APPLICATION NOS.322 AND 323 OF 2014

IN C.S.NO.618 OF 2013

PUSHPA SATHYANARAYANA, J.

Application No.322 of 2014 is filed by one Mr. A. Krishnamoorthy, the first defendant in C.S. No. 618 of 2013, claiming to be one of the trustees of the five Public Charitable Trusts, viz., Defendants 4 to 8, *inter alia* praying for rejection of the plaint filed by one Mrs. Mallika Srinivasan on various grounds while the defendants 4 to 8, various Trusts, viz., Saravanabhava Trust, Sri Sivasailapathy Trust, Paramakalyani Trust, Narayana Iyer Memorial Trust and Anantharamakrishnan Memorial Trust, [hereinafter referred to as "Charitable Trusts"], represented by Trustee Mr. A. Krishnamoorthy, who is the applicant in the former application, have filed the latter application being Application No.323 of 2014 under Order VII Rule 11 of the Code of Civil Procedure seeking for the very same relief of rejection of plaint in the suit.

2. At the first instance, it would be relevant point out that the instant applications have been filed by one and the same person, ie., one application in the individual capacity and the other one in the capacity of Trustee. Since the parties and facts are similar in both applications, they are taken up together and common order is passed.

3. The plaintiffs / respondents 1 and 2, claiming to have individual rights in the capacity of legal heirs of one of the Trustees late A. Sivasailam, have filed the suit for declaration that 50% of the shares standing in the names of late A.Sivasailam and the first defendant belonged to late A.Sivasailam and consequently to his heirs; for decree of injunction directing the second defendant for transferring the 50% of the shares, ie., 31,200 shares, in their names; declaring that the plaintiffs are entitled to become Trustees of the defendants 4 to 8 and for further declaration that the appointment of other Trustees subsequent to the death of A.Sivasailam is invalid. A direction was also sought for in the suit, to the defendant Nos.1 and 4 to 8 to appoint the plaintiffs as the Trustees of defendant Nos.4 to 8 besides seeking permanent injunction restraining the defendants from nominating or appointing any new Trustees until the plaintiffs are made Trustees of the defendant Nos.4 to 8 Charitable Trusts.

4. At the foremost, considering the prayer sought for in the instant Applications, before going into the merits of the case, it is useful to refer to the relevant provision. Order VII Rule 11 CPC enacts that the plaint shall be rejected in the four classes mentioned in Clauses (a) to (d) though cannot be regarded as exhaustive of all the cases in which a Court can reject a plaint or limit the inherent powers

of the Court. The question of maintainability or the defect in the plaint has to be examined with reference to the date on which the suit is filed.

5. For better appreciation of the case, Order VII Rule 11 CPC is extracted hereunder:-

> *"Rejection of Plaint:-*
>
> *The plaint shall be rejected in the following cases:-*
>
> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Courts, fails to do so;*
>
> *(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to suppy the requisite stamp-paper within a timem to be fixed by the Court, fails to do so';*
>
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
>
> *(e) where it is not filed in duplicate;*
>
> *(f) where the plaintiff fails to comply with the provisions of Rule 9.*

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the caase may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff]"

6. Order VII Rule 11 CPC serves a broad purpose and the same has been extensively considered by the Hon'ble Apex Court and this Court in a series of decisions. In this regard, it would be worthwhile to refer to the judgment of the Hon'ble Apex Court in ***LIVERPOOL & LONDON S.P. & I ASSOCIATION LTD., VS. M.V. SEA SUCCESS I AND ANOTHER [2004 (9) SCC 512]*** wherein in paragraph 133, it has been held as under:-

"The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil

> *Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant."*

7. The instant applications have been filed contending that there is no cause of action disclosed in the plaint. The plaintiffs are alleged to have assumed totally incorrect facts with respect to the shareholding of the second defendant Company.

8. Some of the relevant facts which emerged from the plaint and affidavits filed by the parties are summarized as under:-

(a) One S.Anantharamakrishnan, a leading industrialist and his wife Smt.Valli Anantharamakrishnan had four children, namely, A.Sivasailam and A.Krishnamoorthy two sons and two daughters, viz., Mrs.Kalyani Sundaram and Ms.A.Sita Venkataramani. There was a transmission of shares held by S.Anantharamakrishnan in the second defendant company in the names of his wife and four children and the shares were equally shared between the heirs.

(b) As seen from the plaint, Public Charitable Trusts which are shown as defendants 4 to 8 were established during 1972 – 1973. During 1974, Smt.Valli Anantharamakrishnan had split the shares held by her and executed five Gift Deeds individually in favour of the above five Public Charitable Trusts on 27.12.1974. The said gifts were also accepted by the five Trusts. For the sake of convenience, the shares were registered in the names of A.Sivasailam and A.Krishnamoorthy two of the Trustees for and on behalf of the Trusts and the shares so registered would constitute Trust property.

(c) It is also stated that holding of the same by the said A.Sivasailam and A.Krishnamoorthy would be as Trustees and would not have any beneficial interest in the shares either solely or jointly. The remaining 1500 shares, after gifting to the defendant Nos.4 to 8 Charitable Trusts, were again split into three Certificates of 500 shares each. On 20.03.1976, three separate Gift Deeds were made in favour of defendant Nos. 5, 6 and 8 and on acceptance, the transfer forms were also executed by Smt.Valli Anantharamakrishnan in favour of the Trustees A.Sivasailam and A.Krishnamoorthy in conformity with the Gift Deed.

(d) It is also stated in the affidavit that in C.S.No.727 of 2001 filed by Shankar Sundaram, legal heir of late Kalyani Sundaram, a written statement was filed by A.Sivasailam adopting the written statement filed by the applicant as per which, the said shares were held by A.Sivasailam and the applicant in the joint capacity of Trustees of the Charitable Trusts. Hence, according to the applicant, there is no doubt whatsoever that the ownership of the shares vests only with the Trust. The further case of the applicants is when the plaintiffs have admitted the ownership of the shares only by the Trust, they cannot now take a different stand in the present suit claiming right to the shares by way of succession.

9. The case of the applicants is that after the transfer of the shares in the years 1974 and 1976, the five Public Charitable Trusts namely, defendant Nos. 4 to 8, became the beneficial owners of the shares and the individuals A.Sivasailam and A.Krishnamoorthy were not the owners of the shares. In this regard, a reference was made to Article 9 of the Articles of Association of the Company.

10. The second ground raised in the applications is that there is non-disclosure of material facts and misrepresentation of facts while the third ground on which the rejection of the plaint is sought for, is the question of limitation. It is stated that when the transfer of shares in favour of the defendant Nos. 4 to 8 Charitable Trusts took place on 27.12.1974 and the donor Valli Anantharamakrishnan died in May 1977, the succession opened even in the year 1977. While so, without challenge to the transfer of shares by Late Valli Anantharamakrishnan, in the form of Gift Deeds, according to the

applicants, the reliefs sought for by the plaintiffs in the suit, are not maintainable.

11. To put it in a nutshell, according to the applicants, the present prayer indirectly assailing the transfer of shares in the form of Gift Deed effected in the year 1974, is barred by limitation.

12. Mr. Gopal Subramaniam, learned Senior Counsel appearing for the applicants contended that the prayer sought for in the suit is Hybrid in nature. According to him, reliefs (a) and (b) of the plaint have got nothing to do with the reliefs (c) to (f). He contended that in the event of a decree being granted with respect to reliefs (a) and (b), the other reliefs automatically would fall in their place.

13. The next limb of argument is that without leave of the Court being obtained under Section 92 of the Code of Civil Procedure, the suit cannot be filed for those reliefs falling under the provisions of Section 92(1) of the Code of Civil Procedure. It is the submission of the learned Senior Counsel that the reliefs sought for in (c) to (f) are in the nature of invasion into the Trusts and the same cannot be done without leave under Section 92 of the Code of Civil Procedure. Learned Senior Counsel submitted that as the plaintiffs have claimed their right to become the Trustees of the defendant Nos. 4 to 8

Charitable Trusts and also sought for permanent injunction restraining the defendants from nominating or appointing any Trustees until the plaintiffs are made Trustees, the prayer falls well within the scope of Section 92 of the Code of Civil Procedure. According to the learned Senior Counsel, the suit has to be dismissed for non-compliance of the provisions of Section 92 CPC.

14. Having taken great pains to read the entire plaint, Mr.Gopal Subramaniam, learned Senior Counsel referred to the documents also to contend that there was no cause of action disclosed in the plaint and according to him, in any event, the suit is barred by limitation.

15. Expatiating his arguments, learned Senior Counsel representing the applicants vehemently contended that as per Section 153 of the Companies Act, a Trust shall not be recorded as a Member in the Register of Members, though the Companies Act does not prohibit a Company to hold shares on behalf of the Trusts. The Trustees A.Sivasailam and A.Krishnamoorthy never claimed to be the owners of the shares in the individual capacity from the date of the Gift Deed. According to the learned Senior Counsel, as the shares belonged only to the Trusts, there is no cause of action for the suit as laid.

16. Per contra, Mr. C.A. Sundaram, learned Senior Counsel appearing for the respondents 1 and 2 / plaintiffs resisted the applications for rejection of plaint *in limini* contending that unless the six limbs of Order VII Rule 11 of the Code of Civil Procedure are satisfied, a plaint cannot be rejected. For the said purpose, the Court is expected to see only the plaint. According to the learned Senior Counsel, the application itself is misconceived as the suit is not filed in the representative capacity and not falling within the meaning of Section 92 of the Code of Civil Procedure and prayed for dismissal.

17. I have given my anxious consideration to the arguments advanced by Mr. Gopal Subramaniam, learned Senior Counsel representing the applicants / defendants and Mr. C.A. Sundaram, learned Senior Counsel appearing for the respondents 1 and 2 / plaintiffs *in extenso* and perused the materials.

18. A mere perusal of the affidavit would disclose that from the above gift of shares in favour of the Trusts, Smt.Valli Anantharamakrishnan intended the revenues from the shares, to be used suitably for charitable purposes and not to be enjoyed by the individuals. Further more, on an analysis of the plaint allegation, it appears that the primary object is vindication of individual or personal

right. Hence, the suit under Section 92 of the Code of Civil Procedure, will not lie.

19. To comply with Section 92 of the Code of Civil Procedure, three conditions have to be fulfilled. First of all, the suit has to relate to a Public Charitable or Religious Trust. Secondly, it should be founded on an allegation of breach of Trust or the direction of the Court is required for administration of the Trust. Such a suit is of special nature and therefore, if the breach of trust is not substantial or if the plaintiffs fail to make out a case for direction for proper administration, the very foundation of the suit would fail.

20. Admittedly, in the case on hand, it is only focussing on the personal right. Though the defendants 4 to 8 are Public Trusts, there is no allegation of malfeasance or misfeasance for interference by the Court under Section 92 CPC. Therefore, the real test for applicability of Section 92 is to see whether the suit is fundamentally on behalf of the Trust for vindication of public right. If the suit is filed against a Trustee and only when there has been a breach of trust, the suit under Section 92 CPC is maintainable.

21. As culled out from the materials, the plaintiffs do not challenge the Trusteeship of the first defendant or allege any breach of

trust against him. Therefore, a reading of the plaint does not attract Section 92 CPC, which is to be brought in representative character to give protection to Public Trust from being subjected to any kind of harassment. Hence, the claim of the applicants that the suit has to be rejected under Order VII Rule 11 of the Code of Civil Procedure, as the suit is not filed under Section 92 of the Code of Civil Procedure does not hold good and, accordingly, it is rejected.

22. Coming to the next contention with regard to the non-disclosure of cause of action, the same is only to be rejected at the threshold. According to the learned Senior Counsel for the applicants, if there is a gift, which has taken effect, and there is an admission by the first plaintiff herself to say that the Trusts exist, then the cause of action is said to have arisen even during the lifetime of Smt.Valli Anantharamakrishnan and, therefore, according to him, there is no cause of action with respect to prayers (a) and (b).

23. Relying on the statement made by the father of the first plaintiff in another suit admitting the existence of the Trusts and the share holdings of Trusts, learned Senior Counsel fervently contended that the plaintiffs ought to have disclosed a cause of action to show that they have a right in the shares. Admittedly, when the shares were transferred in favour of the Trusts in the year 1974 and 1976, it

is contended by the learned Senior Counsel that starting from 1974, since it is a continuous cause of action, it cannot be deemed to be a disclosure of cause of action. According to him, the documents filed along with the plaint are in support of non-disclosure of cause of action.

24. Resisting the said contention, Mr. C.A. Sundaram, learned Senior Counsel appearing for the respondents 1 and 2 / plaintiffs submitted that the averments made in the plaint are germane though the documents annexed to the plaint are irrelevant and if they are considered, it would amount to many trials, which would prejudice the final hearing of the suit.

25. In support of his contention, learned Senior Counsel appearing for the respondents 1 and 2 / plaintiffs invited the attention of this Court to the judgment of the Honourable Supreme Court in ***SALEEM BHAI AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS [2003 (1) SCC 557]*** wherein in paragraph 9 of the judgment, it has been observed in the following words:

> "*A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power*

> *under Order VII Rule 11 C.P.C. at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects."*

26. Reliance was also placed on the judgments of the Hon'ble Supreme Court in ***CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL CHARITABLE SOCIETY VS. PONNIAMMAN EDUCATIONAL TRUST [2012 (8) SCC 706]*** and ***BHAU RAM VS. JANAK SINGH AND OTHERS [2012 (8) SCC 701]***.

27. In paragraph 15 of the judgment in ***BHAU RAM's case***

(cited supra), Their Lordships have observed as follows:-

> "*15. The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant. [vide C. Natrajan vs. Ashim Bai and Another, (2007) 14 SCC 183, Ram Prakash Gupta vs. Rajiv Kumar Gupta and Others, (2007) 10 SCC 59, Hardesh Ores (P) Ltd. vs. Hede and Company, (2007) 5 SCC 614, Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and others, (2006) 3 SCC 100, Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others, (2004) 3 SCC 137, Saleem Bhai and Others vs. State of Maharashtra and Others, (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, 2012 (6) JT 149.* "

28. In asking the Court to decide an issue whether the plaint discloses a cause of action or not, which is essentially a demurrer, the

defects must be taken to admit for the sake of argument that the allegations of the plaintiffs in the plaint are true *modo et forma* – in manner and form. In doing so, they must be taken to reserve their right to show that those allegations are wholly or partially false in further stages of the action should the preliminary point be overruled.

29. The power to reject a plaint under this clause must be exercised only if the Court comes to the conclusion that even if all the allegations are proved, the plaintiffs would not be entitled to any relief whatever.

30. In the event, the plaint averments require interpretation of the pleadings, as demonstrated by learned Senior Counsel for the applicants, then the same cannot be the subject matter of Order VII Rule 11 CPC. It was argued that the prayer in the suit itself is hybrid in nature, that while on the one hand, the plaintiffs are seeking for declaration of their right in the shares, on the other hand, they have expressed their willingness to continue as Trustees of defendant Nos. 4 to 8 Charitable Trusts. It is trite law that if a plaint has to be rejected, it has to be rejected as a whole and there cannot be a partial rejection of the plaint. There cannot be any compartmentalisation, segregation, dissection and inversions of the language of various

paragraphs in the plaint. The transfer of shares by Smt.Valli Anantharamakrishnan in favour of the defendant Nos. 4 to 8 Charitable Trusts, is admitted from the date of transfer. A distinction must be drawn between a case where the plaint itself does not disclose a cause of action and another in which, the Court, after considering the entire material on record, comes to the conclusion that there is no cause of action. The plaint cannot be rejected in the latter case.

31. The next point falling for consideration is, whether the plaint can be rejected on the ground that the suit is barred by limitation. In this regard, it is the contention of the learned Senior Counsel for the respondents 1 and 2 / plaintiffs that the cause of action for the suit arose only after the demise of the father, as he was having the shares in his name till his death. Therefore, according to him, the suit cannot be rejected, as barred by limitation, as Order VII Rule 11 (d) CPC itself has got only limited application. Unless otherwise the suit filed as such is barred by any law, which could be gathered only from the averments in the plaint, the provisions of Order VII Rule 11(d) CPC cannot be invoked. The question of limitation being mixed questions of law and fact, in the absence of any explicit bar under any law, it cannot be rejected under Order VII Rule 11(d) CPC.

32. In this regard, learned Senior Counsel appearing for the

respondents 1 and 2 / plaintiffs seeks in aid the decision of the Hon'ble Supreme Court in ***POPAT AND KOTECHA PROPERTY VS. STATE BANK OF INDIA STAFF ASSOCIATION [2005 (7) SCC 510]***. The relevant passages found in paragraph Nos. 22 and 23 of the said judgment are extracted hereunder:

> "*22. There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. (1936) 1 KB 697 in the following passage:*
>
> *23. Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to*

perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13. "

33. A thorough reading of the decisions on the issue on hand makes it clear that Order VII Rule 11(d) CPC has only limited application. The applicants / defendants must show that the suit is barred under any law. Only the averments in the plaint should be seen to draw such conclusion. The clauses in Order VII Rule 11 CPC cannot be mixed up though in a given case, an application for rejection of the plaint may be filed on more than one ground.

34. The learned Senior Counsels on both sides relied on a large number of decisions. Though it cannot be said that they are wholly irrelevant, in the considered opinion of this Court, they are not relevant for the purposes of this case, at this stage.

35. In the light of the above discussions, though Order VII Rule 11 CPC lays down an independent remedy made available to the applicant / defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits, this Court is of

the view that unless the plaint is hit by the infirmities provided in the four clauses of Rule 11 of Order VII CPC, the plaint cannot be rejected.

36. The Hon'ble Apex Court as well as this Court, in a catena of decisions, have held that that the basic question to be decided is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 C.P.C. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud. The real object of Order VII Rule 11 CPC is to keep out of Courts irresponsible suits. But, in the instant case, I find that a clear cause of action has been made out to sustain the suit as against the defendants. Therefore, I find no merits in the instant applications filed under Order VII Rule 11 C.P.C. to reject the plaint and the same are liable to be dismissed.

In the result, both the applications are dismissed as devoid of merits. However, there shall be no order as to costs.

29 – 09 – 2016

TK / SRN

PUSHPA SATHYANARAYANA, J.

TK / SRN

APPLICATION NOS.322 AND 323 OF 2014
IN C.S.NO.618 OF 2013

29 – 09 – 2016