

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2015

Pronounced on : 29.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

**Application Nos.4580 and 5513 of 2015
in
C.S.No.518 of 2013**

G.V.Selvam ..Applicant in both applications

vs

1.G.V.Sampath

2.R.Sadanandam

3.M/s.Vellore Institute of Technology,
a Public Charitable Trust,
having its registered office at
No.54, Thennamaram Street,
Vellore 623 001,
Rep. by its Chairman and
Managing Trustee and Chancellor,
Shri G.Viswanathan

4.Vellore Institute of Technology,
Katpadi, Tiruvalam Road,
Vellore 632 014,
Rep. by its Registrar,
Having Administrative Office at
No. W-73, Anna Nagar West,
Chennai 600 040.

5.G.Viswanathan

6.Sankar Viswanathan

7.Sekar Viswanathan

8.G.Kanagasabapathy

9.S.Dharmaraja Chettiar

10.P.L.Mareddy

11.Sunday Reddy

12.Sandya Penta Reddy ..Respondents in both the applications.

13.A.Ravindran

14.R.Vijayakumar

15.C.Venkataswamy ..Respondents in A.No.5513 of 2015

Prayer in Application 4580/2015: Application filed under Order XIV Rule 8 of O.S.Rules, Clause XII of the Letters Patent Act read with Order 3 and Rule 1 of the Madras High Court Original Side Rules to revoke the leave granted vide orders dated 30.07.2013 in Application No. 3335 of 2013 in C.S.No.518 of 2013.

Prayer in Application 5513/2015: Application filed under Order XIV Rule 8 of O.S.Rules, read with Order 1 Rule 10 of C.P.C. read with under Section 92 CPC, to strike out the second plaintiff from the array of plaintiffs in the above suit.

For applicant :Mrs.Chitra Sampath
in both applications Senior Counsel
for M/s.Aarthu Madan

For Respondents :Mr.T.V.Ramanujam for plaintiff
 in both applications Senior Counsel
 for M/s.Prakash Goklaney
 Mr.R.Gandhi for D1 and D3
 Senior counsel
 for M/s.R.Sivakumar
 Mr.T.R.Rajagopalan
 Senior Counsel
 for Mr.G.Viswanathan for D4
 for Mr.K.Purusothaman for D5

COMMON ORDER

Application No.4580 of 2015 is filed for revoking the leave granted in Application No.3335 of 2013 in C.S.No.518 of 2013 dated 30.07.2013.

2.Application No.5513 of 2015 is filed to strike out the name of the second plaintiff from the array of plaintiffs in C.S.No.518 of 2013.

3.The applicant in both these applications is the sixth defendant in the main suit. The respondents 1 and 2 herein in both the applications are the plaintiffs. They filed the above suit under Order 7 Rule 1 C.P.C. read with Section 92 of C.P.C., seeking for the following reliefs:

i)to frame a scheme for the proper conduct of the affairs of the

first defendant Trust;

ii) to remove the defendants 3 to 11 from the post of trusteeship and appoint an administrator in the interregnum, pending framing of a scheme by this Court;

iii) to direct the defendants to render true and proper accounts in respect of the first defendant trust including that of the second defendant from the year 2001 till date of taking of accounts; and

iv) to reinstate the first plaintiff to the post of Vice President of the second defendant and allow the first plaintiff to discharge his duties as trustee of the first defendant trust.

4. Before filing the above suit, the plaintiffs filed two applications, one under section 92 C.P.C. in Application No.3335 of 2015 and another under clause 12 of the Letters Patent in Application No.3334 of 2013, seeking leave of this court to file the above said suit.

5. This court by an order dated 30.07.2013 granted leave in both the above applications, of course, by an ex parte order. The second defendant filed two applications in Application Nos.3559 and 3560 of 2013 for revocation of leave granted by this Court. The present applicant who is the sixth defendant in the suit, was arrayed as the

seventh respondent in the above said applications seeking for revocation of the leave.

6.This Court, after hearing both parties and considering various aspects of the matter in detail, dismissed both the said applications by an order dated 20.02.2015. Challenging the same, appeals have been filed in O.S.A.Nos.68 and 69 of 2015 before the Division Bench of this Court and the same are said to be pending without any interim order.

7.Now, the sixth defendant in the suit has filed the present applications once again seeking for revocation of leave granted under section 92 C.P.C. In fact, the very same applicant/sixth defendant filed another application in A.No.4579 of 2015 seeking for revocation of the leave granted in Application No.3334 of 2013 dated 30.07.2013 under clause 12 of the Letters Patent. When the said application was taken up for hearing on 14.09.2015, the learned senior counsel Mrs.Chitra Sampath appearing for the applicant/sixth defendant fairly submitted that similar application filed by the second defendant in Application No.3559 of 2015 raising very same grounds came to be dismissed by this Court on 20.02.2015 and an appeal filed against the said order in O.S.A.No.68 of 2015 is pending. Considering the above

submissions and considering the fact that the similar application filed by the second defendant raising the very same grounds in respect of clause 12 of the Letters Patent came to be rejected by this court on 20.02.2015, this court found that the above Application No.4579 of 2013 cannot be sustained and the same has to be dismissed by following the earlier order dated 20.02.2015. Accordingly, the said application was dismissed by this court on 14.09.2015.

8. Even though it was contended by the learned senior counsel appearing for the present application that the order passed by this court earlier on 20.02.2015 in similar application concerning clause 12 of the Letters Patent covers the application seeking revocation of leave in Application No.4579 of 2015, she however, submitted that the present application viz., A.No.4580 of 2015 concerning the leave granted under section 92 CPC is to be heard on merits once again by this Court, since the grounds raised in the present application are not the grounds raised and considered by this Court earlier while deciding the application filed by the second defendant in Application No.3560 of 2013. In other words, it is the contention of the learned senior counsel that this Court, notwithstanding the order passed earlier on 20.02.2015 in respect of the similar application, is necessarily to

consider the present application seeking revocation of leave granted under section 92 C.P.C. based on the new grounds raised, which were not raised and considered earlier. Therefore, she contended that there is no res judicata as the applicant is not one and the same in both the applications and the grounds raised are also not one and the same.

9. Now, the present Application No.4580 of 2015 is filed for revocation of leave by contending as follows:

The plaintiffs have not fulfilled the essential requirements of section 92 C.P.C. to institute the present suit. The plaint averments do not make any specific allegations on the breach of trust. The plaintiffs have brought out averments pertaining to the statutory violations by the defendant trust which is outside the scope of section 92 CPC. The functions of the University are governed by the Board of Management which runs the university independently without any relation to the trust. The trust has no role to play in the administration of the university. All the decisions with regard to the running of the university is taken only by the Board of Management and the trust does not play any role in the above said affairs/functions of the university. The first plaintiff was part of Board of Management and was a trustee who is fully aware of the factual position. He made false

allegations for his private gains. He was removed from the post of Vice President in 2013 for his various nefarious activities which were detrimental to the interest of the university and the trust. Thus, the first plaintiff in order to vindicate his grievance has filed the present suit. Therefore, no public interest is involved in this case. The second plaintiff is the cousin of the first plaintiff and holds grudge against the defendant university as he has been suspended from the university employment due to in-disciplinary activities. The second defendant is not having any special interest on the trust. The allegation regarding donation of Rs.22 crores to another trust is untenable as the trust deed provides for making such donation. The said donation was given for bonafide purpose. With regard to the allegation of the construction of building without approval and encroachment of lands are concerned, they are relatable to the Board of Management and therefore, it cannot be said that there was breach of trust. The prayer (d) in the plaint seeking reinstatement of the first plaintiff as Vice President of the university would show the intention of the plaintiff that the suit was not filed in public interest but for resolving the private interest of the first plaintiff.

10.The first plaintiff filed a counter affidavit wherein it is stated

as follows:

The sixth defendant is one of the persons responsible for the mismanagement of the trust. He exerted pressure on the third defendant who is none else than their father and started the course and admitted the students without the approval of the off campus centre. This court has already held in the earlier order that the plaintiff has set out sufficient details of the acts of mismanagement. Therefore, the very same issue cannot be reopened by the present applicant. The first plaintiff was functioning as the Secretary of the North Arcot Educational and Charitable Trust, the fore runner of the first defendant, in the year 1991. Thereafter, the first plaintiff was made as a member of the trust and the Vice President of the university from 2004. The first plaintiff purchased the property for the trust and was managing the same. The second plaintiff is the cousin of the first plaintiff and the younger sister's son of the Managing trustee viz., the third defendant. The second plaintiff has been serving the trust for more than a decade and he was the Assistant Estate Officer when the suit was filed. The second plaintiff has worked towards the benefit of the trust, the university and the students. Thus, he is having sufficient standing to file the present suit along with the first plaintiff. The applicant is deliberately misleading the court with respect to the

difference between the Board of Management of the University and the trust. The bank account of the trust is being used by the university. The trust controls the Board of Management. The Board of Management cannot take any action without approval of the trust. The applicant is deliberately misleading this court with regard to the regulations presently applicable to the university. The board of management of the University consists of all the trustees and they controlled all the affairs of the University. The act of malfeasance and misfeasance cannot be separated from the trustee and university. The only activity of the trust is to establish, sponsor and operate the university. When the trust itself owned several crores to public financial institution, parting Rs.20 crores by way of donation to a trust, unconnected with the subject matter trust, is an act against the interest of the trust. As against the removal of the first plaintiff from the post of Vice President, he has filed a separate suit in O.S.A.No.69 of 2015 on the file of the Principal District Court, Vellore. Therefore, the present suit is not filed for vindicating the personal grievance.

11.The second plaintiff filed a separate counter affidavit wherein it is stated as follows:

The second plaintiff is the nephew of the third defendant and as

passionate about the institution like the trustees themselves. On the invitation of the Managing Trustee, he joined the institution in 2002. His dedication to the institution started off as a Mess Incharge and reached the level of the Estate Officer on account of his hard work. He was promoted as second supervisor in the administrative office and thereafter, as Assistant Estate Officer. Non family members are not part of the trust. Therefore, it cannot be said that the personal interest is involved in this matter. The various averments made in these applications are mere repetitions of the averments made in Application Nos.4579 and 4580 of 2015 . The second plaintiff had duty bound to bring it to the knowledge of the trustees about the rampant encroachment indulged by the sixth defendant. The second plaintiff will be close associate to everyone who is interested in the betterment of the first defendant trust and the second defendant institution.

12.Mrs.Chitra Sampath, learned senior counsel appearing for the sixth defendant/applicant submitted as follows:

The order passed by this court in Application Nos.3559 and 3560 of 2013 dated 20.02.2015 will not operate as res judicata since the grounds raised therein are different from the one raised in the present applications. The ground raised in the present applications are that

the plaintiffs are not the persons interested in the trust and thus, the mandatory requirements under section 92 CPC has not been made out. Therefore, the leave granted should be revoked. The second plaintiff is only an employee of a trust and therefore, he cannot claim as a person interested in the trust. Except stating one line in paragraph No.3 of the plaint regarding the second plaintiff, no other averments were made in the plaint as to how he is an interested person. No specific allegations were made regarding the misfeasance and malfeasance more particularly, against the defendants 7 to 11. On the other hand, the entire allegations made were only against the defendants 3 to 6. The first plaintiff was also party to all the decisions taken till his removal. Therefore, the suit is motivated.

13.Mr.T.R.Rajagopalan, learned senior counsel appearing for the defendants 4 and 5 and supporting the sixth defendant submitted as follows:

Though the first plaintiff is having an interest in the trust, the second plaintiff cannot be said so. Section 92 CPC mandatorily requires two or more persons who are having interest in the trust alone can file a suit. If it is found that the second plaintiff is not having any interest, then the suit filed as such cannot survive. The

interest in the trust as contemplated under section 92 must be substantial, specific, clear and not a remote and fictitious or purely illusory interest. When the plaint averments, in so far as the second plaintiff is concerned, do not disclose any of such interest on the part of the second plaintiff, the suit cannot survive and consequently, the leave has to be revoked. If the allegations of mismanagement is not sufficient with evidence, leave can be revoked. Vindicating a personal grievance is not a cause for filing the suit under section 92 CPC.

14. In support of the above contention, the learned senior counsel relied on the following decisions:

i) XXXVI MLJ 396 (FB), T.R. Ramachandra Iyer vs. Ponniath Akathuthu Parameswaram Munbu;

ii) 2008(4) SCC 115, Vidyodaya Trust vs Mohan Prasad;

iii) AIR 1984 Madras 328, P. Sivagurunatha Pillai vs P. Mani Pillai (died) and others;

iv) AIR 1967 SC 1415, Mahant Harnam Singh vs. Gurdial Singh

iv) 1924 Privy Council 221(2), Vaidyana Ayyar vs Swaminatha Ayyar;

v) 2004 (1) CTC 321; L.M. Menezes vs Rt. Rev. Dr. Lawrence Pius;

vi) An unreported decision of the Delhi High Court made in

I.A.No.11202 of 2008 dated 20.11.2009.

15. Mr.R.Gandhi, learned senior counsel appearing for the first defendant and the third defendant supporting the other defendants submitted as follows:

The university run by the trust is one of the best institution in this country and no allegations of mismanagement were made all these years. The present suit is filed with all false allegations in order to vindicate the personal grievance. There is no cause of action for filing the present suit and no cause of action for the second plaintiff is shown. As the plaint has to be rejected as against the second plaintiff, the suit cannot survive under section 92 CPC with 1st plaintiff alone .

16. Per contra, Mr.T.V.Ramanujam, learned senior counsel appearing for the plaintiff submitted as follows:

In both these applications, the sixth defendant is re-agitating the matter once again when this court has already decided the same earlier. Therefore, it is an abuse of process of Court. The court is custodian of the public trust. All the allegations made in the plaint would show that there is a breach of trust. The correctness or truthfulness of those allegations are to be considered and decided only

in the main suit after conduct of trial and therefore, the same cannot be gone into at the time of considering the leave application. The university is established by the trust and therefore, the decision by the university is the decision of the trust. Every time one defendant comes out with fresh application seeking revocation of leave. This cannot be entertained. The averments made in the plaint is enough to show that the second plaintiff is the beneficiary and thus he is an interested person. The Application No.5513 of 2015 is totally unnecessary. A person who is a resident of the locality where the trust lies can be termed as a person interested within the scope of section 92 CPC. The second plaintiff is still residing within the same campus. ***AIR 1978 Madras 205, Kumudavalli vs P.N.Purushotham***, is relied on in support of such contention.

17. Heard both sides. Perused the materials placed before this court. I have given careful consideration to all the facts and circumstances of the case.

18. The point for consideration in these applications is as to whether the leave granted by this Court under section 92 CPC is to be revoked and whether the 2nd plaintiff is to be struck off from the array

of plaintiffs on the grounds set out in the present applications.

19. The plaintiffs before filing the above suit, sought leave of this court under section 92 of C.P.C. by contending that the first plaintiff was one of the trustees of the first defendant and was the Vice President of the second defendant and the second plaintiff was the Assistant Estate Officer of the second defendant and an employee and beneficiary of the first defendant. It is their contention that the defendants have indulged in several acts of breach of trust and misfeasance and malfeasance as set out in detail in the plaint.

20. The crux of the allegations made in the plaint warranting the filing of the suit was that,

i) There has been diversion of huge amount of money over Rs.22 crores to another trust in Chandigarh absolutely unconnected with the plaintiff trust;

ii) Without there being approval, there has been admission of students in Chennai campus from 2010 onwards while UGC has granted approval only in 2013, that too, prospectively which made the students and parents to suffer;

iii) There has been encroachment of the land belonging to

Government;

iv) No approval or sanction of building plan was obtained from the competent authorities;

v) There has been indiscriminate cash drawings;

vi) There has been wide spread misappropriation of the trust funds for the personal benefits of trustees;

vii) The accounts of the trust are not properly maintained in the regular course of business, etc.,

It is further contended by the plaintiffs that they have no personal interest and they act for the benefit of the trust at large.

21. This Court considered the above facts and circumstances and granted leave under section 92 C.P.C.

22. The sixth defendant is the applicant herein seeking revocation of leave granted under section 92 CPC. The crux of the contention raised in the present application is that the second plaintiff is not the person interested in the trust and consequently, he cannot maintain the suit along with the first plaintiff. Thus, it is contended that when the second plaintiff is not a person interested, the suit cannot survive with the first plaintiff alone and consequently, the leave

granted is liable to be revoked. It is also contended that the averments made in the plaint do not make out a case under section 92 CPC and that the allegations of mismanagement, malfeasance and misfeasance are vague and without any material particulars with specification.

23. No doubt, in so far as the first ground raised herein disputing the interest of the second plaintiff in the trust, is concerned, it is a fact that the same has not been raised in the earlier application filed by the second defendant and not considered by this Court. However, insofar as the other ground disputing the allegations made in the plaint with regard to mal administration, etc. is concerned, I do not think that the sixth defendant herein can raise these contentions once again in this application in view of the fact that this Court has already considered the very same contentions and decided the Applications 3559 and 3560 of 2013 against the defendants. In fact, a perusal of the above said order would show that the learned Judge has considered the very same objections as point No.3 by raising a question as to whether the plaint does not contain the averment to make out section 92 of C.P.C. Learned Judge considered the said question from paragraphs 31.1 to 31.11 in detail and found that there is an existence of a public trust

and that there is an allegation of breach of trust which necessitate this Court to issue a direction to set right the administration of the trust. The learned Judge also found that the prayer (d) of the plaint seeking for reinstatement of the first plaintiff to the post of Vice President of the second defendant cannot make the suit out of the scope of section 92 CPC. Needless to say that when several reliefs are sought for in the suit, out of which, if one may have a personal interest, that alone cannot be a ground to reject the suit in its entirety under section 92 C.P.C., if the other reliefs sought for are showing the public interest involved therein. Therefore, the sixth defendant and the other defendants are precluded from raising the very same grounds, once again, as it is for them to agitate the same only in the appeal pending in O.S.A.Nos.68 and 69 of 2015.

24. Therefore, now, it has to be seen as to whether the second plaintiff is to be considered as a person interested in the trust to maintain the present suit or not.

25. Section 92 C.P.C. reads as follows:

"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 (leave of the court) may institute a suit whether contentious or not, in the principal Civil Court, or 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 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;*
- (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)*
- (3)....."*

26. Thus, it is evident that two or more persons interested in the trust after getting leave of the Court, can file the suit under section 92 CPC for seeking the reliefs as contemplated therein. The phrase

"persons having an interest in the trust" has not been defined in the Code of Civil Procedure. However, going by various case laws in this aspect, it could be seen that there is no hard and fast rule to conclude as to who are to be termed as such persons interested. Finding on such issue, thus, has to be made based on the facts and circumstances of each case, as there cannot be any uniform applicability of any proposition in this aspect.

27.The phrase "persons having an interest in the trust" as contemplated under section 92 CPC would come up for consideration before the Court at two stages of the suit. The first stage being the one while considering the application seeking leave to file the suit under section 92 CPC. This stage is the preliminary stage where the rights of the parties are not at all decided on merits. At this stage, what the Court has to see is as to whether the averments made in the plaint show any interest of the plaintiffs in the trust. Thus, while considering the grant of leave, the Court has to go by the plaint averments alone and decide the application. If the averments made in the plaint, prima facie show that the plaintiffs are persons having an interest in the trust, it is enough for the court to grant leave however, by leaving the rest of the allegations to be decided in the main suit.

Needless to say that the issue as to whether the plaintiffs are persons interested in the trust will also be an issue to be gone into and decided in the main suit, if the defendants raise an objection with regard to the maintainability of the suit by contending that the plaintiffs are not the persons interested in the trust. Therefore, that stage is the second stage for the Court to consider the phrase "person having interest in the trust". Needless to say that only at the second stage, the court has to finally consider and decide as to whether the plaintiffs are persons interested in the trust, after going through the pleadings and evidence of the respective parties. Thus, it is evident that the scope of considering such phrase by the Court, is not one and the same. At the first stage, while considering the application for leave, the Court has to see as to whether the pleadings made in the plaint *prima facie* show the interest of the plaintiffs in the trust. Whereas in the second stage, the court has to find out whether the plaintiffs have established such *prima facie* case, by adducing material evidence in support of such claim. Therefore, the scope for consideration and the role of the Court at both the stages cannot be confused with each other.

28. It is also to be noted at this juncture that while hearing the

application either for grant of leave or for revocation of the same under section 92 C.P.C., roving enquiry on the allegations made by the respective parties is not required for deciding as to whether the plaintiffs are persons interested or not. Mere basic averments made in the plaint, even if not elaborately stated, are sufficient to grant leave if such averments prima facie satisfy the Court that the plaintiffs are persons interested in the trust. On the other hand, if the Court is called upon to decide such issue finally, even at the stage of hearing the application for leave or revoke the leave, based on the rival contentions of the parties, it would only mean that a decision is called for in the main suit itself without conducting a trial. While it is true that the Court is duty bound to prevent unscrupulous litigations against a public trust, it should be kept in mind that it is also the duty of the Court to see that such public trust is being run in accordance with law with its avowed object and without indulgence of any maladministration or malfeasance or misfeasance. Needless to say that protection of the interest of the general public is the foremost consideration of the Court which is said to be the custodian of the public trust.

29. In this case, it is seen that the first plaintiff, admittedly, was

one of the trustee of the first defendant trust and was the Vice President of the second defendant. Even though he was removed from the post of Vice President later, the fact remains that on the date of filing the suit, he was the trustee holding the said post. Therefore, the 1st plaintiff is the person interested in the trust and thus, would come within the scope of Section 92 C.P.C. Insofar as the second plaintiff is concerned, it is averred in the plaint that he was the Assistant Estate Officer of the second defendant and an employee and beneficiary of the first defendant. Therefore, it cannot be said that the second defendant is not at all connected with the trust in any manner or he is totally an alien to the subject matter trust and consequently, not an interested person. It is true that the averments regarding the second plaintiff in respect of his interest in the trust have not been elaborately stated in the plaint. It is also true that only at paragraph No.3 of the plaint, it has been stated that the second plaintiff was the Assistant Estate Officer of the second defendant and an employee and beneficiary of the first defendant. Therefore, it is contended on behalf of the defendants that such averment itself is not sufficient to conclude that the second plaintiff is the person interested in the trust. I am not able to accept the contention of the defendants since what is required at this stage while considering the leave application under section 92

of CPC, is as to whether such averment, though made in short form, *prima facie* show that the second plaintiff is an interested person in the trust or not. The claim of the 2nd plaintiff with regard to his relationship with the trust in different capacities by holding different posts is not disputed by the 6th defendant in the affidavit filed in support of the present applications. It is specifically admitted therein that the second plaintiff was appointed as a Section Supervisor in the administrative office and on retainer basis and thereafter he was re-designated as Assistant Estate Officer and was working in such capacity till his suspension. From these admitted factual position, it is seen that the 2nd plaintiff, *prima facie*, is an interested person in the trust and therefore, he cannot be thrown out from the contest even at the threshold without allowing him to prove such claim made by him with regard to his interest in the trust by adducing material evidence at the time of hearing the main suit. Therefore, in my considered view, the relationship of the second plaintiff with the trust and its University by holding different posts, *prima facie* show that he is a person interested in the trust and consequently he can be permitted to pursue the suit further along with the first plaintiff. This *prima facie* conclusion is made also on the reason that he is admittedly, a close relative of the trustees. It is also stated that the second plaintiff alone brought to the

notice of the trustees about the alleged encroachment of the Government poramboke land by the sixth defendant. Therefore, based on the present facts and circumstances, this Court cannot accept the contention of the defendants that the second plaintiff is not a person interested in the trust. No doubt, this conclusion is only a *prima facie* conclusion, that too, for the purpose of deciding the application for revocation of the leave under section 92 C.P.C. It is well settled that grant of leave cannot be regarded as defeating or seriously prejudicing any right of the defendants. When an order is made not prejudicing the rights of the parties or determining such rights finally, parties should not make the Court to spend much of its judicial time in roaming around the said order itself again and again, especially when such parties have ample opportunity to raise such issue at the time of hearing of the main suit. Therefore, all the contentions raised by the defendants with regard to the second plaintiff are left open to be agitated and decided in the main suit so as to enable the parties to let in evidence in support of their respective claims. Likewise, the allegation that the plaintiffs are having only personal interest and not public interest, is also the question that can be considered and decided in the main suit after conducting the trial especially under the circumstances that various allegations made

against the defendants in the suit regarding the mal administration are serious in nature more particularly, with regard to the alleged encroachment of government poramboke land and diversification of the fund of the trust to the tune of Rs.20 crores to another trust, etc.

30. Mrs.Chitra Sampath, learned senior counsel for the applicant relied on the decision of the Delhi High Court reported in **138 (2007) DLT 329, Rahul Jain vs Shri Pradeep Kumar**, in support of her contention that the plaintiffs are not entitled to maintain the suit.

31. Perusal of the said decision would show that one of the two applicants therein who sought leave to sue a trust under section 92 CPC, expired and therefore, the question that arose before the Delhi High Court in that case was as to whether the two persons who have submitted the application have to be alive and in existence on the date when the petition is taken up for consideration or is it enough if they were alive on the date on which the application was filed before the Court. The Delhi High Court in the above decision has held that the defect in the application for leave to sue cannot be permitted to be cured or changed by way of an application seeking the impleadment of another party proposed to be the plaintiff. Therefore, I am of the view

that the above decision, factually distinguishable, does not help the applicant in any manner.

32. Mr.T.R.Rajagopalan, learned senior counsel appearing for the defendants relied on a Full Bench decision of this court reported in **XXXVI MLJ 396 (supra)**. No doubt, in the above decision, it has been held that the interest required by the statute to reside in the relator must be clear, a present and substantial and not a remote or fictitious or purely illusory interest. It has been observed in the above decision as follows:

"..I am content to say that the task is impossible, that the most that can be done, or attempted to be done, is to say that the interest required by the statute to reside in the relator must be, in the words of Lord Eldon "clear" or in the words of the learned Chief Justice in this case, "a present and substantial, and not a remote and fictitious, or purely illusory interest," or, in the words of the learned Judges in Mohiuddin v. Sayiduddin "an existing interest and not a mere contingency." Beyond that, it seems to me that the question as to whether any given person has or has not an interest, as so defined, is a pure question of fact and must be left to the Court, before whom he appears to decide in the light of these general principles on a consideration of the particular circumstances of each case."

33. From the perusal of the above decision, it is seen that the same came to be rendered in an appeal filed against dismissal of the suit filed against the trustee of a temple under section 92 on the ground that one of the plaintiffs had no interest in the trust within the meaning of such section. Therefore, it is evident that such finding rendered by the Hon'ble Full Bench is in pursuant to the consideration of the dispute between the parties in the main suit after conducting trial by the trial court. That stage has not come in the present case. We are still at the stage of considering the prima facie case of the plaintiffs with regard to their interest in the trust. Even otherwise, as it is stated in the above decision that the question as to whether any given person has an interest or not is a pure question of fact and must be left to the court to be decided in the light of the general principles on a consideration of the particular circumstances of each case, I am of the view that the facts and circumstances of the above case are distinguishable.

34. ***AIR 1984 Madras 328, P.Sivagurunatha Pillai vs P.Mani Pillai (died) and others*** and ***AIR 1967 SC 1415, Mahant Harnam Singh vs. Gurdial Singh*** are also relied on by the learned senior counsel for the defendants in support of their submissions.

35.Perusal of the above said decisions would show that both were rendered in pursuant to the respective decision made in the main suit itself after considering the evidence of the respective parties. The facts of the *Sivagurunatha Pillai's* case would show that the trial court after framing necessary issues and on consideration of the oral and documentary evidence, found that the plaintiffs therein failed to establish the dedication or endowment of the suit properties for any public trust and that they were persons interested in the suit properties so as to justify their claim to file the suit under Section 92 CPC. Likewise, in *Mahant Harnam Singh* case also, the parties have gone in for trial and thereafter, the matter went to the Hon'ble Supreme Court where it has been observed that the plaintiffs were not interested persons and that mere residence in a village where free kitchen is being run for providing food to visitors does not create any interest in the residents of the village of such a nature so as to claim that they can institute a suit under Section 92 C.P.C.. Therefore, I am of the view that the above decisions are not presently applicable at the stage of considering the leave application.

36.In **1924 Privy Council 221(2), Vaidyanatha Ayyar vs**

Swaminatha Ayyar, it has been observed that descendant in the female line from the founder of the charity have an "interest" therein within the meaning of section 92 CPC although they do not claim any benefit from it. The above said decision cited on the side of the defendants, in fact support the case of the plaintiffs.

37.2004(1) CTC 321, L.M.Menezes vs Rt.Rev.Dr.Lawrence Pius, a Division Bench decision of this court is cited in support of the defendants. In paragraph Nos.29 and 30, it has been observed as follows:

*"29. From the above judgments, it is clear that interest of a person has to be determined on the facts appearing on the relationship of the person to the Trust, with reference to which the suit is brought. No doubt, each and every case has to be decided on the facts and circumstance. On careful perusal of the pleadings and documents placed before the learned Single judge, which were indeed placed before us also. Even though the first appellant held office of the Member of Property Committee of the Trust/Church, it is not sufficient to satisfy the ingredients of Section 92 CPC. The judgment of the Honourable Supreme Court reported in **Swami Paramatmanand Saraswati and another v. Ramji Tripathi and another, AIR 1974 SC 2141** cautions that the suit should be to vindicate the right of the public and*

not the right of an individual persons. Hence, we hold that the appellants are not interested persons.

30. Leave must precede the institution of suit. Prior to granting leave, there can be no suit. Leave is essentially a matter of discretion. When trustees are able to satisfy the Court that there is no evidence to support the allegations or that evidence is not sufficient or the intention of the parties are not bonafide or that action is being initiated for selfish personal ends and not with the object of any public good, it is open to the Court to revoke the leave. The court has to take an objective decision on consideration of facts of each case. The court should go into the questions of bonafide of plaintiffs and their capacity to represent the public and also see whether they are really interested in the Trust and are not those whose motives are impure. After appearance, the defendants may ask for revocation of leave and where the plaintiffs have failed to prove that they have any interest in the Trust, exparte leave is liable to be revoked. The learned single Judge taking into consideration of the facts and circumstance of the case found that though the respondents are respectable persons in the locality, they are not persons interested in the trust as contemplated under Section 92 CPC and revoked the leave."

38. Perusal of the above decision would show that the same came to be rendered based on the facts and circumstances of the above case and as such, the finding rendered therein cannot be

applied uniformly to all cases under Section 92 C.P.C. Further in the above decision, it has been specifically observed that interest of a person has to be determined on the facts appearing on the relationship of a person to the trust and each and every case has to be decided on its facts and circumstances. In this case, I have already pointed out that the relationship of the second plaintiff, admittedly by holding several posts, *prima facie* show that he is the person interested in the trust. I have also pointed out the close relationship of the second plaintiff with the trust. Therefore, the facts and circumstances of the present case are totally different and the same cannot be equated with the facts and circumstances of the above referred case. Even otherwise the above decision can be distinguished in the present case in view of the fact that this Court has already found in its earlier order dated 20.02.2015 that reading of the averments in the plaint and from other materials, there is an existence of a public trust and the allegation of breach of trust warrants a direction of this court to set right the administration of the trust. In fact, this Court has also found therein that there is a *prima facie* case regarding the breach of trust. When that being the factual finding rendered already, I do not think that the above decision will help the defendants in any manner.

39.2008(4) SCC 115, Vidyodaya Trust vs Mohan Prasad, is also relied on by the defendants wherein at paragraph Nos.18 to 20, it has been observed as follows:

"18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act, (104 of 1976) the expression used was "consent in writing of the Advocate-General". This expression has been substituted by the words "leave of the Court". Sub-Section (3) has also been inserted by the Amendment Act. 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 purpose 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.

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 Parmatmanand's case 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 no application.

20. In Swamy Parmatmanand's case it was held that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92. But if after evidence is taken it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in fact or reason but is made only with a view to bringing the suit under the Section then suit purporting to be brought under Section 92 must be dismissed."

40. Perusal of the above decision would show that the Court can dismiss the suit brought under section 92 CPC, if it is found, after evidence is taken, that the breach of trust alleged has not been made out. Therefore, the allegations made in the plaint should be allowed to be proved by conducting the trial. Before doing so, such allegations cannot be brushed aside, merely based on rival contentions of the parties in their respective affidavits, while considering the application for revocation of leave.

41. An unreported decision made in I.A.No.11202 of 2008 of the Delhi High Court was cited on behalf of the defendants. No doubt, at paragraph No.24 of the above decision, the learned Single Judge of the Delhi High Court has pointed out that there was absolutely no material therein for the plaintiffs to maintain the suit under Section 92 C.P.C. It is also observed at paragraph No.26 that it is for the plaintiffs to establish the averments even at the stage of considering the application for leave. Paragraph No.26 reads as follows:

"26. Now upon a bare reading of the averments in the suit and the applications undoubtedly the plaintiffs have categorically averred about the irregularities which according to them necessitated Court intervention. However, mere averment is not sufficient in such cases, unlike in the case of normal civil action where the Court has to take every pleading on its face value. The requirements of Section 92 mandate a slight higher standard in the sense that the legislative intention was to spare public charities from needless litigation. If someone feels that public charitable trust is being mismanaged or mal-administered, he can seek leave of the Advocate General to sue for one or some of the specific reliefs which the Court can grant under Section 92. However, if such leave is not forthcoming, he has to necessarily approach the Court and disclose why such leave is needed. In these

circumstances, the duty cast upon the plaintiffs is not merely to aver but also to establish whether the allegations pertaining to irregularities in the administration of the Trust are prima facie manifested from the record."

42. With great respect to the learned Single Judge of the Delhi High Court, I would like to differ with the said conclusion for the following reasons:

I have already pointed out that the scope for the Court under section 92 C.P.C. to consider the averments made in the plaint are at two stages and the first stage, being the one while considering the leave application. At that stage, what is to be seen is as to whether the averments made in the plaint, prima facie, satisfy the Court for grant of leave. Therefore, at that stage, the plaintiff cannot be expected to establish the averments made in the plaint by adducing any material evidence, as such exercise would amount to conduct of the trial of the suit itself before completion of the pleadings and framing of the issues. Therefore, I do not think that the above decision of the Delhi High Court can be applied to the case of the applicant.

43. Per contra, **AIR 1978 Madras 205, Kumudavalli vs.**

P.N.Purushotham, a Division Bench decision of this court was cited by the learned counsel for the plaintiffs wherein it has been observed at paragraph Nos.4 and 6 as follows:

"4...It would, therefore, appear from the meaningful expansion of the word 'interest' in S.92 C.P.C., that a person in order to lay a suit under it should plead and establish that he has some tangible interest towards the maintenance and progress of the public trust. Such an interest could be established in a number of ways. A resident of the locality who has some nexus or connection with the trust in the sense that he has interest in its well-being and prosperity, can under certain circumstances, be taken to be a person having an interest in the trust.

..6...It is not necessary that a particular person to have an interest under S.92 C.P.C. should be personally interested or personally affected by any act done by the administrator of the trust. If it could be established that they are interested in the proper conduct and running of the trust and are involuntarily involved in evincing interest in its being regulated and conducted in accordance with the terms of the trust it could reasonably be said, that

such a person has enough of an interest in the trust concerned."

44. Perusal of the above decision of the Division Bench, would make it clear that to maintain a suit under Section 92 CPC, a person should plead and establish that he has some tangible interest towards the maintenance and progress of the public trust and such an interest could be established in a number of ways. I have already pointed out that the pleading of such interest is the first stage showing the *prima facie* case of the plaintiffs whereas establishing the said interest by adducing material evidence is the second stage, which has to take place only at the time of conducting the trial. Needless to say that the process of establishing the fact is not merely reiterating the same by way of an argument. On the other hand, it means substantiating those facts by way of letting in evidence. While *prima facie* satisfaction requires mere pleading, of course, convincing to the Court, establishment of such statement/pleadings, undoubtedly, requires the process of trial. Therefore, the plaintiffs having shown a *prima facie* case of their interest in the trust, the leave granted by this Court, though by an *ex parte* order, cannot be revoked. As I found *prima facie* that the second plaintiff is also an interested person and

consequently, the leave granted cannot be revoked, I find that the Application No.5513 of 2015 is unnecessary and the same is liable to be dismissed.

45. Considering all these facts and circumstances, I am of the view that the leave granted by this Court cannot be revoked and accordingly, both the applications are dismissed.

29.09.2015

Index :Yes
Internet:Yes
vri/vsi

K.RAVICHANDRABAABU,J.

vri/vsi

Pre-delivery order made in
Application Nos.4580 & 5513 of 2015
in
C.S.No.518 of 2013

29.09.2015