed by utilising the funds of the appellants. Since the said Sivakumar had become indebted to various creditors and institutions and suffered severe financial crisis, the appellants, having invested huge sums of money in setting up the infrastructure to run the school, had decided to run the school at their costs since September, 2014 and subsequently, the said Sivakumar had initiated a winding up proceedings, showing as if the lease deed dated 01.07.2010 was executed in favour of M/s.Achievers Agri India Pvt. Ltd, in which a notice was issued and a provisional liquidator was also appointed to



deal with M/s.Achievers Agri India Pvt. Ltd. When the Official Liquidator came to take possession of the property, it came to light that M/s.Achievers Agri India Pvt. Ltd., had shown the properties of the appellants as properties of M/s.Achievers Agri India Pvt. Ltd. In fact, M/s.Achievers Agri India Pvt. Ltd., had indulged in EMU scam, in which the appellants themselves are victims. Since the properties were never leased out to M/s.Achievers Agri India Pvt. Ltd., the same cannot be taken over by the Provisional Liquidator and the act of the 2nd respondent in taking symbolic possession of the appellants' properties is highly untenable in law. On an earlier occasion, C.A.No.667 of 2015 was filed with the same prayer and due to miscommunication between the erstwhile counsel and the appellants, several facts were not disclosed in the said application and therefore, the application has been filed with adequate facts and it is also prayed for withdrawal of the earlier application.

4. The learned single Judge, while considering the Comp.A.No.986 of 2015 along with other connected applications, after hearing both sides, passed the following order:-

“According to the learned counsel for the applicants, an application in C.A.No.666 of 2015 was filed by the Official Liquidator, seeking permission to take possession of the School viz., Achievers International Academy situated at Surya City, Phase-I, Anekal Road, Chandapura,



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Bangalore-560 099 (now renamed as “D.American International School), situated at Surya City, Phase-I, Anekal Road, Chandapura, Bangalore, wherein on 26.08.2015, this Court had passed a detailed order, holding that the said school in Karnataka shall also be vested with the Official Liquidator. The relevant portion of the order dated 26.08.2015 is extracted hereunder:

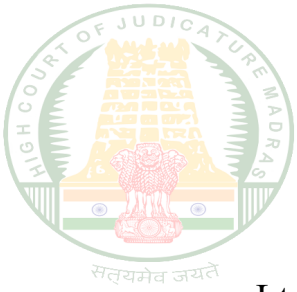
“5. Considering the facts and circumstances of the case and also considering the report filed by the learned Official Liquidator, this Court is inclined to pass the following order:

(i) The Official Liquidator is directed to take over the possession of the school viz., Achievers International Academy (now remaned as “D.American International School”) situated at Surya City, Phase-I, Anekal Road, Chandapura, Bangalore-560 099 during holiday;

(ii) The Commissioner of Police, Karnataka is directed to give police protection to the Official Liquidator at the time of taking possession of the said school;

(iii) The Commissioner of Police, Karnataka is further directed to monitor the sequence of events while taking possession of the said school; and

(iv) It is open to the Commissioner of Police, Karnataka to take photographs or videograph of the events wherever and whenever



it is necessary.”

5. The applicants state that M/s.Achievers Agri India (P) Ltd. and D.American International School are not one and the same and it is a different entity and it cannot, at any stretch of imagination, be brought under liquidation. It is further stated that a lease deed was entered into on 01.07.2010, wherein there is a specific mention about the Kendra Foundation, a company registered under Section 25 of the Companies Act, 1956.

6. Since this Court found that there is something fishy in the entire issue, the School was ordered to be handed over to the Official Liquidator. It is seen that even though the order of taking possession has been passed as early as in the year 2015, as on date, it does not vest with the Official Liquidator and it is being maintained by the very same Management, though symbolic possession has been given.

7. The case of the 1st respondent is that even though it has been stated by the applicants that they are going to withdraw Comp.A.No.667 of 2015, as on date, the said application is pending and no orders have been passed and repeated applications are being filed to defeat the rights of secured creditors and others. In reply to the above, learned counsel for the applicants would submit that in Paragraph No.13 of Comp.A.No.985 of 2015, it has been clearly stated that there was a collusion between some of the Directors and the erstwhile Advocate.

8. Admittedly, Comp.A.No.667 of 2015 has not yet been withdrawn and the question whether there is a collusion



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between some of the Directors and the erstwhile Advocate cannot be gone into in these applications and it is for the applicants to approach the appropriate forum to establish the case. From the pleadings before the Karnataka Court, it is clear that the entire property belongs to M/s.Achievers Agri India (P) Ltd. and the applicants cannot attempt to defeat the earlier order of this Court, by which there was an appointment of the provisional Official Liquidator and since the symbolic possession was given, it is the duty cast upon the applicants and other Directors of the Kendra Foundation to produce all the records before the Official Liquidator for the purpose of scrutinizing the records with regard to flow of money of the said company.

9. The issue, as to whether M/s.Achievers Agri India (P) Ltd., and D.American International School are one and the same, cannot be adjudicated in the present applications and it has to be elaborately addressed in the main C.P.No.54 of 2015. However, in order to safeguard the interest of parties, including the secured creditors, who are before this Court, this Court thinks it appropriate that the school, namely, Achievers International Academy (now renamed as “D.American International School) should be vested with the Official Liquidator, as there was an order as early as on 2015 itself.

10. Accordingly, these applications are closed with the following directions:

i) the Official Liquidator shall immediately take over the possession of Achievers International Academy, situated at Surya City, Phase-I, Anekal Road, Chandapura,



Bangalore-560 099 (now renamed as “D.American International School);

ii) the details of assets and liabilities shall be furnished to the Official Liquidator and also the details of properties acquired by the school, by the applicants, name of persons from whom they have acquired the properties, details of money and the passport details of Ex-Directors and the present Directors have got to be furnished to the Official Liquidator;

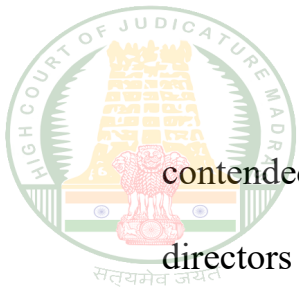
iii) the Passports of the Ex-Directors and the present Directors of M/s.Achievers Agri India (P) Ltd., and the Kendra Foundation shall be handed over to the Official Liquidator for custody and in case they want to go abroad, prior permission should be obtained from the Official Liquidator;

iv) they shall also intimate the place where they are going to travel and reside and furnish the complete address and the telephone number of that place to the Official Liquidator and without the orders of this Court, they should not leave this Country.

With the above observations and directions, these Applications are closed.”

5. Aggrieved thereby, the present original side appeal has been filed before this Court.

6. The learned Senior Counsel, by way of filing written submissions,



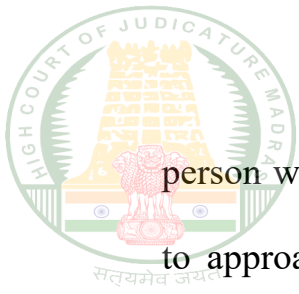
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contended that when the appellants are neither parties nor shareholders or directors and do not have any right whatsoever or any connection whatsoever so far as the management of the company under liquidation is concerned, an order affecting their right of ownership over the immovable property, which has been proved by the production of the partition deed as well as the admission of the 1st respondent, erstwhile Managing Director of the winding-up company, cannot be passed without notice to them. In such circumstances, the impugned order against the appellants is violative of the principles of natural justice and also Section 457(1)(c) of the Companies Act, 1956, as the said order directs the Official Liquidator to take over the Bangalore school/property claimed by the appellants. Even the documentary chain placed before this Court identifies the underlying owners of the property, the registered 99-year lease in favour of Achievers Vidhya Kendra Foundation (AVKF) and the Power of Attorney executed in favour of Achievers Agri India Pvt. Ltd., in relation to the project. However, if it is the case of the Official Liquidator that Achievers Agri India Pvt. Ltd. subsequently acquired an independent proprietary or leasehold interest in the said property, the specific legal instrument by which such interest was acquired must necessarily be identified and established, as mere financial involvement, managerial participation or association with the school or the educational project cannot, in law, by itself create or establish an independent right, title or interest in the underlying immovable property. There must be a



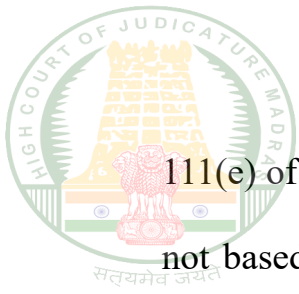
legally recognised instrument or transaction by which such proprietary or leasehold rights were transferred or created in favour of the company under liquidation. When there is no document, particularly a registered instrument, establishing that the ownership or the relevant leasehold interest in the land or the school building was ever transferred to or acquired by M/s. Achievers Agri India Pvt. Ltd., the mere fact that the school was operated or managed in connection with the said company cannot, by itself, convert the property into an asset of the company under liquidation. Therefore, there is a fundamental missing legal link between the property admittedly belonging to the appellants' family and the conclusion that the same constitutes an asset of the company under liquidation. Unless that link is established by a legally valid document and upon proper determination of the rights of the parties, the property cannot be brought within the liquidation estate merely on the basis of the company's association with the school or the project.

7. The learned Senior Counsel also contended that though the Company Court retains inherent jurisdiction under Rule 9 to pass appropriate orders in the interests of justice to prevent abuse of its process, however, an earlier interlocutory order does not, in appropriate circumstances, prevent the Court from reconsidering the matter at a later stage of the same litigation, especially when such an order prejudicially affects the independent proprietary rights of a



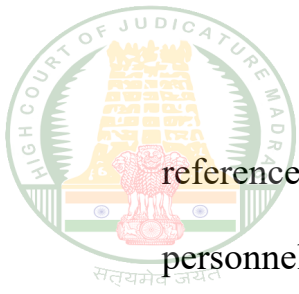
person who was not a party to the original proceedings, such person is entitled to approach the appellate Court for appropriate relief. Therefore, the present

appeal cannot be defeated merely on the ground that the appellants were not parties to the winding up proceedings, when the impugned order directly affects the appellants' independent rights over the schedule property. The appellants, being applicants in C.A.No.986 of 2015 whose asserted property rights were directly affected by the order under appeal, are persons aggrieved and without prejudice, if this Court considers formal leave necessary because of their status vis-à-vis the original C.P.No.54 of 2015, the appellants respectfully seek such leave in the present appeal. Further, the subject land is asserted by the appellants and other owners as their property through the registered lease deed dated 01.07.2010, which is the foundational transaction for the educational project. When the registered lease identifies M/s Achievers Vidhya Kendra Foundation as the lessee for the educational institution and not a registered lease in the name of M/s Achievers Agri India Pvt. Ltd., although the Power of Attorney has been executed for obtaining permission, licence and related approvals in connection with the AVKF educational project, followed by the registered surrender deed dated 23.11.2015 executed by AVKF surrendering and returning the property to the owners, the appellants were put in possession of not only the school building thereon, but also the land in which the construction had been made and thus the lease stands determined as per Section 106 read with Section



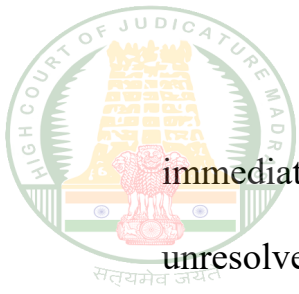
111(e) of the Transfer of Property Act. But the case of the Official Liquidator is not based on any document, much less any registered document regarding the transfer of title of the land or the building thereon and no such document has been produced. Therefore, under Section 5 read with Sections 105 and 106 of the Transfer of Property Act, there is no lease at all and no right over either the land or the school building attached thereto so as to form the asset of the company under liquidation. If the respondents seek to attribute AVKF's leasehold or property rights to Agri India, the legal and factual foundation for doing so must be established, as the common management, common personnel, common address or financial dealings are not themselves a conveyance or assignment. Moreover, the District Court at Bengaluru has also recorded that the association of Sivakumar with both Agri India and AVKF did not by itself establish the necessary connection, when the leasehold right of AVKF had been extinguished by the registered surrender and ultimately directed the release of the schedule property from attachment. However, the present appeal stands independently upon the registered property documents, separate corporate identity, statutory limits of liquidation custody, the evidence already on record and the reasoning of the impugned order.

8. Drawing our attention to the Official Liquidator's report dated 04.02.2016 and the later material filed in the appeal containing substantial



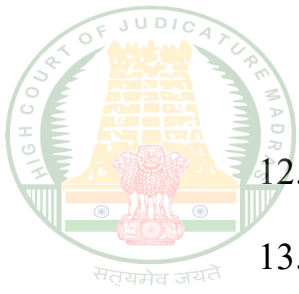
references to school management, alleged expenditure, possession, common personnel and the relationship between Agri India and AVKF, it was contended that those matters may justify investigation into the financial affairs of the company and they do not establish that the registered leasehold of AVKF became an asset of Agri India. The later OL objections cannot transform an unresolved property question into a completed title adjudication merely by repetition of the proposition that the school was an asset of Agri India, as the Court should test that proposition against the registered lease, the corporate identity of AVKF, the Power of Attorney and the surrender deed.

9. In view of the above, the learned Senior Counsel would finally submit that the registered lease identifies AVKF, a separate juristic entity, as the lessee; that the Power of Attorney explains authority to act and it does not convey title; that the alleged expenditure and management explain financial or operational association, but they do not, without a further legal instrument, create proprietary title; that the registered surrender was by AVKF; that if Agri India acquired a separate proprietary interest in the identified property, the instrument creating that interest must be identified; that the statutory liquidation machinery protects the property of the company in liquidation, but it does not enlarge the liquidation estate; that the impugned order itself records that the foundational identity issue could not be adjudicated in the Company Applications, yet directs



immediate possession of the very property whose legal character remained unresolved; that the later reports may furnish material for investigation, but they cannot substitute for the missing proprietary bridge. Hence, the impugned order insofar as it treats the subject Bangalore property/school as an asset of Agri India or directs the Official Liquidator to take possession on that footing, is unsustainable in law. The learned Senior Counsel also relied upon the following judgments in support of his contentions.

1. Ghanshyam v. Yogendra Rathi, (2023) 7 SCC 361
2. Prem Singh and others v. Birbal and others, (2006) 5 SCC 353
3. P.T.Chathu Chettiar v. Kariat Kunnummal Kanaran, 1983 SCC OnLine Ker 92
4. H.Anjanappa and others v. A.Prabhakar and others, 2025 SCC OnLine SC 183
5. National Conduits (P) Ltd v. S.S.Arora, (1967) 37 Comp Cas 786
6. Smt.Sukhrani (Dead) by Lrs & others v. Hari Shanker and others, (1979) 2 SCC 463
7. Smt.Jatan Kumar Golcha v. M/s Golcha Properties (P) Ltd. (in liquidation), (1970) 3 SCC 573
8. S.P.Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs, (1994) 1 SCC 1
9. Ningawwa v. Byrappa Shiddappa Hireknrabar and others, 1968 SCC OnLine SC 206
10. Balwant Rai Saluja and another v. Air India Limited and others, (2014) 9 SCC 407
11. Suraj Lamp and Industries Private Limited v. State of Haryana and another, (2012) 1 SCC 656



12. Bacha F.Guzdar v. Commissioner of Income Tax, (1954) 2 SCC 563

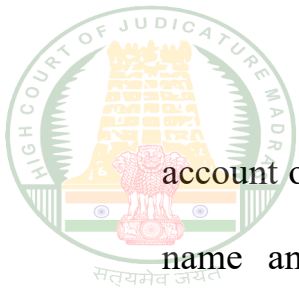
13. Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179

14. Rangammal v. Kuppuswami, (2011) 12 SCC 220

15. Union of India v. Vasavi Cooperative Housing Society Ltd., (2014) 2 SCC 269

16. Sita Ram Bhau Patil v. Ramchandra Nago Patil, (1977) 2 SCC 49

10. The Official Liquidator representing the 1st respondent company under liquidation, relying upon the report filed in the stay petition, would submit that in compliance with the winding up order, after taking symbolic possession of the Bengaluru school on 13.09.2015, a meeting was convened on 12.10.2015 with the ex-directors viz., 1. Shri.S.Sivakumar, 2. Shri.R.Madesh, 3. Shri.V. Padmanabha Soundappan, 4. Shri.R.Narayanappa and also Shri.D.Venkatesh, the first appellant along with his counsel, in which the first appellant informed that he had invested the entire money for construction planning and other approvals approximately to the tune of Rs.4,02,89,311/- and he produced a statement detailing such expenses. Whereas the ex-director Shri Sivakumar stated that the statement of expenses belong to another construction activity nearby and the ex-director disputed the statement of expenses. Further, the Assistant Official Liquidator who conducted the meeting requested Shri.Venkatesh to produce a statement that details transfer of funds from his personal account towards the bills having details such as the date of transaction,



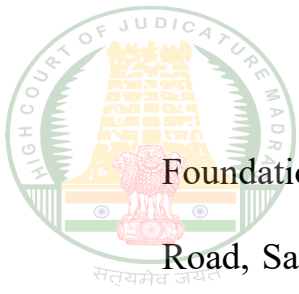
account origin (from which payment was made), beneficiary account number & name and corresponding bill/invoice details. In this regard, the Official

Liquidator relied upon a copy of the minutes of the meeting dated 12.10.2015 marked as Annexure-A. However, no such statement was produced by the appellant herein. He would further submit that in terms of the order dated 31.08.2016 in C.A.Nos.569 of 2016, 981 & 982 of 2015, 121 & 122 of 2016, 998 of 2015 and 984 to 986 of 2016, Shri Sivakumar, in the capacity of Ex-Managing Director of Achievers Agri India Pvt. Ltd., in the form of affidavit, stated that Achievers Vidya Kendra Foundation was created only for the purpose of running the School at Bengaluru and as per the trust deed Shri Venkatesh and Shri Manjunath were only non-active trustees and the school was run under the care and control of M/s.Achievers Agri India Pvt. Ltd., as marked in Annexure-B. The ex-director further stated in para 9 of the aforesaid affidavit that the appellants herein have filed a case, A.A.Case No.5001 of 2015 before the Hon'ble Sessions Judge at Anekal, Karnataka making the company under provisional liquidation as respondent, wherein it was stated that the company under provisional liquidation has established and running the educational institution on the scheduled properties under the name and style of 'Achievers International Academy' from the academic year 2012-13 [Classes from LKG to 7th Standard (ICSE Syllabus)] to academic year 2013-14, as marked in Annexure-C. Further, it is ascertained from the said affidavit that the school has



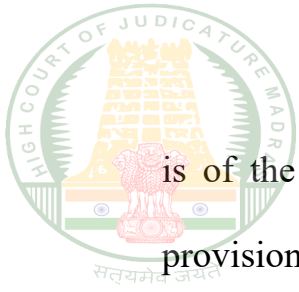
been run by the company under provisional liquidation upto the academic year 2013-14 and it is not possible to run the school without the buildings and superstructures and amenities. In view of the affidavit filed by the ex-director reflecting a true and fair view, the Official Liquidator is of the view that the school has been constructed by utilising the funds of the company under liquidation only. However, the Official Liquidator will file an application for appointment of a Chartered Accountant to ascertain all affairs of the company under liquidation in the interest of the body of creditors of the company under provisional liquidation so that if any asset not yet disclosed will also be identified and put for sale. As per the information provided by the ex-management of the company under provisional liquidation, they have formed Trust for each school, namely, Bless Charitable Trust for the school at Hosur, New Everest Educational Trust for the school at Dharmapuri and Achievers Vidya Kendra Foundation for the school at Bengaluru and Achievers Vidya Kendra Foundation was having control over the School at Bengaluru since 2012 upto 2014. It was also ascertained from the ex-management/ex-director that the entire controlling system of the school was with the ex-management of the company under provisional liquidation.

11. It was also pointed out that the registered office of Achievers Agri India Pvt. Ltd., (in provisional liquidation) and Achievers Vidya Kendra



Foundation are one and the same at 2nd Floor, Subham Towers, Meyyanur Road, Salem 636 004. As stated by Shri.Sivakumar in his affidavit (Annexure-

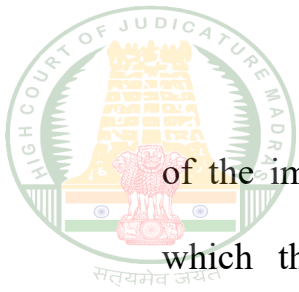
B), the Section 25 Company i.e., Achievers Vidya Kendra Foundation has been formed by utilising the funds of Achievers Agri India Pvt. Ltd., (in provisional liquidation) and the said Section 25 company formed for the purpose of running the school at Anekal, Bangaluru by utilising the funds of the company under provisional liquidation. As per the back papers of the affidavit of the present OSA, Achievers Vidhya Kendra Foundation was incorporated on 04.06.2010. As per the enclosures of the present OSA by the appellant herein, Shri.Narayanappa, Shri.Madesh and Shri.Sivakumar, who are ex-Directors of the company under provisional liquidation, were also the Directors of Achievers Vidhya Kendra Foundation (along with Shri D.Venkatesh (appellant herein) and Shri Manjunath) and they resigned their directorship from Achievers Vidhya Kendra Foundation vide their letter dated 25.02.2014, 20.04.2014 and 17.07.2014 respectively. However, the said fact has been denied by the Ex-director and they stated that the letters of resignation referred above are fabricated. As per the Master data of Ministry of Corporate Affairs, the status of Achievers Vidhya Kendra Foundation is Active with the Directorship of Shri D. Venkatesh and Shri Manjunath. As per the statement of the appellant herein, Achievers Vidya Kendra Foundation has surrendered the lease by a registered deed of surrender of lease dated 23.11.2015. The Official Liquidator



is of the view that in the absence of the ex-directors of the company under provisional liquidation, Shri.D.Venkatesh (the appellant herein) and Shri.Manjunath have surrendered the lease deed. Before the cancellation deed, they might have utilised optimum funds of the company under provisional liquidation to maintain the school in question; that the appellant herein had utilised the funds of company under provisional liquidation for maintaining the School in question and suppressing the fact and providing false information that the School in question belongs to him. Since the transaction with regard to the School in question have taken place prior to winding up of the company under provisional liquidation by the ex-management and the functions of the school and formation etc., was done by them and relevant documentary evidences are known to ex-directors of the company under provisional liquidation, they may be impleaded as parties in the interest of the body of the creditors of the company under provisional liquidation. In view of the foregoing, the Official Liquidator contended that the present OSA is not maintainable and hence prayed to dismiss the same.

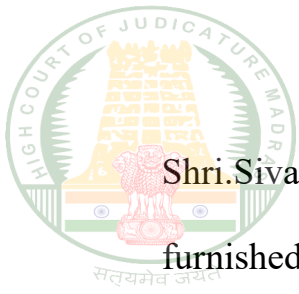
12. We have considered the submissions and perused the materials available on record.

13. The specific case of the appellants is that they are the absolute owners



of the immovable properties under the deed of partition dated 26.02.2007 in which the school building is situated and when there is no document, particularly a registered instrument, establishing that the ownership or the relevant leasehold interest in the land or the school building was ever transferred to or acquired by the company under provisional liquidation, the mere fact that the school was operated or managed in connection with the said company cannot, by itself, convert the property into an asset of the company under provisional liquidation. Therefore, the appellants filed the Comp.A.No.986 of 2015 seeking to declare the order dated 21.04.2015 made in C.P.No.54 of 2015 as inapplicable insofar as the appellants' properties, namely, the land and the school building and to handover the possession back to the appellants, as they do not belong to the company under provisional liquidation. However, the learned single Judge, without considering the material facts that the immovable properties are the exclusive properties of the appellants, taking note of the earlier order dated 26.08.2015, simply closed the application *inter alia* directing the Official Liquidator to take over possession of the Achievers International Academy (now renamed as D.American International School) situated at Bengaluru. Therefore, the impugned order is liable to be set aside.

14. The Official Liquidator representing the company under provisional liquidation has contended that as per the statement made by the ex-director



Shri.Sivakumar in the meeting held on 12.10.2015, the statement of expenditure furnished by the first appellant belongs to another construction activity nearby and since the ex-director disputed the said statement, the Assistant Official Liquidator requested Shri.Venkatesh (first appellant herein) to produce a statement detailing the transfer of funds from his personal account towards the bills specifying the date of transaction, account origin (from which payment was made), beneficiary account number with name and corresponding bill/invoice details. However, no such statement has been produced by the first appellant herein. When it is ascertained from the ex-management/ex-director that the entire controlling system of the school was with the ex-management of the company under provisional liquidation, the impugned order requires no interference.

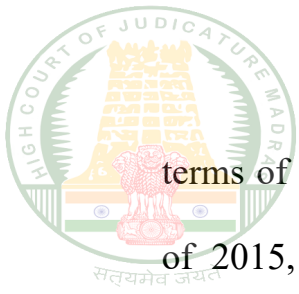
15. The core point for consideration in this appeal is as to whether the application filed by the appellants in Comp.A.No.986 of 2015 in C.P.No.54 of 2015 is maintainable to adjudicate the claim that the school and the land are the exclusive properties of the appellants.

16. Admittedly, pursuant to the order dated 21.04.2015 passed by the Company Court in C.P.No.54 of 2015 filed by the first respondent, the Official Liquidator attached to this Court was appointed as the Provisional Liquidator to



take charge of the assets of the first respondent company, namely, M/s Achievers Agri India Pvt. Ltd., having its registered office at Salem including the school, namely, Achievers International Academy (now renamed as D.American International School) functioning at Bengaluru. It is also admitted by the appellants that pursuant to the order passed by the Company Court in Comp.A.No.666 of 2015 in C.P.No.54 of 2015 directing the Official Liquidator to take over possession of the school at Bengaluru, the appellants filed the Comp.A.No.986 of 2015 seeking to declare the order dated 21.04.2015 passed in C.P.No.54 of 2015 as inapplicable insofar as the appellants' properties, namely, the school and the land situate at Bengaluru and to handover possession back to the appellants, claiming that the company under provisional liquidation and the D.American International School are not one and the same and they are separate entities. The learned single Judge, taking note of the earlier order appointing the provisional liquidator to take charge of the assets of the company and only symbolic possession was given in respect of the property/school at Bengaluru, and also considering that the points urged by the appellants can be adjudicated only in the main C.P.No.54 of 2015 and not in the company application, closed the application by issuing the directions (i) to (iv) as contained in paragraph 10 of the impugned order.

17. Moreover, the report filed by the Official Liquidator reveals that in



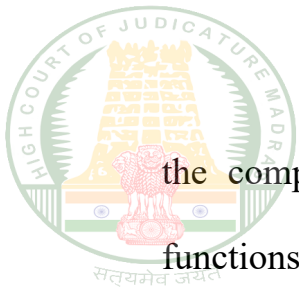
terms of the order dated 31.08.2016 made in C.A.Nos.569 of 2016, 981 & 982 of 2015, 121 & 122 of 2016, 998 of 2015 and 984 to 986 of 2016, Shri

Sivakumar, in the capacity of Ex-Managing Director of Achievers Agri India Pvt. Ltd., by way of an affidavit, stated that Achievers Vidya Kendra Foundation was created only for the purpose of running the school at Bengaluru and as per the trust deed Shri Venkatesh and Shri Manjunath were only non-active trustees and the school was run under the care and control of M/s.Achievers Agri India Pvt. Ltd. The ex-director further stated in para 9 of the aforesaid affidavit that the appellants herein have filed a case, A.A.Case No.5001 of 2015 before the Hon'ble Sessions Judge at Anekal, Karnataka making the company under provisional liquidation as respondent, wherein it was stated that the company under provisional liquidation has established and running the educational institution on the scheduled properties under the name and style of 'Achievers International Academy' from the academic year 2012-13 [Classes from LKG to 7th Standard (ICSE Syllabus)] to academic year 2013-14 and it is not possible to run the school without the buildings and superstructures and amenities. It was also ascertained from the ex-management/ex-director that the entire controlling system of the school was with the ex-management of the company under provisional liquidation. It was also pointed out that the Section 25 Company i.e., Achievers Vidya Kendra Foundation has been formed by utilising the funds of Achievers Agri India Pvt. Ltd., (in provisional liquidation) and the said Section



25 company was formed for the purpose of running the school at Anekal, Bangaluru by utilising the funds of the company under provisional liquidation.

The materials filed by the appellants show that Shri.Narayanappa, Shri.Madesh and Shri.Sivakumar, who are ex-Directors of the company under provisional liquidation, were also the Directors of Achievers Vidhya Kendra Foundation (along with Shri D.Venkatesh (first appellant herein) and Shri Manjunath (fifth appellant herein) and they resigned their directorship from Achievers Vidhya Kendra Foundation vide their letter dated 25.02.2014, 20.04.2014 and 17.07.2014, respectively. However, the said fact has been denied by the ex-director stating that the letters of resignation referred above are fabricated. Even the Master data of Ministry of Corporate Affairs shows the status of Achievers Vidhya Kendra Foundation is Active with the Directorship of Shri D.Venkatesh and Shri Manjunath. As per the statement of the appellant herein, Achievers Vidya Kendra Foundation has surrendered the lease by a registered deed of surrender of lease dated 23.11.2015. However, the Official Liquidator is of the view that in the absence of the ex-directors of the company under provisional liquidation, Shri.D.Venkatesh (the first appellant herein) and Shri.Manjunath have surrendered the lease deed and before the cancellation deed, they might have utilised optimum funds of the company under provisional liquidation to maintain the school in question. Since the transaction with regard to the School in question have taken place prior to winding up process initiated in respect of



the company under provisional liquidation by the ex-management and the functions of the school and formation etc., was done by them and relevant documentary evidences are known to the ex-directors of the company under provisional liquidation, the Official Liquidator sought to implead them as parties.

18. On a reading of the entire materials, this Court is of the view that the claim of the appellants can be adjudicated only if the appellants and the other Directors of Kendra Foundation produce all the records before the Official Liquidator for the purpose of scrutiny with regard to the flow of money of the said company together with the assets and liabilities as well the details of properties acquired by the school along with the names of persons from whom they have acquired the properties, source of money, to find out whether the company under provisional liquidation and D.American International School are separate entities and the subject properties are the exclusive properties of the appellants, which cannot be decided in the company application, as held by the learned single Judge. Equally the proposition of law laid down by the Hon'ble Supreme Court in the decisions cited by the learned Senior Counsel for the appellants are distinguishable to the facts and circumstances of the present case. Under these circumstances, finding no grounds whatsoever to interfere with the impugned order, this original side appeal is dismissed. However, the questions



of law raised by the learned Senior Counsel for the appellants and other facts regarding title are left open to be adjudicated before the Company Court in the main C.P.No.54 of 2015. Consequently, the interim order stands vacated and the connected CMP is also closed. Considering the facts and circumstances of the case, there shall be no order as to costs.

(P.VELMURUGAN, J.)

(GK.MUTHUKUMAAR, J.)

23-09-2026

Index: Yes/No

Speaking/Non-speaking order

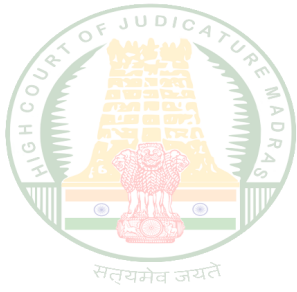
Internet: Yes

Neutral Citation: Yes/No

SS

To

1. The Sub Assistant Registrar (O.S.)
High Court, Madras
2. The Official Liquidator
As Provisional Liquidator of
M/s. Achievers Agri India (P) Ltd.,
(In Liquidation) High Court
Chennai 600 104



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OSA No. 47 of 2019



Order QR

**P.VELMURUGAN, J.
AND
GK.MUTHUKUMAAR, J.**

SS

**Judgment in OSA No. 47
of 2019**

23-09-2026