

IN THE HIGH COURT OF JUDICATURE AT MADRAS

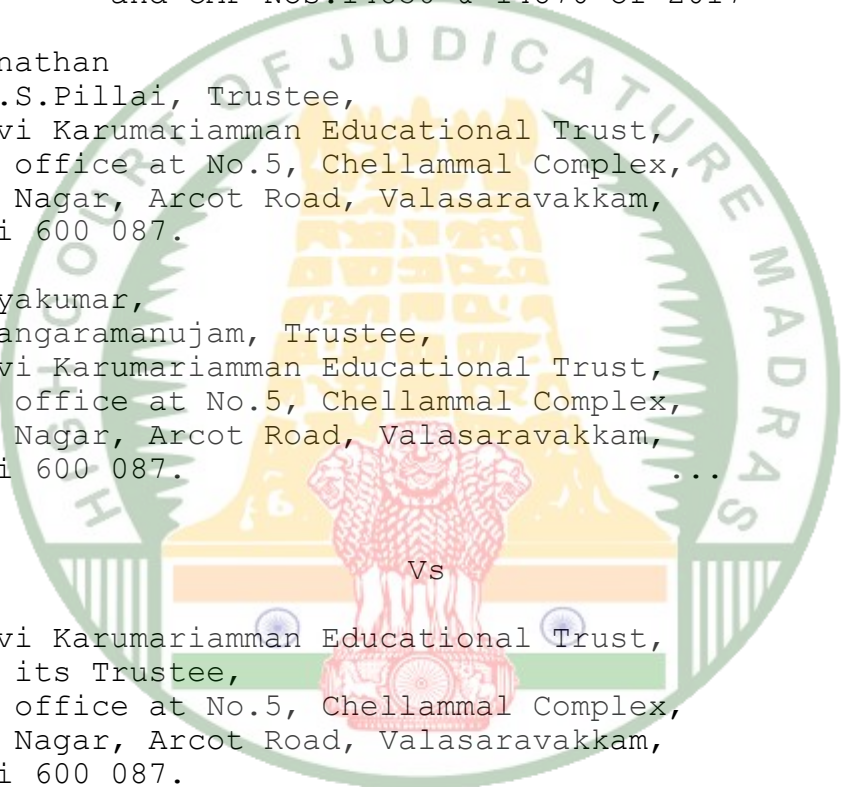
JUDGMENT RESERVED ON : 01.09.2017

JUDGMENT PRONOUNCED ON : 13.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2343 of 2017
and CMP.Nos.12604 & 12605 of 2017
and CMP Nos.14850 & 14870 of 2017

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1. S.Meganathan
S/o. K.S.Pillai, Trustee,
Sri Devi Karumariamman Educational Trust,
Having office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road, Valasaravakkam,
Chennai 600 087.
2. R.Vijayakumar,
S/o. Rangaramanujam, Trustee,
Sri Devi Karumariamman Educational Trust,
Having office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road, Valasaravakkam,
Chennai 600 087. ... Appellants
- Vs
1. Sri Devi Karumariamman Educational Trust,
Rep by its Trustee,
Having office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road, Valasaravakkam,
Chennai 600 087.
2. G.Jayaraman
S/o. Govindarajnaicker, Trustee,
Sri Devi Karumariamman Educational Trust,
Having office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road, Valasaravakkam,
Chennai 600 087.
3. J.Jayalakshmi
W/o. G.Jayaraman, Trustee,
Sri Devi Karumariamman Educational Trust,
Having office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road, Valasaravakkam,
Chennai 600 087.
4. J.Nirmala

D/o. G.Jayaraman, Trustee,
Sri Devi Karumariamman Educational Trust,
Having office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road, Valasaravakkam,
Chennai 600 087.

5. J.Kumaran

S/o. G.Jayaraman, Trustee,
Sri Devi Karumariamman Educational Trust,
Having office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road, Valasaravakkam,
Chennai 600 087.

... Respondents

This appeal is filed under Order 43 Rule 1 (R) of the Code of Civil Procedure, against the order of the District Judge No.II, Kanchipuram dated 21.07.2017 in I.A.No.345/2017 in O.S.No.56/2017 under Section 104 of C.P.C.

For Appellants : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.Prahaladh Bhatt

For Respondents : Mr.T.V.Ramanujam, Senior Counsel
for Mr.Raj & Raj Associates

JUDGEMENT

The defendants 1 and 2 in OS No.56 of 2017 who have been restrained by an order of injunction from interfering with the affairs of the plaintiff 1 to 5 and their institutions, including Annai Medical College and Hospital established and run by the 1st plaintiff through plaintiffs 2 to 5 are the appellants in this appeal.

2. The suit in OS No.56 of 2017 was filed by the 1st plaintiff, which is a trust of which plaintiffs 2 to 5 are the trustees, for permanent injunction restraining the defendants their men, agents or any person claiming to be directly or indirectly acting through them or on their behalf or under their instructions from in any way associating with and interfering with the affairs of the plaintiffs 1 to 5 and the institutions run by them, including Annai Medical College and Hospital established and run by the 1st plaintiff through plaintiffs 2 to 5 as its trustees and for other reliefs.

The sum and substance of the plaint is as follows:

3. The 1st plaintiff is a Public Educational Trust created by the 2nd plaintiff in the year 1997. The plaintiffs 3 to 5 are the founding trustees of the 1st plaintiff trust right from its inception. The trust is running four institutions namely an Engineering College called Arignar Anna Institute of Science and Technology, a Management institution in the name of Arignar Anna Institute of Management Studies, Computer Applications Institute in the name Arignar Anna Institute of Computer Applications and a 300 bedded teaching Hospital to support their Medical College in the name of Annai Medical College and Hospital. All the above institutions are located at No.104, Pennalur Village, Sriperumbudur Taluk, Kancheepuram District.

4. According to the plaintiffs, Annai Medical College and Hospital is a 300 bedded teaching Hospital cum Medical College constructed by the 1st plaintiff trust at a cost of Rs.171.33 Crores and maintained as per the norms of the Medical Council of India and provided with the necessary infrastructure. The funds for construction of Medical college obtained by way of a term loan from Bank of India and Central Bank of India to the tune of Rs.111.31 Crores. It is also claimed that the oversight Committee appointed by the Hon'ble Supreme Court had granted approval for the Medical College and Hospital to admit students. In fact it is claimed that the Essentiality Certificate for running the college was obtained by the 1st plaintiff trust as early as on 30.09.2010. After the letter of permission was granted by the Medical Council of India as per the directions of the oversight Committee appointed by the Hon'ble Supreme Court on 20.08.2016, it is claimed that the representatives of the Tamil Nadu Dr.MGR Medical University, inspected the Medical College and Hospital and affiliation was granted, on 21.09.2016, with an in take of 150 students for the 1st year.

5. Since the founder trustee of the first plaintiff trust namely the second plaintiff fell ill the 1st plaintiff trust suffered a financial set back. At this stage the 1st defendant promised to infuse funds into the trust so as to enable it to keep upfloat. On the said promise of financial assistance, an agreement was entered into on 20.08.2015 to the effect that the 1st plaintiff would infuse a sum of Rs.200 Crores into the trust over a period of one year out of which a sum of Rs.120 Crores would be utilized by repaying Banks and remaining amount would be utilized for improving the infrastructure of the institutions run by the 1st plaintiff trust. On the aforesaid promise of infusion of funds, the 1st defendant was inducted as a trustee on 20.08.2015 and the 2nd defendant was inducted as a trustee on 19.09.2016 in the 1st plaintiff trust at the instance of the 1st defendant. Upon such induction, they were entrusted the responsibilities of Managing the Annai Medical College and Hospital. The Management and running of the Hospital was left to defendants 1 and 2 and plaintiffs 2 to 5 divested of

themselves of any responsibility in Management of the Medical College and Hospital. The defendants 1 and 2 were given a free hand, since they had assured the plaintiffs 2 to 5 that they will be able to mobilize funds so as to satisfy the requirements of the Medical Council of India in order to continue the recognition and affiliation granted to the Medical College and Hospital.

6. According to the plaintiffs, the defendants 1 and 2, apart from failing to infuse funds in the institution also mismanaged the institution, which resulted in the Dean of the Medical College appointed by the defendants to make a complaint against the defendants 1 and 2 to the Medical Council of India pointing out the various irregularities in the administration of the institution. According to the plaintiffs, the defendants 1 and 2 did not even attempt to make good the deficiencies pointed out by the Medical Council of India in its inspection reports. The deficiencies pointed out by both the Medical Council of India as well as the Tamil Nadu Dr.MGR Medical University, related to the day to day administration which was entrusted with the defendants 1 and 2 and there were no deficiency in infrastructure that was created by the founding trustees namely plaintiffs 2 to 5. This led to a threat of withdrawal of recognition and affiliation. Consequently, the plaintiffs 2 to 5, being the founding trustees of the trust were afraid that all the good work done by them since 1997 would be nullified, if the defendants 1 and 2 are allowed to continue in the Management of the Medical College and Hospital. The situation also gave rise to police complaints and counter complaints between the plaintiff 2 to 5 on the one side and the defendants 1 and 2 on the other. Since the situation worsened and there was no meeting point between the two rival factions the plaintiffs 2 to 5, as the founding trustees decided to issue a show cause notice to the defendants 1 and 2 requiring them to show cause as to why they should not be removed from the office of trustees of the 1st plaintiff trust. It is also contended that the defendants 1 and 2, who were appointed as trustees, on a specific understanding that they would infuse funds to discharge the Bank loan did not do so. The said inaction of defendants 1 and 2 resulted in proceedings being taken against the trust under the SARFAESI Act by the Bank. Upon S.A.No.459 of 2016 being filed by the 1st plaintiff trust before the Debt Recovery Tribunal III, Chennai, there was a conditional order directing the trust to pay a sum of Rs.6 Crores on or before 12.08.2016 and another sum of Rs.14 Crores on or before 29.09.2016. It is contended that the defendants 1 and 2 paid only a sum of Rs.6 Crores payable on or before 12.08.2016 but failed to pay the remaining Rs.14 Crores as directed by the Debt Recovery Tribunal.

7. In view of the above said factual situation and the actions of the defendants 1 and 2, according to the plaintiffs 2

to 5, amounted to breach of trust the plaintiffs 2 to 5 had no other option but to remove the defendants 1 and 2 as trustees of the 1st plaintiff trust. It is contended that the 1st plaintiff trust in its meeting held on 07.06.2017 resolved to remove defendants 1 and 2 as trustees. Upon such removal, according to the plaintiffs, the defendants 1 and 2 are not entitled to function as trustees of the 1st plaintiff trust. Hence the present suit seeking the relief of permanent injunction as stated supra. Pending the said suit the plaintiffs also sought for temporary injunction in IA.No.345 of 2017 restraining the defendants 1 and 2 from interfering with the affairs of the 1st plaintiff trust and the institutions run by it particularly the Annai Medical College and Hospital. The averments in the affidavit filed in support of the application for injunction were substantially the same as in the plaint.

8. The 2nd defendant had filed the counter. While admitting the fact that the 1st plaintiff trust was established and created by the 2nd plaintiff and that it had started the institutions mentioned therein the 2nd defendant/2nd respondent would contend that the defendants 1 and 2 were inducted into the trust only because the plaintiffs 2 to 5, though had put up construction of Annai Medical College and obtained Essentiality Certificate in the year 2010 itself, were unable to get the necessary approvals from the Medical Council of India. Since the interest on the borrowings from Central Bank of India and Bank of India were mounting, there was no asset creation in reality. It is also claimed that out of the 1,00,200 sq.ft. of building that was constructed for the purpose of Medical College a major portion of it was constructed in the land gifted to the local body as OSR land. It is also contended that the defendants 1 and 2 had parted with huge amounts of money upon being inducted as trustees and the plaintiffs have suppressed several facts. Even prior to the induction of the defendants 1 and 2 the plaintiffs had entered into an agreement with one Dr.S.Peter, who was inducted as a joint managing trustee of the 1st plaintiff trust and three other persons have been inducted as life trustees under a resolution passed by the trustees on 06.11.2014. The said resolution inducting them as trustees was also informed to the office of Sub Registrar, Virugambakkam, on 24.11.2014. The said Dr.Peter and three others had filed the suit in CS. No.78 of 2016 before this Court and had obtained an injunction restraining the plaintiffs 1 to 5 and the 1st defendant from interfering with the functioning of the plaintiff/applicants as trustees of the 1st respondent trust. There was also a separate application in OA.No.84 of 2016 seeking an order of injunction restraining the 1st defendant herein S.Meganathan, who was the 7th respondent/7th defendant in the said suit from in any way interfering with the the 1st plaintiff trust in CS.No.78 of 2016. The said injunction order was in force, thus preventing the 1st defendant from carrying out the terms of the agreement

entered into between him and the 1st plaintiff trust. With great difficulties the 1st defendant/1st respondent had settled the issue with Dr.Peter on payment of nearly Rs.6 Crores and upon such payment the said Dr.Peter and his family members, who were plaintiffs in CS No.78 of 2016, resigned from the trusteeship and withdrew the said suit. The injunction that was granted on 16.02.2016 was finally vacated only during September 2016, therefore, the 1st respondent though was inducted as a trustee could not act as a trustee, in view of the order of the injunction. Thereafter, the defendants took steps for getting approval from the medical Council of India and the same was granted on 19.09.2016. After the approval was granted the 2nd defendant was inducted as a trustee on the same terms as that of the 1st defendant. The defendants would further contend that the plaintiff had suppressed several facts namely the induction of Dr.Peter and his family as trustees the fact that the Banks had declared the accounts of the borrowings of the 1st plaintiff trust as non performing assets and had taken proceedings under the SARFAESI Act, a sum of Rs.10 Crores paid to the 2nd plaintiff for being used to discharge the debts of the trust were used by him to discharge his personal borrowings. Upon survey of the lands it was found that a major portion of the construction put up for the purposes of the Medical College and Hospital was on the land gifted to the local body as OSR land under the Development Control Rules. It was also found that huge chunk of construction was on the private land belonging to the 2nd plaintiff who was the managing trustee. It is also contended that because of these non disclosures and irregular constructions the defendants 1 and 2 could not achieve the desired results in the functioning of the Medical College and Hospital. It is further contended by the defendants that the plaintiffs do not have the power to remove them as trustees of the 1st plaintiff trust relying upon the amendment deed dated 20.08.2015. The defendants would contend that the power to remove them as trustees has been specifically waived by the 2nd plaintiff, founder trustees as well as by the Board of Trustees. Therefore, the defendants would contend that their removal itself is not just and legal. Hence an injunction based on an illegality cannot be granted. It is also contended that there is no prima facie case in favour of the plaintiff.

9. The learned Trial Judge, who heard the application concluded that whether the removal of defendants 1 and 2 as trustees is legal or not has to be decided only after trial of the suit. The learned Trial Judge, further concluded that the plaintiffs 2 to 5 who are the founder trustees having control over the management of trust and other institutions of the trust are entitled to an injunction restraining the defendants 1 and 2 from interfering with the management of trust and its affairs. Upon the above findings the learned Trial Judge granted an injunction as prayed for pending disposal of the Suit in OS.56

of 2017.

10. Aggrieved, by the grant of such injunction the defendants 1 and 2 are on appeal.

11. I have heard Mr.T.R.Rajagopalan, learned Senior counsel appearing for Mr.Prahaladh Bhatt, learned counsel for the appellants and Mr.T.V.Ramanujam, learned Senior Counsel appearing for M/s. Raj and Raj Associates, learned counsel for the respondents.

12. CMP No.14850 of 2017 has been filed by appellants under Order 41 Rule 27 of the Code of Civil Procedure, seeking to produce certain documents as additional documents. The documents sought to be filed along with this application mainly relate to correspondence between the appellants and Banks, to show that the appellants had taken steps for availing loans from the Banks/Financial Institutions concerned. Some of the documents, namely document Nos. 1 to 4 relate to the period prior to the induction of the appellants as trustees of the 1st respondent trust. The documents Nos.5 to 9 are documents which are again correspondence between the Banks and the appellants and it is found from them that applications have been made for sanction of term loans and such term loans having been sanctioned in the name of one Rajalakshmi Medical Education and Research Foundation. They do not relate to the first respondent trust. Therefore, I am of the considered opinion that those documents are not germane to the dispute in the appeal. Document No.10 relates is a correspondence informing the appellants that a portion of the land in which construction has been made for the Medical College and Hospital are situate in OSR land, the said position is admitted by the parties. Therefore, I do not find these documents are required for the disposal of the appeal. Hence the application in CMP No.14850 of 2017 is dismissed. However, it is open to the parties to produce these documents at the time of trial if they are so advised.

13. CMP No.14870 of 2017 has been filed by the respondent in the appeal seeking to produce certain documents as additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. The documents Nos.1 to 3 are No Objection Certificate, Planning Approval and the Gift Deed of the OSR land. Similarly, the document Nos. 6 to 9 also relate to the OSR land, wherein modification of the OSR land was sought for by the respondents. The fact that the portion of the construction is in OSR land is not in dispute, the granting of planning permission is also not in dispute, therefore, those documents are not relevant for the purposes of this appeal. Document No.4 is the agreement said to have been entered between the parties which provides for an ultimate transfer of the trust to the appellants. No relief is sought for by either of the parties based on this document.

Document No.6 is letter dated 15.10.2015 issued by Rajalakshmi Medical Education and Research Foundation, affirming that the payments due to the banks will be completed within a period of two months. Document No.10 is an undertaking executed by the trustees of the 1st respondent trust. The said undertaking only records the fact that the appellants had been admitted as trustees of the trust on an assurance made by them that they would be able to infuse funds in to the trust. The document only reiterates the contents of the amended trust deed. Therefore, I do not find this document is of any help in deciding the issues involved in the appeal. The document No.11 is Income Tax return of the 1st respondent trust for the year 2016-2017, the same is also not relevant for the purposes of the deciding the controversy in this appeal. Document No.12 is a reply Email by the 1st appellant to one of the trustees, the contents of the said Email only reiterates the disputes that are required to be solved. Therefore, I do not think the said document is relevant for the purpose of this appeal. Documents Nos.13 and 14 are the Attendance Register of the Doctors, Staff Nurse, Technician for the month of July 2017 and the salary paid to the staff for the month of July 2017. They had come into the existence pending the suit. Therefore, I do not think they could be received any evidence in this appeal. Documents No.15 relates to an order passed by the Ministry of Health & Family Welfare, regarding admission of the students in the Medical College for the Academic year 2017-2018 and 2018-2019. It is an admitted fact that the Medical College has been debarred from admitting the students, due to certain deficiencies noted in the said order. The said order does not advance the cause of either of the parties. Document No.16 is an application filed by the respondent seeking modification of the OSR land as already stated the same is an admitted position, hence I do not find that it is essential for the disposal of the appeal. Document No.17 is the Statement of Accounts of respondents 3 and 5 for the period 01.08.2017, these two documents have come to existence after suit and they relate to the period after the order of the trial Court. Therefore, these documents are also considered to the unnecessary for deciding the subject matter of the appeal. Hence this application CMP No.14870 of 2017 is dismissed with liberty to the petitioners to produce these documents before the trial Court if they are so advised.

14. Mr.T.R.Rajagopalan, learned Senior Counsel would contend that the suit itself is based on the removal of the defendants 1 and 2 as trustees by the plaintiff trust in its meeting held on 07.06.2017. If the removal is found to be bad, according to the learned Senior Counsel, a prayer for injunction based on the removal cannot be granted. For the sad purpose Mr.T.R.Rajagopalan. Learned Senior Counsel would refer to the claim of the plaintiff in paragraph 13 of the plaint, wherein it is specifically stated that the defendants 1 and 2 were removed

as trustees of the 1st plaintiff in the meeting held at 11 a.m. On 07.06.2017. The resolution said to have been passed on 07.06.2017 has been extracted in the plaint. Relying heavily on the said resolution, Mr.T.R.Rajagopalan, learned Senior Counsel would contend that the basis for the suit for injunction is the resolution dated 07.06.2017.

15. According to him, the very resolution is beyond the competence of plaintiffs 2 to 5 as trustees of the 1st plaintiff trust. He would contend that once the trust deed has been amended on 20.08.2015 when the 1st defendant was inducted as a trustee under which the power that was available to the founder trustee/Chairman to remove trustees was specifically waived. Claiming that as per the amendment deed dated 20.08.2015 the founder trustee namely the 2nd plaintiff G.Jayaraman had given up his right to remove the 1st defendant as a trustee. He would also rely upon to the deed of amendment dated 19.09.2016 which was executed at the time when the 2nd defendant R.Vijayakumar was appointed as trustee of the 1st plaintiff trust. Pointing out to the language in both the deed of amendment dated 20.08.2015 and the deed of amendment dated 19.09.2016, the learned Senior Counsel appearing for the appellants would contend that the other trustees did not have the power to remove the defendants as the trustees of the 1st plaintiff trust, he would further contend if it is prima facie shown that the removal is beyond the competence of the plaintiffs 2 to 5, then an order of injunction cannot be granted on the basis of such removal which is on the face of it invalid. It is also contended by Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellants that the induction of the appellants into the trust itself was to enable them to obtain necessary clearance from Medical Council of India and other authorities to run the Medical College.

16. It is also contended that the defendants 1 and 2 were put in exclusive possession of Medical College and Hospital and they have also been empowered to open and operate bank accounts independently and pay monies on behalf of the trust pertaining to the Medical College and Hospital and also borrow funds from Banks by mortgaging trust property exclusively earmarked for the Medical College and Hospital. While admitting that the defendants 1 and 2 had agreed to infuse enough funds in order to run the Medical College and Hospital after obtaining the necessary statutory permission, Mr.T.R.Rajagopalan, learned Senior Counsel would point out that nobody can bring Rs.200 Crores over night. According to him, defendants 1 and 2 were empowered to borrow on the security of the properties of the trust which were set apart for the Medical College. But the said borrowing could not take place, in view of the fact that a major portion of the building was constructed in the land reserved as OSR land and certain other portion of the building

was constructed in the private land of the 2nd plaintiff namely the founder trustee of the 1st plaintiff. The pendency of the suit filed by Dr.Peter and the interim orders that were granted therein also hampered the progress of the steps taken by the defendants 1 and 2. Contending that the plaintiffs are guilty of suppression of material facts while inducing the defendants 1 and 2 as trustees, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellants would strenuously contend that the trial Court was in error in relegating everything to the trial of the suit and granting an order of injunction. The learned Senior Counsel would further contend that the trial Court should have ventured to record a prima facie finding regarding the validity of the removal of the defendants 1 and 2 as trustees.

17. It is further contended by the learned Senior Counsel, that the removal of defendants 1 and 2 is ultra virus Section 92 of Code of Civil Procedure. Once it is admitted that the 1st plaintiff trust is a public charitable trust, the trustees cannot be removed except by invoking Section 92 of Code of Civil Procedure. He would contend that even in cases where a trustee is found to be acting against the interest of the trust or in cases where the majority of trustees are empowered to remove a trustee, a trustee of a public charitable trust cannot be removed except by invoking Section 92 of Code of Civil Procedure. He would also invite my attention of the Full Bench decision of this Court in Kalyana Venkataramana Aiyangar and another v. Kasturi Ranga Aiyangar reported in Volume V LW 625; and the Judgments of the Hon'ble Supreme Court in Bishan Das and others v. State of Punjab and others reported in AIR 1961 SCC 1570 and Swami Paramatmanand Saraswati and another v. Ramji Tripathi and Another reported in (1974) 2 SCC 695.

18. Summarizing his submissions, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellants would submit as follows:

1. The amendment deeds dated 20.08.2015 and 19.09.2016 specifically prohibit either founder trustee or the other trustees 1st plaintiff trust from removing defendants 1 and 2 as trustees.
2. Even in the absence of such prohibition or express conferment of such power the power of removal of trustees of a public trust could be resorted to only by adopting the procedure prescribed under Section 92 of Code of the Civil Procedure and not otherwise.
3. The plaintiffs are guilty of suppression of material facts while inducing the defendants 1 and 2. They entered into agreement with the plaintiff for infusing funds to get necessary approval for the Medical College. The suppression of facts by the plaintiffs was so enormous that

defendants 1 and 2 could not, despite their best efforts get the institution back on track.

4. The amendment deed dated 20.08.2015 as well as the amendment deed dated 19.09.2016 would categorically show that the defendants 1 and 2 were put in exclusive possession and management of the Medical College and the Hospital. Therefore, a person in legal possession cannot be enjoined from interfering with the management.
5. The grant or otherwise of an injunction would depend on the averments in the plaint relating to the cause of action for the relief. Pointing out the fact that the cause of action for the relief of injunction is the removal of the defendants as trustees, on 07.06.2017, Mr.T.R.Rajagopalan, learned Senior Counsel would contend that once it is concluded that the removal is improper or that the plaintiff did not have power to remove defendants as trustees, there cannot be injunction on the basis of the allegations made in the plaint as well as the affidavit filed in support of the application for an injunction.

19. Per contra Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondents/plaintiffs would contend that the very induction of the defendants 1 and 2 in the trust was induced by fraud. Referring to the memorandum of understanding dated 20.08.2015, the learned Senior Counsel would contend that the defendants 1 and 2 were brought in as trustees on the understanding that they would infuse funds in the trust and also obtain the necessary permissions for running the Medical College. Mr.T.V.Ramanujam, learned Senior Counsel would also contend that the amendments brought to the trust deed is void and no right could be claimed under the said amendment. According to the learned Senior Counsel the power of the founder trustee to remove the defendants as trustees has not been withdrawn. As an alternative submission, the learned Senior Counsel would contend that even if the defendants cannot be removed as trustees the permission that would give them to manage Medical College Hospital can be withdrawn by the other trustees and the trust Board, which had the power to appoint them as trustees and invest them with certain function has always the power to recall the said functions. He would also rely upon the judgment of this Court in S.Saravanamuthu v. V.Moorthy and 4 others reported in 2010 (3) LW 393.

20. The sum and substance of the contentions of Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondents is as follows:

1. The induction of defendants 1 and 2 is induced by fraud. Defendants 1 and 2 cannot claim any right based on the said induction as trustees.
2. The amendment of the trust deed under which the defendants 1 and 2 have been inducted as trustees being a result of a

fraudulent misrepresentation, appointment of the defendants 1 and 2 is per se void and as such no right will accrue to them under the said amendment.

3. The defendants 1 and 2 having failed in their commitments under the agreement dated 20.08.2015 cannot be continued as trustees. Since they were inducted for a specific object and their failure to fulfill the expectations will result in their rights under the agreement being withdrawn.
4. Even assuming that the plaintiffs 2 to 5 have no power to remove the defendants 1 and 2 as trustees, the majority of the trustees in the interest of the trust have got the right to withdraw the specific functions that were assigned to them, namely the Management and Administration of the Medical College and Hospital. And even assuming that the plaintiffs would continue as trustees on the ground that their removal is prima facie illegal they should be restrained from interfering with the management of the trust.

21. On the basis of the above rival contentions, the following points emerge for consideration in this appeal.

1. Whether the removal of the defendants 1 and 2 as trustees by a resolution of the 1st plaintiff trust dated 07.06.2017 could be termed as legally valid?
2. Whether the defendants 1 and 2 could be enjoined from acting as trustees of the first plaintiff trust in view of their removal?
3. Whether the defendants could contend that the removal is bad without challenging the same by a process known to law?
4. Whether the defendants could be prevented from discharging their functions entrusted to them by the Board of Trust even assuming that the removal is not legally valid?

On the above Points:

22. Since all the four points are interconnected and decision in one will have an impact on the other they are taken up together for discussion. Though both the Senior Counsel had argued at length, in view of the fact that this appeal is directed against an interlocutory order, I do not propose to dwell deep into their submissions as I am of the considered opinion that such exercise would definitely have a bearing on the merits of the case at the time of trial. At the same time, I am obliged to consider the rival contentions atleast to satisfy the minimum requirements of Order 39 Rule 1 and 2 of the Code of Civil Procedure.

23. At the out set, it should be pointed out that the relief of injunctions sought for, both in the suit as well as the application is based on the resolution of the Board of Trustees of the 1st plaintiff trust dated 07.06.2017 removing defendants 1

and 2 as trustees of the 1st plaintiff trust. Therefore, it is incumbent upon the Court, while deciding on the grant or otherwise of an injunction to test the basis atleast on a prima facie level. The main crux of arguments of Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellants is that the plaintiffs 2 to 5, either jointly or the 2nd plaintiff as the founder trustee do not have the power to remove defendants 1 and 2 as trustees. He would place considerable reliance on the amendment deeds dated 20.08.2015 and 19.09.2016 in an by which the defendants 1 and 2 were inducted as trustees respectively and contend that the power that was vested in the 2nd plaintiff namely G.Jayaraman to remove any trustee was particularly waived by the founder himself and the other trustees.

24. The identical Clause found in amendment deeds dated 20.08.2015 and 19.09.2016 regarding removal are as follows:-

1. "Whereas on the induction of Shri S.Meganathan as a New Trustee, the provisions of the Trust Deed by Founder Mr.G.Jayaraman that he shall be empowered to dismiss/suspend/remove any trustee is hereby waived by the founder himself and the other trustees and it is hereby declared that this provision of removal is not applicable to Shri S.Meganathan as a trustee, and it is hereby confirmed that Shri S.Meganathan shall continue to be a trustee and exercise all his powers without hindrance unless he voluntarily resigns".
2. "The Power of the Founder Trustee to remove the Trustees as envisaged in Clause 5 of the Trust deed dated 03.10.1997 shall not be applicable to the Trustees, Shri S.Meganathan & Shri R.Vijayakumar".
3. "The above two Trustees cannot be removed by the majority of the Trustees. They will cease to be Trustees only on their willful voluntary resignation".

25. Drawing support from the language in the amendment deeds extracted above, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellants would contend that the Founder Trustee and the other Trustees have expressly waived their power to remove defendants 1 and 2 as trustees. The said waiver is not contingent but an absolute waiver.

26. Countering the said submissions, Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondents/plaintiffs would however, contend that if the induction itself is found to have been induced by fraud the waiver of the right to remove in the amendment deeds would not operate and therefore the power of removal shall continue. It is also the submission of Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondents that even assuming that the power to remove has been

waived the founder trustees have every right to withdraw certain functions entrusted to the defendants 1 and 2 under the Amendment deeds.

27. The learned Trial Judge while considering this submissions had found that the said question can be decided after full trial. I do not think such postponement of a very vital issue is justified. In view of the fact that the injunction is sought based on the removal of defendants 1 and 2 as trustees, the Court has to, at least, prima facie, decide on the validity of the removal before granting an injunction. It is at this juncture, Mr.T.V.Ramanujam, learned Senior Counsel for the respondents would contend that the defendants 1 and 2 have not challenged the removal, therefore, they cannot by way of defence in a suit for injunction based on the removal question the same. On the question of the absence of challenge to the removal, I do not think the contention of T.V.Ramanujam, learned Senior Counsel appearing for the respondents could be countenanced. If a person seeks discretionary order of injunction based on his own action, then it is for that person to at least prima facie show that his action is legal. The discretionary relief of injunction, in my considered opinion, cannot be granted without testing the validity or legality of the action of the plaintiff which gives them right to seek an injunction. As already pointed out the plaint proceeds on the basis of the removal. The contentions now introduced by Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondents that the induction was induced by fraud etc., are totally absent in the pleadings. Therefore, the first and foremost question that has to be decided is, whether the action of the plaintiffs 2 to 5 in removing the defendants 1 and 2 can be said to be just and legal.

28. The contentions of Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellants on this count is that the amendment deeds apart from waiving all the right of the founder trustee to remove any trustee also prohibit the majority of the trustees from removing the defendants as trustees. As rightly pointed out by him the said prohibition and waiver are not contingent upon happening of a certain event. They are absolute in their terms. Therefore, the answer to the argument that the amendment itself is void since it had been induced by fraudulent misrepresentation cannot be accepted. A fraudulent misrepresentation, even if it is proved to exist, will not invalidate a contract unless it is declared to be a result of fraudulent misrepresentation by a competent Court of Law. Therefore, in my considered opinion, the claim of the defendants that the plaintiffs 2 to 5 have no power to remove defendants 1 and 2 as trustees under the amendment deeds dated 20.08.2015 and 19.09.2016, appears to be at least prima facie valid.

29. The other contention of Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellants is that the plaintiff trust being a public Educational Trust is governed by the provisions of Section 92 of the Code of Civil Procedure. If Section 92 is to be applied then a trustee cannot be removed except by invoking the procedure prescribed under the said Section. There is no doubt that Section 92 of Code of Civil Procedure takes in its sweep removal of trustees also. Therefore if a trustee of a public charitable trust is to be removed it can be done only by invoking the provisions of Section 92 of Code of Civil Procedure. As early as in 1917 the Full Bench of this Court in Kalyana Venkataramana Aiyangar and another v. Kasturi Ranga Aiyangar reported in Volume (V) LW 625, had held as follows:

Section 92 of the present Civil Procedure Code corresponds to Section 539 of the old Code with some difference. One important change is embodied in sub Section 2 of Section 92, which says "save as provided by the Religious Endowments Act, 1863, no suits claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity to the provisions of that section." This has made clear what was formerly the subject of conflicting decisions, viz., that if the object of a suit is to obtain any relief of the specified description it will be entertained only if the conditions mentioned in the section are fulfilled.

30. In Bishan Das and others v. State of Punjab and others reported in AIR 1961 SCC 1570, the Hon'ble Supreme Court while repelling the action of the Government in dispossessing the trustee had held as follows:

It is well recognised that a suit under Section 92, Civil Procedure Code, may be brought against persons in possession of the trust property even if they claim adversely to the trust, that is, claim to be owners of the property, or against persons who deny the validity of the trust.

31. In view of the above well settled principles of law, trustee of a public charitable trust could be removed only by invoking Section 92 of Code of Civil Procedure. Therefore, the removal of the defendants 1 and 2 as trustees by a resolution dated 07.06.2017, is, in my considered opinion, prima facie beyond the competence of the plaintiffs 2 to 5 who are the trustees of the 1st plaintiff trust. Once it is found that the removal is bad the defendants 1 and 2 shall continue to act as

trustee and as such they cannot be prevented by the order of an injunction restraining them from functioning them as trustees.

32. One of the main objections of Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondents/plaintiffs is that defendants have not challenged the validity of the resolution. I have already discussed the said situation and expressed that if an order of injunction is sought for by the plaintiff is based on its own or their own actions then it is for them to justify such action, which is the basis for the relief of injunction or that they have the power to initiate such an action. Since I have found that the plaintiff 2 to 5 had no power to remove the defendants 1 and 2 as trustees of the 1st plaintiff trust, I do not think that they can seek an injunction on the said basis of the said removal.

33. Now we are left with the alternative submission of Mr.T.V.Ramanujam, learned Senior Counsel, who would contend that even assuming that the plaintiff 2 to 5 have no power of removal they cannot be said to be denuded of the power to withdraw certain functions that were specifically assigned to defendants 1 and 2 under the amendment of trust deed. He would contend that the founder trustees and other trustees had only put the defendants 1 and 2 in full control and management of the Medical College and Hospital. Therefore, it is open to them to withdraw that power and prevent the defendants 1 and 2 from discharging any functioning relating to Medical College and the Hospital. Though at the first blush the argument looks convincing, on a deeper examination, it will be seen that the argument suggested by the learned Senior Counsel is only a method to enable a back door entry. Though accusations and counter accusations are made by the plaintiff 2 to 5 and the defendants 1 and 2 against each other. I refrain from going in to all those allegations as I am dealing only with an appeal against an order of injunction in which I am expected to only decide a prima facie case. A reading of the amendment deeds dated 20.08.2015 and 19.09.2016 categorically show that the purpose of induction of defendants 1 and 2 was only with a view to streamline the administration of the Medical College and the Hospital and they were also empowered to borrow monies on the strength of the security of the properties set apart for the Medical College building, build a Compound Wall, demarcate the Medical College etc. They would show that they were put in possession of the Medical College, the Hospital and its properties. Therefore, their possession is legal. Therefore, the plaintiffs 2 to 5 cannot, except by recourse to law, attempt to remove them from the said legal possession and seek an injunction restraining them from exercising their rights. Therefore, I am unable to countenance the alternative submission made by Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondents.

34. In the result the Civil Miscellaneous Appeal is allowed, the order of injunction granted by the Trial Court restraining the defendants 1 and 2 from functioning as trustees of the 1st plaintiff trust is set aside. IA No.345 of 2017 will stand dismissed. However, in the circumstances of the case, I do not make any order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jv

To

1. The District Judge No.II,
Kanchipuram

+2cc to Mr.Raj & Raj Associates, Advocate, S.R.No.66553.

+1 cc to M/s.Prahaladh Bhatt Advocate sr 67329 dt 15/09/2017

CMA.No.2343 of 2017
and CMP.Nos.12604 & 12605 of 2017
and CMP Nos.14850 & 14870 of 2017

SCP(CO)
CS/15/09/17

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