



CNR: KAHC010504952023

NC: 2026:KHC:36778
MFA No. 6631 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 6631 OF 2023 (CPC)

BETWEEN:

1. SRI RAMESH MOOLYA
S/O. GURUVAPPA
AGED ABOUT 59 YEARS
R/AT NO.1000, CHAITRA
HESARAGHATTA MAIN ROAD
HAVNNUR LAYOUT
NAGASANDRA POST
BANGALORE - 560 073.
2. SMT. DEVIKA
W/O. RAMESH MOOLYA
AGED ABOUT 55 YEARS
R/AT NO.1000, CHAITRA
HESSARAGHATTA MAIN ROAD
HAVNNUR LAYOUT
NAGASANDRA POST
BANGALORE - 560 073.

...APPELLANTS

(BY SRI ASHOK HARANAHALLI, SENIOR COUNSEL ALONG WITH
SRI ANOOP HARANAHALLI, ADVOCATE FOR
SRI YESHU BABA R. MISHRA, ADVOCATE)

AND:

1. SRI P. MANJAPPA
S/O. LATE POOVAPPA
AGED ABOUT 62 YEARS.
2. SMT. SUNITHA M.
W/O. P. MANJAPPA
AGED ABOUT 49 YEARS.



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3. SRI KEETHAN KUMAR M.
S/O. SRI P. MANJAPPA
AGED ABOUT 28 YEARS.

4. SRI VARUN KUMAR M.
S/O. SRI P. MANJAPPA
AGED ABOUT 25 YEARS.

RESPONDENT NO.1 TO 4 ARE
RESIDING AT SOUNDARYA
SOUNDARYANAGAR, SIDEDAHALLI
BAGALUKUNTE, NAGASANDRA POST
BANGALORE - 560 073.

5. NARAYANA SALYAN
C/O. P. MANJAPPA
AGED ABOUT 52 YEARS
NO.206, 'SOUNDARYA'
BEHIND DAGA ESTATES
NAGASANDRA POST
BAGALAGUNTA VILLAGE
YESHWANTHAPURA
BANGALORE - 560 073.

6. VASUDEVA BHATTA M
S/O. VITTALA BHATTA
AGED ABOUT 62 YEARS
RESIDING AT NO.283
7TH MAIN, 15TH CROSS
WILSON GARDEN
BANGALORE - 560 030.

7. SOUNDARYA EDUCATIONAL AND
CHARITABLE TRUST
PRESENTLY AMENDED AS
SOUNDARYA EDUCATION TRUST
A REGISTERED PUBLIC
CHARITABLE TRUST
HAVING ITS OFFICE AT NO.206
SOUNDARY BEHIND DAGA ESTAE



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NAGASANDRA POST
BAGALUKUNTE VILLAGE
YESHWANTHPUR HOBLI
BANGALORE - 560 073.

...RESPONDENTS

(BY SRI B.V. KRISHNA, ADVOCATE AND SRI PRASHANTH
CHANDRA S.N., ADVOCATE FOR R1 TO R4 AND R7;
R5 AND R6 SERVED - UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 104(1) OF CPC,
PRAYING TO SET ASIDE THE ORDER DATED 05.08.2023
PASSED IN MISC.NO.233/2021 BY THE PRINCIPAL CITY CIVIL
AND SESSIONS JUDGE, BENGALURU, DISMISSING THE
PETITION FILED UNDER SECTION 92 OF CPC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellants, who are
the petitioners before the trial Court, challenging the order
dated 05.08.2023 passed in Misc.No.233/2021 by the
Principal City Civil and Sessions Judge, Bengaluru (for
short, 'trial Court').

2. Parties shall be referred to as petitioners and
respondents as in miscellaneous petition, for the sake of
brevity.



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3. The petitioners instituted a petition under Section 92 of the Code of Civil Procedure, 1908 (for short, 'CPC') seeking leave of the trial Court to institute a suit on behalf of and for the benefit of all persons interested in respondent No.7-Trust. In the said petition, respondents Nos.1 to 6 were arrayed as the trustees of respondent No.7-Trust.

4. Brief facts of the case are as under:

The petitioners along with respondent Nos.1, 2, 5 and 6 are the authors of respondent No.7-Trust, which was constituted under a registered Trust Deed dated 29.10.1990. It is stated that respondent No.2 is the wife of respondent No.1 and respondent Nos.3 and 4 are their children. According to the petitioners, respondent Nos.3 and 4 were subsequently inducted as trustees by respondent Nos.1 and 2 and thereafter, the petitioners were removed from the trusteeship of respondent No.7-Trust. Therefore, the petitioners instituted the present



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petition under Section 92 of CPC seeking leave of the Court to institute the annexed suit. Along with the miscellaneous petition, they have also produced the plaint proposed to be instituted, wherein they have sought for the following reliefs:

- "A. Declaring that the amendment to the Deed of trust dated 29-10-1990 registered in the office of Sub-Registrar, Rajajinagar (Madanayakanahalli) as document No.68-2016-17 in Book-IV, stored in CD.No.MDLD209 on 02.02.2017 as null and void.*
- B. Remove Defendant No.1 as Managing trustee of the 7th Defendant trust.*
- C. Remove Defendant No.2 as trustee of the 7th Defendant trust.*
- D. Direct the Defendant No.1 to 4 to render accounts of the 7th Defendant trust to the Plaintiffs.*
- E. Grant permanent injunction restraining Defendant No.1 to 4 from interfering with management and other affairs of the 7th Defendant trust.*
- F. Appoint the 1st Plaintiff as the managing trustee of the 7th Defendant trust.*



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- G. Grant permanent injunction restraining the Defendant No.1 to 4 or any other persons claiming through or under them from acting as Chairman, Secretary, Managing trustee, treasurer or trustee of the 7th Defendant trust.*
- H. Grant such other reliefs as this Hon'ble court deems fit in the facts and circumstances of the case in the interest of Justice and Equity."*

4.1 The petitioners have specifically stated that respondent Nos.1 and 2 have ceased to be trustees of respondent No.7-Trust, as they had constituted another Trust and accepted trusteeship therein by virtue of an instrument of trust dated 10.06.1999. It is stated that respondent Nos.1 and 2 could not have simultaneously continued as trustees of the original Trust while constituting and accepting trusteeship in another Trust. According to the petitioners, there was no necessity for respondent Nos.1 and 2 to constitute another Trust or to accept trusteeship under the subsequent Trust constituted by the instrument of Trust dated 10.06.1999.



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4.2 It is stated that the actions of respondent Nos.1 and 2 in constituting another Trust are highly illegal, fraudulent, amount to cheating, misrepresentation, falsification of accounts, criminal breach of trust, criminal misappropriation and playing fraud upon the Court and the statutory Authorities, with a view to making wrongful gains by siphoning off the funds of respondent No.7-Trust and misappropriating the same. It is further stated that respondent Nos.1 and 2, in order to float a new Trust with a similar name, have attempted to use the names alternatively before various Authorities with impunity, with an intention of making financial gains by fudging the funds of respondent No.7-Trust and also by collecting money in the name of respondent No.7-Trust.

4.3 It is further stated that respondent Nos.1 to 4 have got respondent No.7-Trust amended on 02.02.2017 and registered in the office of the Sub-Registrar, Rajajinagar (Madanayakanahalli). By virtue of the said



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amendment, the name of respondent No.7-Trust was changed from 'Soundarya Educational and Charitable Trust' to 'Soundarya Educational Trust.'

4.4 It is further stated that several allegations have been made regarding misappropriation and fraud committed by respondent Nos.1 to 4 in the affairs of respondent No.7-Trust. It is also alleged that they have mismanaged the finances of the Trust to the detriment of the Trust as well as the interests of its beneficiaries.

4.5 It is further stated that they are hand in glove with certain Bank officials and others in misappropriating the funds of the Trust. It is further stated that respondent Nos.1 and 2 have not produced the proper books of accounts and financial records relating to the affairs of the Trust. It is further stated that they have not produced the Bank accounts, income tax returns or other financial statements of the Trust from the year 1999 till date.



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Therefore, it is alleged that they have committed serious fraud in relation to the affairs of respondent No.7–Trust.

4.6 It is further stated that respondent No.7–Trust is vested in the Board of Trustees as per Clause 18 of the Instrument of Trust dated 29.10.1990, which mandates that all decisions of the Board of Trustees shall be taken either unanimously or by a majority of the Board. It is further stated that the said mandate has not been complied with the true letter and spirit of the Trust Deed, thereby resulting in a clear violation of the Trust Deed and consequent mismanagement and misappropriation of the funds of respondent No.7–Trust by the respondents. In view of the several acts of misappropriation and mismanagement in the affairs of the Trust, the petitioners, who are the authors of the original Trust and trustees under the registered Trust Deed, on coming to know of the mismanagement and misappropriation of the funds by respondent Nos.1 to 4, instituted the proceedings.



4.7 It is their specific case that there has been clear mismanagement and misappropriation of the funds of the Trust, warranting the framing of a scheme and interference by the Court. Accordingly, the petitioners filed a petition under Section 92 of CPC before the trial Court seeking leave to institute the suit by producing a copy of the plaint, wherein detailed averments have been made regarding several acts of mismanagement, misappropriation of funds, the creation of a second Trust without the approval of the majority of the trustees and illegal removal of the petitioners and respondent Nos.5 and 6 from the Trust.

4.8 The prayers in the plaint are also required to be read in conjunction with the above averments, wherein the petitioners have, *inter alia*, sought a declaration that the amendment to the Trust Deed dated 29.10.1990, registered in the office of the Sub-Registrar, Rajajinagar (Madanayakanahalli), is null and void; removal of



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respondent No.1 as the Managing Trustee of respondent No.7–Trust; removal of respondent No.2 as a Trustee of respondent No.7–Trust; a direction to respondent Nos.1 to 4 to render accounts of respondent No.7–Trust to the petitioners; a decree of permanent injunction restraining respondent Nos.1 to 4 from interfering with the management and other affairs of respondent No.7–Trust; appointment of petitioner No.1 as the Managing Trustee of respondent No.7–Trust; a decree of permanent injunction restraining respondent Nos.1 to 4 or any other person claiming through or under them from acting as the Chairman, Secretary, Managing Trustee, Treasurer or Trustee of respondent No.7–Trust; and such other reliefs as this Court deems fit in the facts and circumstances of the case. These are some of the allegations of misappropriation, mismanagement and other irregularities levelled against the trustees of respondent No.7–Trust.



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5. The respondents herein appeared before the trial Court and filed their statement of objections to the miscellaneous petition, wherein respondent Nos.1, 2 and 3 stated that respondent Nos.1 and 2 have constituted another Trust, as respondent No.7–Trust was not carrying on any activities.

5.1 It is stated by the respondents that the petitioners never participated in any of the activities of the Trust. In view of the non-participation of the other trustees and with the *bona fide* intention of carrying on the charitable activities, respondent Nos.1 and 2 proceeded with the activities in the field of education without depending upon the other trustees, who, according to them, remained trustees only on paper and had made no contribution whatsoever to the affairs of the Trust. Therefore, respondent Nos.1 and 2 did not consider it prudent to continue the activities of the Trust with the



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other trustees, as they neither adhered to the spirit of the Trust nor participated in its activities.

5.2 It is also stated by the respondents that the petitioners remained in complete hibernation for nearly 32 years and all of a sudden, have questioned the activities of the Trust, despite not having participated in any of its internal affairs or in any of the litigations between the petitioners and the respondents during all these years.

5.3 It is also stated by the respondents that the allegations made by the petitioners regarding misappropriation of the funds are wholly baseless and are nothing but a figment of their imagination. According to the respondents, such allegations reflect a myopic view and a failure to appreciate the contributions made by respondent Nos.1 and 2 in establishing and successfully running a vast educational institution over the last several years. Therefore, it is stated that the petitioners are only attempting to reap the benefits of the hard work of



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respondent Nos.1 and 2, despite having made no contribution whatsoever to the affairs of the Trust.

5.4 It is also stated by the respondents that nothing prevented the petitioners from initiating appropriate proceedings at the earliest point of time. According to the respondents, the petitioners remained silent for more than three decades and have suddenly woken up to file the present petition seeking grant of leave by making false, baseless and unfounded allegations of misappropriation and other irregularities.

5.5 It is also stated by the respondents that the financial affairs of respondent Nos.1 and 2 and the educational institutions are duly audited and maintained by reputed Auditors and that the statutory returns are regularly filed every year. It is further stated that there are absolutely no financial irregularities and that mere allegations do not establish that any fraud has been



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committed by the respondents in relation to respondent No.7–Trust.

5.6 It is also stated by respondent Nos.1 to 4 that the allegations made by the petitioners are wholly devoid of merit, baseless and unsupported by any material on record. It is further stated that, having slept over the matter for more than three decades, the petitioners have suddenly woken up to file the present petition, which is devoid of merits and therefore, liable to be rejected.

5.7 It is also stated that the petition contains clear averments intended to vindicate the personal and private rights of the petitioners, which is not contemplated in a petition under Section 92 of CPC. According to the respondents, the petitioners cannot seek to vindicate their personal interests or vent their private grievances by instituting a scheme suit under Section 92 of CPC. On these grounds, they have sought dismissal of the petition.



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6. Based on the pleadings of the parties and after considering the submissions advanced on both sides, the trial Court came to the conclusion that the petitioners had failed to make out a case for grant of leave under Section 92 of CPC and accordingly, dismissed the petition. It is this order that is called in question by the petitioners before this Court.

7. It is the vehement contention of Sri Ashok Haranahalli, learned Senior Counsel appearing on behalf of the learned counsel - Sri Yesu Baba R. Mishra, for the appellants-petitioners that the impugned order passed by the trial Court is illegal, perverse, arbitrary and liable to be set aside. It is further contended that whenever the trustees of a Trust are of the opinion that there is mismanagement, fraudulent activity or misappropriation of the funds of the Trust, they are at liberty to file a petition under Section 92 of CPC before the trial Court seeking leave to institute a suit by producing the plaint along with



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the petition and seeking the necessary reliefs. It is contended that the petitioners have accordingly adopted the said course.

7.1 It is further contended that a Trust by name 'Soundarya Educational and Charitable Trust' was originally constituted under a registered Trust Deed dated 29.10.1990 and registered in the office of the Sub-Registrar, Rajajinagar (Madanayakanahalli), wherein the petitioners are the founder trustees. According to the petitioners, they subsequently came to know that respondent Nos.1 to 4 had caused the Trust Deed of respondent No.7-Trust to be amended on 02.02.2017 before the very same Sub-Registrar.

7.2 It is further contended that, contrary to the terms of the original Trust Deed, which required the unanimous consent of the trustees for carrying out any amendment, the amendment was illegally effected by removing the petitioners as trustees. It is further



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contended that the word "Charitable" was deleted from the name of the Trust, thereby changing its name from 'Soundarya Educational and Charitable Trust' to 'Soundarya Educational Trust', with the fraudulent intention of creating an impression that respondent No.7-Trust and the subsequent trust constituted under the instrument of Trust dated 10.06.1999 are one and the same. The very fact that the name of respondent No.7-Trust was changed to Soundarya Educational Trust demonstrates that the trust constituted by respondent Nos.1 and 2 under the instrument of Trust dated 10.06.1999 does not have any independent existence. Therefore, the petitioners instituted the petition under Section 92 of CPC seeking leave of the Court to institute a suit for several reliefs, including the removal of the trustees and the consequential reliefs arising out of the amended Trust Deed.



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7.3 It is contended that respondent Nos.1 and 2 are the only trustees of Soundarya Educational Trust, constituted under the instrument of trust dated 10.06.1999 and that the objects of the said Trust are verbatim identical to those of respondent No.7–Trust originally constituted, including its registered office address. It is further contended that the fraudulent motive of respondent Nos.1 and 2 is clearly evident from the fact that they constituted another Trust with a deceptively similar name, identical objects and the same registered office address, without any independent existence or operation of the said Trust, with the sole intention of usurping respondent No.7–Trust. Therefore, learned counsel contends that if the Trust constituted by respondent Nos.1 and 2 under the instrument of Trust dated 10.06.1999 was a genuine and independent Trust, there was no necessity for respondent Nos.1 and 2 to amend the Trust Deed of respondent No.7–Trust by changing its name so as to replicate the name of the Trust



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constituted under the instrument of Trust dated 10.06.1999.

7.4 It is further contended that respondent Nos.1 and 2 never functioned as trustees of the Trust constituted under the instrument of Trust dated 10.06.1999. It is further contended that not even a PAN card has been obtained for the said Trust, nor have any income tax returns been filed in its name. According to the learned Senior Counsel, the said Trust was created solely for the purpose of usurping the institution run by respondent No.7–Trust.

7.5 It is further contended that the Trust constituted under the instrument of Trust dated 10.06.1999 by respondent Nos.1 and 2, who had no authority to constitute a separate Trust, is illegal, void and fraudulent. It is vehemently contended that the very purpose of constituting the original Trust was to carry on several charitable and educational activities in accordance with the



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objects set out in the Trust Deed. The Trust was originally constituted in the name of Soundarya Educational and Charitable Trust, reflecting the intention of the authors to pursue charitable as well as other objects enumerated in the Trust Deed. However, respondent Nos.1 and 2 subsequently caused the Trust Deed of respondent No.7–Trust to be amended by deleting the word "Charitable" from its name, thereby altering the very identity and character of the original Trust. Contrary to the terms of the Trust Deed, respondent Nos.1 and 2, with the sole intention of enriching themselves and making wrongful gains from respondent No.7–Trust, not only fraudulently removed the petitioners as trustees but also inducted their own children, namely respondent Nos.3 and 4, as trustees of respondent No.7–Trust.

7.6 It is further contended that respondent Nos.1 and 2 have not acted in the public interest, for the benefit of the Trust, or in furtherance of the objects of respondent



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No.7–Trust. It is further contended that the actions of respondent Nos.1 and 2 in constituting a new Trust under the instrument of Trust dated 10.06.1999, removing the petitioners and respondent Nos.5 and 6 as trustees, are illegal, arbitrary and actuated by a clear intention to perpetrate fraud. According to the learned Senior Counsel, such acts amount to cheating, misrepresentation, playing fraud upon the other trustees, falsification of accounts, criminal breach of trust, criminal misappropriation and making wrongful gains at the cost of respondent No.7–Trust.

7.7 It is further contended that the very registration of the second Trust under the instrument of Trust dated 10.06.1999 clearly demonstrates that the intentions of respondent Nos.1 and 2 were not *bona fide*. Therefore, the petitioners invoked the provisions of Section 92 of CPC by filing a petition seeking leave to institute a suit and along with the petition, produced a plaint containing detailed



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allegations against the respondents and seeking the necessary reliefs, including the framing of a scheme for the proper administration of respondent No.7-Trust.

7.8 The learned Senior Counsel further contends that the trial Court dismissed the petition seeking grant of leave solely on the ground that the petitioners were seeking to vindicate their private rights and not any public rights as contemplated under Section 92 of CPC. Therefore, it was held that where the pleadings disclose that the petition is intended to vindicate the private rights of the parties rather than the public rights of a public charitable trust, a petition under Section 92 of CPC would not be maintainable. The trial Court also took note of the fact that, apart from the present petition, the petitioners had filed another petition seeking grant of leave in respect of the second Trust in Miscellaneous Petition No.235/2021. On that basis, the trial Court came to the conclusion that the petitioners had sought reliefs in two separate



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proceedings to assert their personal rights rather than to vindicate any public rights of a public charitable trust. Accordingly, the trial Court did not find favour with the case of the petitioners and dismissed the petition seeking grant of leave.

7.9 The learned Senior Counsel further contends that the trial Court has committed an illegality, perversity and a gross error in failing to properly appreciate the scope and ambit of Section 92 of CPC. It is further contended that whenever there are allegations of breach of an express or constructive trust created for public purpose, misappropriation of funds of the Trust, fraud, financial irregularities or other acts of mismanagement on the part of the trustees, any trustee or person having the requisite interest is entitled to invoke the provisions of Section 92 of CPC by seeking leave of the Court to institute a suit.

7.10 Learned Senior Counsel for petitioners has relied upon the following decisions in support of his case:-



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- "1. Swami Paramatmanand Saraswati and Another v/s Ramji Tripathi and Another reported in (1974) 2 Supreme Court Cases 695;
2. Judgment of this Court in the case of Manohar Balappa Mungari and Others v/s Shri. Revansiddeswar Siddarshram Committee and Others in MFA.No.102262/2014 decided on 07.08.2023;
3. Judgment of this Court in the case of Sri G.S.Sudharshan and Others v/s Grama Seva Sangha Trust Old Corporation and Others in MFA.No.8514/2023 decided on 02.09.2024."

7.11 It is further contended that an application seeking leave is required to be presented before the trial Court, which is required to consider the allegations made therein, the documents produced in support thereof and the plaint annexed to the application, if any. Upon being satisfied that a *prima facie* case is made out, the trial Court shall grant leave to institute the suit and thereafter, proceed in accordance with law. According to the learned Senior Counsel, the trial Court has failed to follow the settled procedure and has erroneously dismissed the



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application for grant of leave by entering into issues which ought to be considered only after the institution of the suit. Therefore, it is contended that the impugned order dismissing the petition seeking grant of leave is illegal, perverse and liable to be set aside.

8. *Per contra*, Sri B.V. Krishna, learned counsel for respondent Nos.1 to 4 and 7 vehemently contends that there is no illegality, perversity or arbitrariness in the impugned order passed by the trial Court and that the same does not call for interference by this Court. It is further contended that, in the present case, the petitioners have sought to invoke their personal and private rights and to vindicate their individual interests, rather than seeking to enforce any public cause for the benefit of the Trust. Therefore, it is contended that the question of granting leave under Section 92 of CPC for the purpose of vindication of private rights in respect of a public Trust does not arise.



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8.1 It is further contended that the trial Court was justified in dismissing the petition filed by the petitioners seeking grant of leave to institute the suit under Section 92 of CPC. Secondly, the learned counsel submits that there is absolutely no financial mismanagement or improper administration of the activities of respondent No.7–Trust. It is further contended that reputed Auditors have been appointed and day-to-day affairs and financial transactions of respondent No.7–Trust are being properly managed and audited.

8.2 It is further contended that the petitioners have never participated in the activities of the Trust. It is also contended that some of the other trustees did not participate in the affairs of the Trust. It is only the acting trustees who have been conducting the activities of the Trust by following the due process of law, without any violation of the terms and covenants of Trust Deed or its



objects and in compliance with all financial requirements, including the applicable banking regulations.

8.3 It is further contended that the entire allegations made by the petitioners in the application seeking grant of leave as well as in the plaint are intended to vindicate their private rights and not for the welfare and benefit of the Trust. It is further contended that when a person approaches the Court under Section 92 of CPC for vindication of his private rights, such person cannot be granted leave to institute a suit against a public Trust. Therefore, it is contended that there is no illegality or perversity in the impugned order passed by the trial Court and consequently, seeks dismissal of the appeal.

9. I have heard learned counsel for appellants and learned counsel for respondents. The points that arises for consideration are:

- "1. Whether the impugned order passed by the trial Court calls for interference by this Court?*
- 2. If so, what order?"*



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10. Apparently, there is no dispute regarding the fact that initially a registered Trust Deed came into existence on 29.10.1990, under which the petitioners along with respondent Nos.1, 2, 5, and 6 were the original trustees of the Trust. In the meanwhile, an amendment was effected on 02.02.2017 before the Sub-Registrar, Rajajinagar (Madanayakanahalli), without the consent of the petitioners. Thereafter, by virtue of the instrument of Trust dated 10.06.1999, respondent Nos.1 and 2 have constituted another Trust and have also changed the name of the Trust to 'Soundarya Educational Trust' by deleting the word "Charitable". Under the said amended Trust Deed, the petitioners have been removed as trustees. In their place, respondent Nos.3 and 4 have been inducted as trustees, who are none other than the children of respondent Nos.1 and 2.

11. It is also alleged that respondent Nos.1 and 2 have committed misappropriation of funds, financial



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mismanagement, fraud, criminal breach of trust, cheating and falsification of accounts. It is further alleged that respondent Nos.1 and 2, by filing false documents and creating a new Trust without the consent or approval of the petitioners and the other trustees who were removed, have perpetrated a fraud upon the Trust, its beneficiaries and the public at large.

12. It is seen that, in the application filed seeking grant of leave, the petitioners have made several allegations against the respondents. A copy of the plaint has also been annexed to the application, setting out detailed averments in support of those allegations. At this stage, what is required to be examined is whether the allegations so made by the petitioners disclose acts of breach of trust, misappropriation, mismanagement or other requirements contemplated under Section 92 of CPC, as pleaded in the application seeking grant of leave and the plaint annexed thereto.



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13. At this stage, it would be relevant to extract the provisions of Section 92 of CPC, which reads as under:

"Section 92. Public charities.-(1) *In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the ⁴[leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-*

- (a) removing any trustee;*
- (b) appointing a new trustee;*
- (c) vesting any property in a trustee;*
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;*
- (d) directing accounts and inquiries;*



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- (e) *declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;*
- (f) *authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;*
- (g) *settling a scheme; or*
- (h) *granting such further or other relief as the nature of the case may require.*

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypres in one or more of the following circumstances, namely:-



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- (a) where the original purposes of the trust, in whole or in part,-
 - (i) have been, as far as may be, fulfilled; or*
 - (ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or**
- (b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or*
- (c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or*
- (d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or*
- (e) where the original purposes, in whole or in part, have, since they were laid down,-
 - (i) been adequately provided for by other means, or**



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- (ii) ceased, as being useless or harmful to the community, or*
- (iii) ceased to be, in law, charitable, or*
- (iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust."*

14. Upon a careful perusal of the provisions of Section 92 of CPC, it is evident that, in the event of an alleged breach of any express or constructive trust created for public purpose of a charitable or religious nature or where the direction of the Court is deemed necessary for the administration of such Trust, a suit may be instituted by two or more persons having an interest in the Trust. However, prior to amendment of 1977, such a suit could be instituted by the Advocate General or by two or more persons having interest in the Trust. After the amendment, two or more persons having interest in the Trust may institute the suit only with the leave of the Court.



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15. Even on a plain reading of Section 92 of CPC, it is evident that the provision contemplates a wide range of reliefs, wherein Clause 1(a) provides for the removal of any trustee; Clause 1(b) contemplates the appointment of a new trustee; Clause 1(c) provides for vesting any property in a trustee; Clause 1(cc) contemplates directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled thereto; Clause 1(d) provides for directing accounts and inquiries; Clause 1(g) contemplates the settlement of a scheme for the administration of the Trust; and Clause 1(h) empowers the Court to grant such further or other reliefs as the nature of the case may require.

16. The trial Court is required to examine as to whether the allegations made in the petition satisfy the requirements contemplated under Section 92 of CPC and whether the proposed suit complies with the ingredients of



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the said provision. In my considered opinion, the petitioners have made several allegations disclosing acts of breach of trust, mismanagement and misappropriation. It is also not in dispute that the original Trust was constituted under a registered Trust Deed, a fact which is not denied by the respondents. It is further not in dispute that the said Trust is a public charitable trust. It is also an admitted fact that, subsequently, another Trust Deed came to be executed, whereby the word "Charitable" was deleted from the name of the Trust and the Trust came to be renamed as 'Soundarya Educational Trust.'

17. Be that as it may, the reliefs sought in the plaint include a declaration that the amendment to the Trust Deed is null and void; removal of respondent No.1 as the Managing Trustee of respondent No.7-Trust; removal of respondent No.2 as a Trustee of respondent No.7-Trust; a direction to respondent Nos.1 to 4 to render accounts of respondent No.7-Trust to the peitioners; grant of a



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permanent injunction restraining respondents Nos.1 to 4 from interfering with the management and affairs of respondent No.7–Trust; appointment of petitioner No.1 as the Managing Trustee of respondent No.7–Trust; grant of a permanent injunction restraining defendants Nos.1 to 4 or any person claiming through or under them from acting as Chairman, Secretary, Managing Trustee, Treasurer or Trustee of respondent No.7–Trust; and such other or further reliefs as this Court deems fit in the facts and circumstances of the case.

18. In my considered opinion, the requirements contemplated under Section 92 of CPC are *prima facie* borne out from the averments made in the plaint as well as the reliefs sought therein. The allegations regarding breach of Trust, mismanagement, misappropriation and other irregularities have been specifically pleaded. Whether those allegations are true or otherwise is a



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matter of evidence and is yet to be established before the trial Court in the course of the suit.

19. Under the circumstances, the trial Court is not required to examine as to whether the allegations made in the petition are true or have been proved. The scope of enquiry is confined to ascertaining whether the petition and the plaint disclose the requirements contemplated under Section 92 of CPC. Once the Court is satisfied that the statutory requirements are *prima facie* fulfilled, leave to institute the suit ought to be granted. In the present case, the trial Court has failed to adopt the said approach and has erroneously declined to grant leave, which is perverse.

20. Having gone through the judgments relied upon by the learned Senior Counsel for petitioners, I am in agreement with the submissions made by the learned Senior Counsel that the impugned order passed by the trial Court requires interference, as the same is perverse,



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illegal and unsustainable in law. Accordingly, the impugned order is liable to be set aside. Once the petitioners make out *prima facie* case satisfying the requirements of Section 92 of CPC, leave to institute the suit requires to be granted. At the stage of considering an application for grant of leave under Section 92 of CPC, the trial Court is not required to adjudicate upon the merits of the dispute or decide whether the petitioners are wrong and the respondents are right.

21. The grant of leave merely signifies that the petitioners have made out a *prima facie* case to proceed with the suit. It does not amount to an adjudication on the merits of the dispute. Whether the plaintiffs ultimately succeed or fail in the suit is a matter to be decided on the basis of the pleadings, evidence and material placed on record during the course of the trial. Therefore, having considered the submissions advanced by the learned counsels for parties, perused the impugned order passed



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by the trial Court and examined the judgments relied upon by the learned Senior Counsel, I am of the considered opinion that there is considerable substance in the submissions advanced by the learned Senior Counsel, warranting interference by this Court with the impugned order.

22. Accordingly, I pass the following:

ORDER

- i. This appeal is ***allowed***;
- ii. The impugned order dated 05.08.2023 passed in Misc.No.233/2021 by the Principal City Civil and Sessions Judge, Bengaluru, is hereby set aside;
- iii. Leave is hereby granted to the appellants-petitioners to institute the suit;
- iv. The trial Court is hereby directed to register the suit and proceed further in accordance with law;
- v. Any observations made by this Court in this judgment are confined solely to the consideration



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of the application seeking grant of leave under
Section 92 of CPC;

vi. It is needless mention that this Court has not
expressed any opinion on the merits of the
matter;

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**

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