

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 13.10.2017

ORDER PRONOUNCED ON: 24.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application No.3937 of 2011
in CS D. No.29101 of 2011

1. CH.Mahesh Kumar Reddy
2. CH.Suresh Kumar Reddy
3. CH.Umesh Kumar Reddy
4. Tmt.CH.Premalatha

... Applicants

Vs

1. Sathyanarayana Charitable Trust
rep by its Managing Trustee,
K.R.Purushothaman
No.1, Sathyanarayana Avenue
Chennai 600 028.

- 2 K.R. Purushotham

- *3 R. Krishnaswamy
Sr. Advocate, Trustee- Sathyanarayana
Charitable Trust, Karapakkam, Chennai 18

* 3rd Respondent deleted as per order dated 03.03.2017
in Application Nos.1418 and 1419 of 2017,
Mr.V.Ravi, Advocate for plaintiff

- 4 M. Utham reddy
Sr. advocate & Trustee
Trustee- Sathyanarayana Charitable Trust,
New No. 37, VOC Main Road, Chennai 24

- 5 Mrs.K.Shyamala

- 6 K.Ram Narayan

... Respondents

The Respondents 5 & 6 are impleaded
as parties as per the order dated 24.09.2012
in Appl. No.4225 of 2012.

Prayer: Application is filed under Order XIV Rule 8 of O.S.Rules read with Section 92 and Section 151 of the Code of Civil Procedure, praying to grant leave to the applicants/plaintiffs herein to file suit against the 1st respondent/1st defendant Trust and its Trustees viz. Respondents/Defendants 2 to 4 under Section 92 of the Civil Procedure Code.

For Applicants : Mr.S.V.Jayaraman Sr. Counsel
for Mr.V.Ravi & G.Nanmaran

For Respondents : Mr.K.Harishankar

ORDER

This application has been filed seeking leave to institute the suit under Section 92 of the Code of Civil Procedure.

2. The plaintiffs have sought for the following reliefs in the suit:

- i) For a further declaration that the defendants 2 to 6 are not entitled to function as Trustees of Sathyanarayana Charitable Trust and direct removal of all Trustees.
- ii) Directing the defendants to render accounts of the 1st defendant's Trust.
- iii) For formation of the scheme by this Hon'ble Court to manage the 1st defendant Trust.
- iv) Permanent injunction restraining the defendants from disposing the Trust properties.
- v) For cost of this suit

3. The nature of the reliefs sought for are not in dispute. It is admitted that the suit as framed would be a suit under Section 92 of the Code of Civil Procedure. According to the plaintiffs, the plaintiffs 1 to 3 are the grandsons and the 4th plaintiff is daughter-in-law of the author of the trust, namely CH.Sathyanarayana. The said CH.Sathyanarayana, had created a trust, under Registered Trust dated 05.06.1968. He also left a Will dated 19.06.1968, which was probated after his death on 07.02.1971 in OP No.165 of 1972. According to the said Will certain properties were bequeathed by him to the Trust. The main objects of the Trust are as follows:

1. To establish, maintain run, develop, improve, extent, grant donation for and to aid and assist in the Establishment, maintenance, running, development, improvement and extension of General and Technical education, Industrial Technical or other Art, Craft and Science, Schools and institutions or all kinds of Educational Institutions of General, Technical, professional or of any other description whatsoever and to institute and award scholarship to deserving students for study, research and apprenticeship and to run or assist the running or hostels for the benefit of students and scholars.
2. To establish, maintain, run, develop, libraries and reading books.
3. To provide medical relief, namely running of hospital, Nursing Homes etc.,

4. Under the trust deed, testator had appointed three trustees and the mode of appointment of future trustees is also provided in the trust deed itself. The author had nominated his wife Sri.C.H.Balamoney, his son-in-law K.R.Purushotham, and himself as the first trustees of the trust. The said deed also provides that the first trustees shall hold the office for their lives and other trustees, who may be appointed shall hold office for a period of 3 years from their respective dates of appointment unless, by the terms of their appointment, some other period is fixed. The power to appoint trustees is also given to the trustees. Clause 16 of the trust deed reads as follows:

"The trustees may at any time and from time to time appoint any person or persons as trustees or trustees to fill any vacancies in the office of the trustees or as additions to the existing trustees provided the total number of trustees shall not exceed maximum of nine mentioned above."

5. The author of the trust died some time in 1971 and thereafter, it appears that the other two trustees, namely, K.R.Purushotham, C.H.Balamoney, continued to be trustees. By a letter dated 01.03.1985 the other trustee namely, C.H.Balamoney, wife of the founder trustee had required that her son should be appointed as the third trustee. The other surviving trustee had not acceded to her request. Thereafter, the 1st plaintiff in the proposed suit as legal heir of one of the sons of the founder of the

trust had addressed a letter to the Managing Trustee, namely

Mr.K.R.Purushotham, seeking details of the income and expenditure of the trust. It appears that the said Mahesh Kumar Reddy has also followed it up by another notice dated 24.01.2002, issued by his counsel claiming that he has a legal right and interest over the property of C.H.Sathyanarayana and Sathyanarayana Charitable Trust as well as in the properties vested in the trust by his grandfather. He also sought for details of the accounts of the trust. The said legal notice appears to have been followed by the suit in OS No.3648 of 2002 on the file of the City Civil Court at Chennai, for the following reliefs:

1. To declare that the 2nd defendant is not entitled to enjoy the properties of the trust for his individual benefit;
2. Pass on order of direction directing the defendants to render income and expenditure statements from the date the 1st defendant took charge of the properties left behind by Late C.H.Sathyanarayana and to furnish the names of the present trustees:
3. Order costs of the suit.

6. The said suit was resisted by the Managing Trustee, who was arrayed as the 2nd defendant raising various contentions. One of the primary contentions raised by the Managing Trustee was that since the relief sought for in the suit falls within the ambit of Section 92 of the Code of Civil

maintainable.

7. On the above contentions, it appears that, the following issues were framed for trial:

1. *Whether the suit is barred under Section 92 of the Code of Civil Procedure?*
2. *Whether the plaintiff is entitled to the declaratory relief sought for?*
3. *Whether the defendants are bound to furnish accounts as prayed for?*
4. *To what other relief the plaintiff is entitled to?*

8. The trial Court dismissed the suit holding that the suit is not maintainable in the absence of leave under Section 92 of the Code of Civil Procedure. Not stopping there, the learned Trial Judge went into the other issues also and found that the plaintiff is not entitled to a declaration that the 2nd defendant is not entitled to be in the management of the trust property. On the above findings, the suit came to be dismissed by the Trial Judge. The said judgment was unsuccessfully challenged by the plaintiff in the said suit (1st plaintiff in the proposed suit) in AS No.443 of 2006.

9. It is also seen from the records that the Managing Trustee had filed an application for seeking permission for sale of one of the properties belonging to the trust in OP No.314 of 2004, in this Court. The proposed

plaintiffs herein have filed an Application No.3645 of 2011, seeking to implead themselves in the original petition for sale of the property. The said application was allowed by the Hon'ble Single Judge of this Court and the trust represented by its Managing Trustee had filed appeal in OSA No.201 of 2012, against the order dated 19.09.2011, allowing the application for impleading for the present plaintiffs in the said OP filed under Section 7 of the Charitable and Religious Endowment Trust Act, 1920, seeking sanction for sale of one of the property in the trust. The said appeal came to be allowed by the Division Bench, wherein the Division Bench held that it is for the existing trustees to appoint new trustees and the heirs of the founder cannot claim any vested right to be appointed as trustees. The Division Bench also held that the dismissal of the suit in OS No.3648 of 2002, would in fact operate as *res judicata* and would prevent the applicants in Application No.3645 of 2011, from seeking impleading in the proceedings for the sale of the property. The said original side Appeal was disposed on 16.08.2012. Even before the filing the original side appeal the plaintiffs have come forward with the present suit for the above reliefs along with an application under Section 92 for leave to institute the suit.

10. The application is resisted by the Managing Trustee contending that the petitioners are not interested persons, and the suit if allowed would be barred by principle of *res judicata*. In view of the dismissal of the suit in OS

trust. The petitioners are attempting to espouse their own interest than the interest of the trust in the present suit and therefore, they are not entitled to leave under Section 92 of the Code of Civil Procedure.

11. I have heard Mr.S.V.Jayaraman, learned senior counsel appearing for Mr.V.Ravi and Mr.G.Nanmaran learned counsel for the applicants and Mr.K.Harishankar, learned counsel appearing for the respondents.

12. Mr.S.V.Jayaraman, learned Senior Counsel appearing for the applicants would contend that the suit of this nature can be brought by any person interested in the trust and as grand children and daughter-in-law of the founder of the trust, the plaintiff cannot said to be persons having no interest in the affairs of the trust. Inasmuch as the trust has been created by the grandfather of the plaintiff 1 to 4 and father-in-law of the 4th plaintiff, they are very much interested in the affairs of the trust and when they find that the affairs of the trust are not conducted in a proper manner, they are entitled to come before the Court and seek for removal of trustees and framing of a scheme. As regards the findings in OS No.3648 of 2002, the learned Senior Counsel would submit that the suit was dismissed on the ground of the maintainability and any finding rendered by the Court after having been held that the suit is not maintainable cannot operate as *res*

<http://www.judis.nic.in> *judicate* in the subsequent proceedings. He would also submit that the

Division Bench has only held that they cannot claim a vested right to be the trustees of the trust and they cannot seek impleading in the proceeding filed by the trustees seeking permission to alienate the property of the trust. According to the learned Senior Counsel, the Division bench Judgment cannot be interpreted to mean that they can never complain about any mismanagement in the affairs of the trust.

13. Per contra Mr.K.Hari Shankar, learned counsel appearing for the respondents would submit that the object of the plaintiffs is to espouse their personal cause to discharge the managing trustee. Their conduct right from the year 1985, when the other trustee, namely the wife of the founder, C.H.Sathyanarayana, wrote to the 2nd defendant, seeking an appointment of her son as trustee would show that they are only interested in becoming trustees of the trust and not in the affairs of the trust. While conceding the fact that the trust being a public trust, any member of the public, who is able to show a *prima facie* case of mismanagement can file a suit under Section 92 of the Code of Civil Procedure.

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14. Mr.K.Hari Shankar, learned counsel would vehemently contend that in view of the decision in OSA No.201 of 2012 and the suit filed by them the plaintiff are not entitled to grant of leave in the present suit. He would also rely upon the judgments of Supreme Court in **Vidyodaya Trust**

Paramatman and Saraswati and Anr. V. Ramji Tripathi and Anr., reported in **1974 (2) SCC 695**; ***Aurobindo Ashram Trust and Others v. R.Ramanathan and others***, reported in **2016 (6) SCC 126** and the judgment of Single Judge of this Court in ***A.Duruvasulu Naidu v. Bhajarang Educational & Social Trust***, reported in **MANU/TN/3014/2014**.

The requirements under Section 92 of the Code of Civil Procedure are very clear, two or more persons having an interest in the trust may bring in a suit with the leave of the Court for any one of the reliefs set out under the said Section. While considering the grant of leave, the Court is mainly concerned with the averments in the plaint. Even, in ***Swami Paramatmanad*** case, referred supra, the Hon'ble Supreme Court has made it very clear that while deciding the question of leave the Court is concerned only with the plaint allegation. In paragraph 14 of the said judgment, the Hon'ble Supreme Court has observed as follows:

“It is, no doubt, true 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 facts or reasons but is made only with a view to bring the suit under the Section, then a suit purporting to be brought under Section 92 must be dismissed.”

would submit that if the allegation of breach of trust is not substantiated and it is found that they have not made out a case for any direction by the Court for proper administration of the trust, the very foundation of the suit under Section 92 of the Code of Civil Procedure, would fail and even other ingredients of the suit under Section 92 are made out, if it is clear that the proposed plaintiffs are not suing to vindicate the rights of the public/beneficiaries but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested then the suit would be outside the scope of Section 92 of the Code of Civil Procedure. Relying upon the observations of the Hon'ble Supreme Court in **Swami Paramatmanad's** case, the learned counsel Mr.K.Hari Shankar, would invite this Court to go into the conduct of the proposed plaintiffs in the past to conclude that they are espousing their personal interest in the suit. I am afraid such a contention cannot be countenanced at this stage. No doubt, true in **Vidyodaya Trust case**, referred supra, also the Hon'ble Supreme Court has reiterated the position that it is found that the suit is for espousing the individual rights, the same cannot be held to be a suit within Section 92 of the Code of Civil Procedure. I have already extracted the prayers in the suit, none of the prayers appear to me to espouse the individual right of the plaintiff or any person in whom the plaintiffs are interested.

according to them would constitute breach of trust. Whether they are able to prove those facts and the actual breach of trust is not a question that is to be considered at the threshold. The same will have to depend on the evidence that is to be let in. Even in ***Aurobindo Ashram Trust's***, case referred supra, the Hon'ble Supreme Court has only reiterated the principles laid down in the ***Swami Paramatmanand Saraswati's case*** and as well as the ***Vidyodaya Trust case***, referred to supra, wherein it has been stated that the suit under Section 92 of the Code of Civil Procedure, is the suit of the special nature and unless it is shown that there was a breach of trust or the relief sought for is within frame work under Section 92 of the Code of Civil Procedure, such a suit could not be entertained. The fact that the plaintiffs are the grand children and the daughter-in-law of the founder of the trust is not in dispute. The fact that they have made certain allegations regarding breach of trust is also not in dispute. The only contention of the learned counsel for the respondents is that the prior conduct of the plaintiffs would show that what they are seeking as a relief is an espousal of their own cause and not the cause of the public. I am afraid such an inference cannot be drawn at this juncture in the absence of any evidence being let in the suit itself.

17. The next contention of the learned counsel Mr.K.Hari Shankar, is that in view of the judgment of the Division Bench in OSA No.201 of 2012, the present suit is barred by principles of *res judicata*. OSA No.201 of

2012, arose out of an application for impleading filed by the proposed plaintiffs in the OP filed under Section 7 of the Charitable and Religious Endowments Act 1920, seeking permission for the sale of the trust property. The application was mainly rejected on the ground that the applicants, who claim to be the grand children and daughter-in-law of a deceased testator cannot claim any right over the trust properties, since they do not have a right to be appointed as a trustees as per the trust deed, the dismissal of the earlier suit in OS No.3648 of 2002, was also taken into account and the Division Bench concluded that the applicants are not entitled to question the action of the trustees in seeking permission to sell the property. Though, the learned counsel Mr.K.Hari Shankar, would vehemently contend that the said judgment would operate as *res judicata*. I am unable to agree with the said contention of the learned counsel for the following reasons:

(i).The Division Bench has not said that the decision in OS No.3648 of 2002, would operate *res judicata* in all the suits that would be filed at a later point of time. The Division Bench was concerned only with the right of the applicants/proposed plaintiffs to seek impleading in a proceeding for seeking permission for sale of the property. There the question was, as to whether the applicants could oppose the actions of the trustees by seeking to implead themselves in a proceeding filed under Section 7 of the Charitable and Religious Endowment Trust Act, 1920. The right of the

plaintiffs to file a suit under Section 92 of the Code of Civil Procedure, seeking reliefs, under Section 92 was never decided either by the Court, which tried OS No.3648 of 2002 or by the Division Bench in OSA No.201 of 2012.

(ii). I am afraid the stretching Section 11, to the extent indicated by Mr.K.Hari Shankar, learned counsel appearing for the respondents would lead to anomalous results. The principle of *res judicata* enunciated under Section 11, cannot be stretched to include all kinds of suits filed between the parties. Even then the suit in OS No.3648 of 2002 was filed only by the 1st plaintiff in the present proposed suit. Therefore, any finding cannot therein operate against the other plaintiffs, who are now seeking to file the present suit under Section 92 of Code of Civil Procedure.

20. On the averments made in the plaint when the plaintiffs are alleged breach of trust, I am of the considered opinion that they have made out a case of grant of leave. While considering the question of grant of leave, the Court cannot look for concrete evidence, which would 100% ensure that the plaintiffs would be entitled to a decree as prayed for. The grant of leave essentially based on *prima facie* material and the allegations made in the plaint in my considered opinion would constitute a *prima facie*

21. I do not think, it would be proper for me to go into the nature of the material and pronounce even a prima facie conclusion regarding the alleged breach of trust. I am making it clear that I am not going into the correctness or otherwise of the allegations made in the plaint. Taking the allegations in the plaint as they stand, I am of the considered opinion that the plaintiffs have made out the grant of leave under Section 92 of the Code of Civil Procedure, to file the above suit.

22. In fine, this application is allowed. Leave is granted to the plaintiffs to file the present suit under Section 92 of the Code of Civil Procedure. However, there will be no order as to costs in the circumstances of the case.

24.10.2017

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Internet: Yes

Speaking order

jv

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R.SUBRAMANIAN,J.

jv



Pre Delivery Order

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