

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

FAO.No. 188 of 2013 ()

(AGAINST THE ORDER IN I.A.NO.1081/2010 IN O.S.NO.16/2011 DATED
5.1.2013 OF DISTRICT COURT, ERNAKULAM)

APPELLANTS/PETITIONERS/PLAINTIFFS:

1. T.J.JOHN AGED 55 YEARS
S/O.T B JOHN, R/A.542 A"PRAKRUTHU" THEVARTHUNDIYIL
SWARGOM ROAD DESOM, ALUVA-683102

2. THARIAN CHACKO AGED 60 YEARS
S/O.P C CHACKO, A-2 RB, IMPERIAL PARK
OLD DESOM ROAD, THOTTAKKATTUKARA, ALUVA-683108

BY ADVS.SRI.K.V.SADANANDA PRABHU
SRI.TITUS MANI

RESPONDENTS/RESPONDENTS/DEFENDANTS:

1. THE CHURCH OF SOUTH INDIA
REP BY ITS GENERAL SECERTARY, 5 WHITES ROAD
ROYAPETTAH, CHENNAI-600014

2. THE CHURCH OF SOUTH INDIA TRUST ASSOCIATION,
REP BY ITS SECRETARY , 5, WHITES ROAD
ROYAPETTAH, CHENNAI-600014

R1,R 2 BY ADV. SRI.SATHISH NINAN
R1,R2 BY ADV. SRI.SANTHOSH MATHEW
R1,R2 BY ADV. SRI.JENNIS STEPHEN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

F.A.O.No.188 OF 2013

Dated this the 26th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The plaintiffs in O.S.No.16/2011 aggrieved by the order in I.A.No.1081/2010 have filed this appeal. The said petition was filed by invoking Section 92 of the Code of Civil Procedure (C.P.C. for short) seeking leave to sue. The parties are before this Court for the second time. By the order dated 4.12.2010, the court below had granted leave which was challenged before this Court by the defendants. In O.P.(C) No.3743/2011, the order was set aside and the I.A. was remanded back for consideration afresh. The said judgment is reported as ***Church of South India v. John (2012 (2) KLT 606)***. By the said judgment, this Court allowed the plaintiffs and the defendants to adduce evidence also. After the matter was sent back, the first plaintiff has been examined as PW1. After referring to the evidence adduced and after considering the pleadings, the learned Judge rejected the application.

2. We heard the learned counsel for the appellants Sri.K.V.Sadananda Prabhu and the learned counsel for the respondents Sri.Sathish Ninan.

3. In the plaint, the first defendant is shown as the Church of South India and the second defendant is the Church of South India Trust Association, represented by its Secretary, both having the Chennai address. One of the main reliefs sought for is to direct incorporation of a scheme in the constitution of first defendant Church of South India providing for the constitution of a trustee committee and rules for the management and control of the properties of the first defendant trust. Another relief sought for is to hand over the administration of the trust properties to the newly appointed trustees in place of the 2nd defendant on the incorporation of a scheme.

4. Before going into the contentions of the parties, we will extract the operative portion of the judgment of this Court whereby the matter was remanded back. In paragraph 6, it has been directed as follows :

“but whether the petitioners have interest in

the trust, and if so, whether it is real and substantial, and leave is applied by them bona fide, has necessarily to be examined by the court below to determine whether they are entitled to get leave for instituting the suit as applied for. I find the petitioners have to be provided with an opportunity to show that they have got real, substantive and existing interest in the trust, to institute a suit under S.92 of the Code. So much so, setting aside Ext.P4 order, the court below is directed to examine the question whether the petitioners have interest in the trust, providing both sides opportunity to lead evidence on that limited question, that alone, for the purpose of determining whether the application moved by the petitioners for leave to institute the suit is allowable. I make it clear that the interests that has to be shown by the petitioners, at this stage, may be oral or documentary as no conclusive opinion on the question of their interests need be made at the stage of granting leave but to grant such leave, the court must be satisfied prima facie that they have real, substantive and existing interest in the trust. Any finding made in favour of the petitioners on such enquiry will still be open for

adjudication in the suit if permission is granted to institute a suit by them. But such enquiry on the question whether they have real, substantive and existing interest at the time of grant of leave cannot be avoided as the very foundation for grant of leave apart from other essential ingredients covered by S.92 of the Code rests on their interests in the trust to institute the suit to protect and safeguard its interests.”

5. Thereby the court below was directed to examine whether the petitioners have interest in the Trust and as to whether it is real, substantive and existing and whether leave applied by them is bonafide. It was also directed that the court must have satisfaction prima facie that they have real, substantive and existing interest in the Trust.

6. The learned counsel for the appellants submitted at the outset that the order passed by this Court, pursuant to which the matter was remanded back, is without jurisdiction and it is a nullity. By elaborating the said argument, the learned counsel submitted that the order granting leave is only an administrative one which is not liable to challenge by the defendants and therefore on the former occasion,

when this Court considered the challenge in an original petition under Article 227 of the Constitution of India, this aspect was overlooked. It is submitted that absence of jurisdiction can be raised even at the subsequent stages of the same proceedings and therefore the order passed by this Court will not bind on the appellants, being a nullity.

7. The learned counsel in support of the contentions that the order is administrative and at the stage of grant of leave, the court only need to go by the pleadings of the plaintiffs and need not elaborately consider the various aspects, relied upon the following judgments :

A.K.Baskar v. Advocate General (AIR 1962 Kerala 90) (F.B.)

Mayer Simon, Parur v. Advocate General of Kerala and

others (AIR 1975 Kerala 57)(F.B.)

8. Our attention was also drawn to the principles laid down by the Apex Court in ***R.M.Narayana Chettiar and another v. N.Lakshmanan Chettiar and others (AIR 1971 SC 221)***, ***Swami Paramatmanand Saraswati and another v. Ramji Tripathi and Another [(1974) 2 SCC 695]***, ***Charan Singh and another v. Darshan Singh and others [(1975) 1 SCC 298]***, Mulla on the Code of Civil

Procedure, Thirteenth Edition, *Mathura Prasad Bajoo Jaiswal and Others v. Dossibai N.B.Jeejeebhoy [(197) 1 SCC 613]*, *Kunheema Umma and others v. Balakrishnan Nair (1967 KLT 629)*, *P.V.Mathew and others v. K.V.Thomas and others (AIR 1983 Kerala 5)* and a decision of the Andra Pradesh High Court in *Shavax A. Lal and others v. Syed Masood Hosain and others (AIR 1965 Andra Pradesh 143)*.

9. It is also submitted that this Court had widened the scope of enquiry at the stage of grant of leave by directing that the court below should ascertain whether the plaintiffs have got any interest direct or substantive. It is submitted that the findings rendered on earlier occasion by this Court cannot therefore be justified. It is submitted that when the Court is only concerned with the pleadings in a case like this where the petitioners claim to be members of the Church, the Court cannot expect the plaintiffs to adduce more evidence since as members of the church and as worshippers they are beneficiaries and they have got interest in the trust itself. It is submitted that the court need only consider whether it is for promoting the personal right of any party that the suit is filed. Therefore it is submitted that whether the

personal right that is being advanced alone has to be properly assessed by the court.

10. The learned counsel submitted that, in this case as per the averments in the plaint it is stated that they are members of the church and that they have got interest in the trust and that the suit is filed on behalf of the beneficiaries of the Trust. It is submitted that the finding rendered by the court below refusing to grant leave, that also on the premise that there is failure on the part of the petitioners to seek remedy by raising a complaint as per the constitution of the church cannot be justified. The suit is filed not to vindicate any personal right.

11. The learned counsel for the respondents Sri.Sathish Ninan submitted, by relying upon the judgment of the Apex Court in ***Vidyodaya Trust v. Mohan Prasad R and others [(2008) 4 SCC 115]*** that, firstly the court will have to assess whether by filing suit the plaintiffs are trying to harass the officers of the trust. It is submitted that whether the intention is bonafide or not will have to be gone into by the Court. The learned counsel explained that a plain reading of the averments in the plaint is not that is expected but the court will have to

go behind the pleadings to find out whether the motive is bonafide and as to whether the primary object was to harass persons in office as trustees. It is submitted that the law being settled by the Apex Court in the above case, in the light of the deposition of PW1 itself that he has filed the suit to project the personal interest, the finding rendered by the learned Judge cannot be said to be faulty. The learned counsel also submitted that in this case the first plaintiff has filed a proof affidavit stating that it is filed on behalf of the second plaintiff also, which cannot be justified. It is submitted that the court had no occasion to examine the interest if any of the second plaintiff and therefore the leave sought could not have been granted. In support of the above contentions, he relied upon the decision of a learned Single Judge of this Court in *Saraswathi Pillai Mahvir v. Gopala Pillay (1987 KHC 495)*

12. The learned counsel also submitted that the contentions raised by the learned counsel for the appellants that the order is purely administrative and therefore it cannot be a matter of challenge at the hands of the defendants is not correct. It is submitted that after the

amendment of the Code of Civil Procedure, in 1976 the provision conferring the power with the Advocate General has been deleted and now it is for the court itself to take a decision. The learned counsel further submits that going by the various decisions of the Apex Court including *Vidyodaya Trust v. Mohan Prasad R and others [(2008) 4 SCC 115]* it is open to the court to issue notice to the defendant. Even if notice is not issued it will not foreclose the remedy of the defendant to file an application to recall the order. Therefore it is submitted that when such procedures are contemplated that too by a civil court as part of the exercise of the power, the resultant order cannot be termed as purely administrative, but it is a judicial order itself. If so the same is amenable to challenge before this Court and therefore there was nothing wrong in the challenge made by the defendants on the previous occasion.

13. Apart from the same, the learned counsel submitted that the order of this Court in **Church of South India's** case (supra) whereby the earlier order passed by the District Court was set aside has become final. The same is binding on the parties to the litigation. The

principles as regards the lack of jurisdiction, the learned counsel submits, to make an order nullity will only apply in a case where there is inherent lack of jurisdiction. Nobody can contend for the position that in a matter like this, when this Court exercised the jurisdiction under Article 227 of the Constitution of India, there is inherent lack of jurisdiction.

14. Our attention was also invited to the pleadings of the plaintiffs, objections filed by the first defendant and the deposition of PW1 to contend that what is being projected is only the personal interest and therefore even though the reliefs sought for in the suit may be those which have been provided in Section 92, the leave sought for could not have been granted.

15. As far as the question whether the nature of the order is administrative or not, true that a Full Bench of this Court in ***A.K.Baskar v. Advocate General (AIR 1962 Kerala 90 (F.B.)*** had held so. That was a case where the leave was sought before the Advocate General. It was under the unamended provisions of the Code of Civil Procedure. The Full Bench in paragraph 18 held that “*the action of the*

Advocate-General cannot be judicially reviewed by this Court under Article 226 of the Constitution.” This view was taken on the reason that while deciding to grant leave the Advocate General does not in any way decide the rights of the parties. Subsequently, the view taken therein and the legality of the same was considered by the Full Bench of this Court ***Mayer Simon, Parur v. Advocate General of Kerala and others (AIR 1975 Kerala 57)(F.B.)***.

16. Sri.K.V. Sadananda Prabhu, the learned counsel submits that the consideration by the larger Bench was in a situation where the Bench had to examine whether the defendants in the suit can challenge the order. In that case, the trial court had refused leave, and the availability of remedy of challenge under Article 226 was considered. The larger Bench in paragraph 12 held as follows :

“ 12. *If the petitioner before us has been prejudicially affected by the conclusion reached by the Advocate General, he would be entitled to move this Court under Art.226 of the Constitution. This leads us to the question when a person can be said to be prejudicially affected as a result of the grant or refusal of the consent by the **Advocate-General** ? The grant of*

*the consent cannot, of course prejudicially affect the grantee. It is urged that it would prejudicially affect the rights of those who opposed the grant of consent and who are likely to be impleaded in a suit as defendants and who would then be called upon to spend time and money and energy in defending the action. We do not think it would be open to the persons who are likely to be made defendants in the action to contend that they would be prejudicially affected by the grant of the consent. It is well established that the Advocate General does not determine any question that will affect the rights of parties. It will be open to the defendants to raise all the contentions that they had raised before the **Advocate-General** or even all the contentions that are available to them in the action. None of their rights is affected by the consent granted by the **Advocate-General**. The inconvenience and temporary expenses caused by a suit being filed against such persons cannot be said to be such a prejudice which will enable those who opposed the grant of consent to sustain a petition under Art.226 of the Constitution. After all no one has the right to say that no suit should be filed against him.”*

17. In paragraph 15 the Full Bench took the view that the order refusing leave should be a speaking one. We extract the relevant portion herein below:

“ The Court must be satisfied in all cases of refusal that the mind of the Advocate-General had been fairly and dispassionately applied to the relevant facts before him. The only way of knowing it is by reading the order in the light of the facts and materials that were before him. So, the order must indicate that mind had been applied to those facts and materials. Where those facts and materials indicate a prima facie case the order should show why they were not accepted and the consent was refused. In this particular case, the prior dissensions in the trust, the clamour for management, the methods adopted for getting the position of trustees of maneuvering to get into that position, and the allegations of breach of trust of a serious nature all indicate prima facie that all was not well with the affairs of the trust. So the order should have been a speaking order and reasons for refusal should have been discernible from it.”

18. It was further held that the Advocate General acts as a statutory administrative authority performing the parens patriae jurisdiction of the State. Thus, the Full Bench held that there is a

remedy under Article 226 of the Constitution.

19. According to us, the contention that the order is purely administrative even though was upheld by the Full Bench in **Mayor Simon's** case (*supra*) now that the Code has been amended by vesting the power to the civil court itself, we cannot accede to the contention that the order is purely administrative. Going by Section 92, a suit can be filed with a leave of the court. We also notice that the power is conferred on the civil court and not even on a *persona designata*. Therefore the action of the court resulting in grant of leave or refusing to grant of leave can only be by a proper order. It can be termed as a judicial one alone. In the decisions including in *Vidyodaya Trust v. Mohan Prasad R and others [(2008) 4 SCC 115]* it has been held that it is open to the court to issue notice to the defendants before the order is passed on the application for grant of leave. In one of the earlier decisions of the Apex Court in *R.M.Narayana Chettiar v. N. Lakshmanan Chettiar [(1991 (1) SCC 48)*, which was relied upon in *Vidyodaya Trust v. Mohan Prasad R and others [(2008) 4 SCC 115]*, their Lordships had held that as far as the defendants are concerned, it

is always open to them to file an application for revocation of the leave which can be considered on merits and according to law. Therefore in such cases what is important to notice is that the court will be acting in tune with the principles of natural justice. We are justified in our conclusion therefore that the court is acting in exercise of the judicial power. Apart from that, the power that was exercised by this Court in the former occasion is under Article 227 of the Constitution of India. Of course the power is discretionary, but there cannot be any fetter on the said power and the contention that the court cannot exercise such a power and if it has exercised, it will be without jurisdiction cannot at all be accepted since it is the power which is vested under the Constitution itself.

20. Apart from the same, going by the decision of the Apex Court in *Vidyodaya Trust v. Mohan Prasad R and others* [(2008) 4 SCC 115] itself, it can be seen that such an argument with regard to absence of the rights of the parties to maintain an application before this Court either under the provisions under Section 115 of C.P.C. or under Article 227 was repelled by the Apex Court itself. In paragraph 5

there is discussion of the decision in *Vidyodaya Trust v. Mohan Prasad R [(2006) 7 SCC 452]*. A reading of the said judgment will show that an argument raised therein was that a revision under Section 115 C.P.C. was not maintainable. The Apex Court in paragraph 11 of the judgment held that the Civil Revision Petition is clearly maintainable and the argument otherwise is 'clearly indefensible'. Therefore, even if by granting or refusing leave it is not a case of entering into any decision on the rights of parties, it is not purely an administrative order.

21. Apart from the same, the order passed by this court namely the decision in *Church of South India v. John (2012 (2) KLT 606)* is binding as far as the parties to the litigation are concerned. Even though the learned counsel for the appellants required us to hold that the order is without jurisdiction and therefore the principles of res judicata will not apply, by relying upon the judgment of the Apex Court in *Mathura Prasad Bajoo Jaiswal and Others v. Dossibai N.B.Jeejeebhoy [(1970) 1 SCC 613]*, in the light of the view taken by us already we reject the said contention also. The order of remand

cannot be termed as a nullity at all. Therefore, we reject the said contention.

22. Now we will come to the relevant aspects to be considered while considering the application for grant of leave. The law being settled in the matter, we need only refer to the decision of the Apex Court in *Vidyodaya Trust v. Mohan Prasad R and others [(2008) 4 SCC 115]*. The learned counsel for the appellants heavily relied upon *Swami Paramatmanand Saraswati and another v. Ramji Tripathi and Another [(1974) 2 SCC 695]* to elaborate the principles under Section 92 and as to how a relief sought for a declaration in respect of one Krishnabodhashram that he was duly installed as the Shankaracharya of the Math was found to be a case where a personal right itself is sought to be established. In the light of the fact that in *Vidyodaya Trust v. Mohan Prasad R and others [(2008) 4 SCC 115]* the said principles have been considered, we will straight away come to the principles stated in the said decision.

23. The Apex Court after referring to the legislative change made by the amendment of C.P.C. 1976 held in paragraph 18 that “ *the*

object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public trusts for charitable and religious purposes are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of public trusts. Thus, there is need for scrutiny.”

Therefore the scrutiny at the initial stage should be also to find out whether the filing of the suit is to harass the persons in management of the trust. In paragraph 19, it has been held as follows :

“19. In the suit against public trusts, if on analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in Swami Paramatmanand case [(1974) 2 SCC 695) a suit under Section 92 CPC is a suit of special nature, which presupposes the existence of a public trust of religious or charitable character. When the plaintiffs do not sue to

vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has not application.”

24. Therefore, the court will have to analyse the averments in the plaint to find out whether the primary object behind the suit was to vindicate the individual rights of parties. If the said aspect is clear, then leave can only be refused. After referring to the averments in the plaint, which were considered by the Apex court, in paragraph 24, it was held that the suit was filed only to advance purely certain private and personal disputes.

25. In the decision of the Apex Court in ***Charan Singh and another v. Darshan Singh and others [(1975) 1 SCC 298]*** it is also held in paragraph 8 that “ *it is well settled that the maintainability of the suit under Section 92 of the Code depends upon the allegations in the plaint and does not fall for decision with reference to the averments in the written statement.*”

26. We will have to analyse the facts of this case and the pleadings in the light of the above principles. In the plaint, the

plaintiffs have stated in paragraph 2 that the first defendant is governed by constitution which among other things provide for various things including the governing principles of the church, the mission of the church, Membership of the church, the Ministry of the church, Election, appointment, consecration and installation of Bishops, Congregations, pastorates and Committees, Diocesan Committee, The Synod, Worship of the Church, Discipline of the Church, marriage law of the church, alteration in the constitution of the church and union of merger with the other churches. The plaintiffs contend that the constitution in effect makes the first defendant a trust created for public purpose of a charitable and religious nature.

27. It is described in paragraph 3 that the second defendant is specifically authorised to function as trustee of all the properties movables or immovable by virtue of the provision in Chapter 9 rule 14 of the Constitution. The aforesaid trustees of the properties of the first defendant is a company incorporated under the Indian Companies Act, 1913. The allegation is that they are in the management of various items of immovable properties situated in various parts of the State.

28. The contention advanced in paragraph 7 of the plaint is that the first defendant is not having any effective control over the functioning of the second defendant. It is further pointed out in paragraphs 8 and 9 by referring to certain transactions of immovable properties that the trust properties are being dealt with and disposed of, not for the interests of the trust. It is also stated in paragraph 12 that the constitution of the first defendant mentions about the existence of the 2nd defendant Trust Association, the scheme is totally silent as to the functioning of the 2nd defendant Trust Association. It is thereafter explained in paragraph 16 that “ *the plaintiffs are persons who have interest in the 1st defendant trust and they propose to seek leave of the court by a separate application to institute this suit seeking reliefs of removal of trustees, taking of accounts and for the amendment of the existing bylaws providing for appropriate provisions in the constitution for the formation of a new trustee committee and for the effective control of the trust properties in the hands of the trustees.*”

29. In paragraph 17 of the plaint, it is stated as follows:

“ *In view of the present situation it has become*

necessary for the worshippers/faithful and other interested persons to unite to save the properties of the 1st defendant trust by approaching this Hon'ble Court, for getting the existing constitution amended by providing for a scheme for the creation of the Trustee Committee for the effective control and use of the trust properties after removing the 2nd defendant from the trusteeship and from the management of the 1st defendant trust properties either as trustees or as agents or under any vestige of right of Church of South India Trust Association.”

30. When we come to the order passed by this Court in O.P.(C) No.3743/2011 this Court was of the view that other than the averments made as noted in paragraphs 16 and 18 the plaintiffs have not produced any material with the draft plaint to show their interest in the trust. After examining the requirement of Section 92, it was held that the interest contemplated under Section 92 of the Code must be a real, substantive and existing interest in the particular trust and reliance was placed on various decisions. It was held that a mere statement in the petition or in the draft plaint that they are well wishers and beneficiaries or worshipers would not suffice to show that they have real and substantive interests.

31. After the matter was sent back the first plaintiff has filed a proof affidavit. He has explained therein that both the plaintiffs are members of the church namely Aluva Holly Trinity C.S.I. Church and the church and the properties are being administered by the defendants. The said plaintiff and his family members are paying subscription to the church and his grandfather Arch Decon Sri.T.K.Benjamin was a priest in the church and his father's brother Sri.T.B.Benjamin was a Bishop. He has also stated that for protecting the interests of members and the church, an organization namely C.S.I. North Kerala Laity Fellowship has been formed by him and others and he is the General Secretary of the same. His wife is a member of Diocesan Council elected from the Holly Trinity C.S.I. Church.

32. A controversy now raised is by referring to one sentence in the cross examination . He was asked whether the suit is filed because of the animosity with the members of the present administrative committee and he deposed that it is not correct and he filed the suit in his own interest. The said sentence, even though was highlighted by Sri.Sathish Ninan, learned counsel for the respondents, to argue that

what is indicated is that the suit is filed to advance his personal interest, we cannot agree. What he has indicated is not his personal interest or personal right which he is trying to project in the suit, but when the question was put whether he has filed the suit because of any dispute with the members of the administrative committee, he explained away the same. Therefore, the said sentence in the deposition, according to us cannot indicate that it is only to vindicate his personal interest that the suit is filed. True that he has replied in the cross examination that he and others have formed the organization subsequent to the filing of the suit. But the impact of the same is not a matter to be considered.

33. The question therefore is whether the averments in the plaint indicate to any extent that it is only to vindicate the personal right of the plaintiffs that the suit has been filed. Of course, Sri.Sathish Ninan raised an argument that as far as the second plaintiff is concerned, he was not examined and he relied upon the decision of the learned Single Judge of this Court in *Saraswathi Pillai Mahvir v. Gopala Pillay (1987 KHC 495)*. Of course in that case the finding was that the order impugned therein considered only the interest of one of

the persons.

34. Herein, in the proof affidavit itself, the first plaintiff has stated that the plaintiffs are members of the Aluva Holly Trinity C.S.I. Church. In the cross examination no challenge has been made about the credentials of the second plaintiff. No other arguments have been raised also before the trial court to contend for the position that he has joined the suit to vindicate any personal right of his own. Therefore we cannot accede to the said argument.

35. We find from a reading of the plaint that what is projected as the cause of action for filing the suit is certain transactions effected concerning immovable properties. It is contended that the transactions have been made adverse to the interests of the trust and its beneficiaries. There cannot be any dispute that the plaintiffs are beneficiaries of the trust. The reliefs sought even though may not be relevant at the time of considering the application for grant of leave, the plaintiffs have not sought for any reliefs personally for them. The personal right if any of the plaintiffs are not being sought to be established. Through the suit they are not trying to vindicate their own

personal rights on the administration of church properties, or for other purposes.

36. If that be so, according to us, a reading of the plaint and the deposition of PW1 will not indicate on any account that the suit is filed only to vindicate the individual or personal right of the plaintiffs.

37. The trial court went to the extent of holding that the plaintiffs should have availed the other remedies provided under the constitution and in the absence of the same, the bonafides become doubtful, to which we cannot agree. As far as the question whether the suit is filed to harrass the office bearers of the trust, there is nothing to show that the plaintiffs have approached any other court on a previous occasion as against the office bearers of the trust or they have got any personal grudge against them in the matter. Even the objection filed by the respondents, which was considered by the trial court in the first occasion, does not go to that extent. The objections have been extracted in paragraph 4 of the earlier order of the trial court when leave was granted. There they have denied the averments in the plaint regarding the alleged violation of the constitution etc.

38. Therefore, we are satisfied that the order impugned cannot be supported and the plaintiffs have established a prima facie case for grant of leave. They have got real, direct and substantive interest in the trust, being members, worshippers and beneficiaries. The personal interest, if any, can only be as worshippers and beneficiaries.

39. Even though the learned counsel for the respondents Sri.Sathish Ninan advanced an argument that the suit itself lacks territorial jurisdiction, the said contention has been rejected by this Court on the former occasion in the decision referred to above. Since the said order has become final, the same binds the respondents also. Therefore we cannot reconsider the issue in this appeal.

For all these reasons, we allow the appeal and I.A.No.1081/2010 is allowed and the plaintiffs are granted leave to institute the suit. The trial court will proceed with the matter in accordance with law. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE