

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 25TH DAY OF OCTOBER 2017

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A. No.4173 of 2017
in
C.S.DIARY NO.24437 of 2017

C.S.D.NO.24437/2017:

1.K.Dharmaraj,
S/o.Late P.Kuppusamy,
No.7, Anna 3rd Cross Street,
Srinivasa Nagar,Padi,Chennai-600 050.

2.P.Nagaraj,
S/o.Late S.Palavesam,
No.271, Gujji Main Street,
Anna Nagar East, Chennai-600 102.

3.C.Govindaraju,
S/o.Late V.Chidambaram,
No.19, Ramalingam Apartments M.M.D.A Colony,
Arumbakkam, Chennai-600 106.

4.T.Ramamoorthi,
S/o.Late S.A.Thandapany,
No.20, Deivasigamani Street,
Muthamizh Nagar,
Pammal, Chennai-600 075.

5.A.Sarawathi,
W/o.S.Angalapan,
No.5, South High Court, Colony,
Villivakkam, Chennai-600 049.

..Plaintiffs

-VS-

1.Sir M.Ct.Muthiah Chettiar,
Higher Secondary School Trust,
Rep.by its President,
No.23, Raja Annamalai Road,
Purasawalkam, Chennai-600 084

2.Mrs.Kamala Muthiah,
W/o.Late M.Ct.Muthiah Chettiar,
New No.9, Old No.5, Raja Annamalai Road,

Purasawalkam, Chennai-600 084

3. Mrs.Arti Meenakashi Muthiah,
W/o.Mr.Tarunghai,
Flat No.D-1, 4th Floor, Sai Kripa Apartments,
No.5, Sundaram Salai,
R.A.Puram, Chennai-600 028.

4.Mrs.Nandini Valli Muthiah,
D/o.Late M.Ct.MuthiahChettiar,
New No.9, Old No.5, Raja Annamalai Road,
Purasawalkam, Chennai-600 084

5.Mr.Tarunghai,
S/o.Mr.ManmohanGhai,
Flat No.D-1, 4th Floor, Sai Kripa Apartments,
No.5, Sundaram Salai,
R.A.Puram, Chennai-600 028.

6.Ms.Supriya Ananth Reddy,
No.23, Raja Annamalai Road,
Purasawalkam, Chennai-600 084.

7.Lady M.Ct.Muthiah Chettiar-Girls
Higher Secondary School Trust,
Rep.by its president, No.13/14,
Dr.Alagappa Road, Purasawalkam, Chennai-600 084.

8.Sir M.Ct.M.Centenary School Society,
Registered as No.283 of 1992, Rep.by its Secretary
Mrs.Nandhini Valli Muthiah,
Old No.63/New No.6, Ormes Road,
Kilpauk, Chennai-600 010.

....Defendants

A.No.4173 of 2017

1.K.Dharmaraj,
S/o.Late P.Kuppusamy,
No.7, Anna 3rd Cross Street,
Srinivasa Nagar,Padi,Chennai-600 050.

2.P.Nagaraj,
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Pammal, Chennai-600 075.

5.A.Sarawathi,
W/o.S.Angalapan,
No.5, South High Court, Colony,
Villivakkam, Chennai-600 049.

..Applicants/Plaintiffs

-Versus-

1.Sir M.Ct.Muthiah Chettiar,
Higher Secondary School Trust,
Rep.by its President,
No.23, Raja Annamalai Road,
Purasawalkam, Chennai-600 084

2.Mrs.Kamala Muthiah,
W/o.Late M.Ct.Muthiah Chettiar,
New No.9, Old No.5, Raja Annamalai Road,
Purasawalkam, Chennai-600 084

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Purasawalkam, Chennai-600 084

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Registered as No.283 of 1992, Rep.by its Secretary

Mrs.Nandhini Valli Muthiah,
 Old No.63/New No.6, Ormes Road,
 Kilpauk, Chennai-600 010. ..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to grant leave to the applicants to file the suit under Section 92 CPC.

This application coming on this day before this court for hearing the court made the following order:

" This application has been filed by four applicants, who are the proposed plaintiffs in C.S.D.No. 24437 of 2017 under Section 92(1) CPC read with Order XIV Rule 8 of Original Side Rules seeking leave to institute the suit under Section 92 of the Code of Civil Procedure.

2. The first respondent is Sir M.Ct. Muthaih Chettiar Higher Secondary School Trust, represented by a President and the respondents 2, 3, 4, 5 and 6 are the President and other Office bearers of the first respondent trust and the 7th respondent is the Lady M.Ct. Muthaih Chettiar Girls Higher Secondary School Trust and the 8th respondent is Sir M.Ct.M. Centenary School Society.

3. The first applicant is a retired Headmaster; the second and third applicants are retired Senior Teachers; the fourth applicant is a retired Assistant Headmaster and the fifth applicant is a parent of an old student.

4. These applicants had filed C.S.D.No. 24437 of 2017 seeking a Judgment and Decree to settle a scheme for the administration of the first defendant, namely, Sir M.Ct. Muthaih Chettiar Higher Secondary School Trust and also for the administration of Sir M.Ct. Muthiah Chettiar Boys Higher Secondary School, Lady M.Ct.Muthiah Chettiar Girls Higher Secondary School and Shri M.Ct. Muthiah Memorial Matriculation Higher Secondary School and also for removal of respondents 2 to 6 from the office of Trustees and for accounts and inquiries and for costs of the suit.

5. In the affidavit filed in support of the application seeking leave to institute the suit under Section 92(1) of the Code of Civil Procedure, it had been stated that the applicants are persons interested in the first respondent trust. It had been stated that the trust deed dated 31.01.1945 was executed by lady Devanai Achi, wife of late Sir M.Ct. Muthiah Chettiar for establishing a High School for Girls. Subsequently, C.S.No. 297 of 2017 had been filed by the fourth respondent contending that Shri M.Ct. Muthiah Memorial Matriculation Higher Secondary School was established by the first respondent's society and registered under the Tamilnadu Societies Registration Act. It had been further stated that 28 grounds of land in S.No. 3111/2 Purasawalkam village was purchased by the first respondent for establishing a hostel. There was an earlier litigation in C.S.No. 542 of 1990 seeking to sell a

property and this Court had also granted such permission. It had been further stated that the 8th respondent had not filed any returns and is a defunct trust. It had been further stated that disputes have arisen in the family of 2nd to 5th respondents and suits in C.S.No. 297 of 2017 and C.S.No. 87 of 2017 have been filed and are pending. There was yet another suit in C.S.No. 717 of 2016. Another suit in C.S.No. 598 of 2013 had also been filed and which had been decreed by this Court. That was to amend the trust deed. It had been stated that the 28 grounds of land was not included in the schedule in the plaint in C.S.No. 598 of 2013. There was yet another suit in C.S.No. 603 of 2013 again under Section 92 of the Code of Civil Procedure seeking amendment of the trust deed. It had been stated that C.S.No. 598 of 2013 and C.S.No. 603 of 2013 were collusively filed by the respondents 2 to 5 to divide the properties of the first respondent's trust.

6. It had been further stated that the District Educational Officer in his report had referred the mismanagement of the school by the fifth respondent. In W.P.No. 26054 of 2011 the fifth respondent undertook not to close down the school and not to use the school premises for his business. There had also police complaints given among staff members alleging attacks by each other. It had been stated that the decree obtained in C.S.Nos. 603 and 588 of 2013 is fraudulent and amounts to breach of trust.

It had been stated that the first respondent trust is a public trust and cannot divert the property of the school to another matriculation school. It had been further stated that there were several bank accounts and the fees collected from the students and the parents have been put into different accounts. This was to facilitate misuse of funds. It had also been stated that donations were also collected from the students amounting to more than 1 Crore every year. It had been further stated that monies were collected from the students without giving any receipt. It had been stated that the respondents 2 to 5 are fighting among themselves for control of the plaint schedule properties. It had been stated that the plaint schedule properties and the schools exclusively belong to the first respondent's trust. There has been breach of trust, mismanagement and corruption. It had been stated that it was necessary to frame a scheme for administration of the trust properties. It had been further stated that the respondents 2 to 6 must be removed from the office of the trustees for breach of trust. It had been stated that orders of this Court in C.S.No. 508 of 2013 and C.S.No. 603 of 2013 were not meant for proper administration of the trust properties but to advance the interest of respondents 2 to 5. In such circumstances, the applicants had filed the present suit and the application seeking permission to institute the suit.

7. Heard Mr.Selvaraj learned counsel for the applicants.

8. It had been pointed out by the learned counsel that the applicants are persons interested since the first applicant was a retired Headmaster and second and third applicants were retired Senior Teachers and the fourth applicant was a retired Assistant Headmaster and the fifth applicant was a parent of an old student. The learned counsel further stated that therefore, as persons interested, they are concerned with mismanagement and breach of trust of the first respondent trust and its properties and the schools and consequently has stated that they are entitled to move this application seeking orders of this Court to frame a scheme for the first respondent's trust.

9. The learned counsel relied on **88 LW P 577 C.Kalahasti and other V.R. Sukhantharaj and others** wherein the plaintiffs, were old students of Sir Thiagaraja College and this Court had held that as old student they stand distinct from the generality community and it gives them a direct and distinct interest under Public Charitable Trust. But however, this Court had directed the Advocate General to look into the affairs of the administration of the trust and not granted any relief to the old students of the college.

10. The learned counsel also relied on **AIR 1975 (SC) 371 Charan Singh and another Vs. Darshan Singh and others** wherein at paragraph 9, relying on an earlier Judgment of the Supreme Court had actually in **AIR 1952 SC 143 Pragadasji Vs. Ishwarlalbai, p 143**, the Supreme Court held that a suit under Section 92, Civil Procedure Code, is a special nature and that there must be allegations of breach of trust.

11. The learned counsel also relied on **AIR 1978 (Madras) 205 Kumudavalli and another Vs. P.N.Purushotham** wherein this Court had recognized a member of the public and resident of the locality as person having interested.

12. The learned counsel also relied on **1990 AIR (SC) 444 R.Venugopala Naidu Vs. Venkatarayulu Naidu Charities**, wherein this Court had held that a suit under Section 92 of the Code of Civil Procedure is a suit of special nature for the protection of public rights in the public trust and charitable.

13. The learned counsel also relied on **2012 AIR (SC) 144 Dr.T.Varghese George Vs. Kora K. George and others**, wherein again the Supreme Court had held that a parent of a student of institution was a person interested

in the activities of a trust.

14. The learned counsel also relied on **1992-1-L.W. P 618 State Bank of India Officers Association Educational Trust Vs. V.Parthasarathy and others** wherein also, a person aggrieved had been held to be a person interested.

15. The learned counsel also incidentally relied on the provisions of the **Tamilnadu Recognised Private Schools (Regulation) Act 1973** wherein it had been stated under Section 15 that the constitution of School Committee shall included the Headmaster and Senior most Teachers employed in the private school. Further reliance was also placed on Sections 30, 31 and 32 with respect to the list of properties, restriction on alienation of properties and collection of fees and other charges.

16. The learned counsel also relied on the provision of the **Tamilnadu Recognised Private Schools (Regulation) Rules 1974** and in particular to rule 2 which dealt with constitution of school committee and that it should exclude the Headmaster and three Senior most Teachers and also a nominee of the parent teacher association stating that the applicants herein are retired Headmaster, Assistant Headmaster and Senior Teachers and

also a parent of a old student.

17. The learned counsel placed reliance on the above provisions and also on the Judgments cited to urge that the applicants must be considered to be persons interested in institution of the suit.

18. Section 92 of the code of Civil Procedure is as follows:-

*"92. 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 the leave of the Court may institute a suit, whether contentious or not, in the principal Civil Court of 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 bee removed or a person 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
inquires;
- (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."

19. I have carefully considered arguments
advanced by the learned counsel.

20. It is an admitted fact that as on date none
of the applicants are in service of either the school

mentioned as respondents or in the first respondent's trust. They are retired Headmaster/Assistant Headmaster and School Teachers. Their connection with the school had been severed on the date when they attained the age of superannuation. Consequently, the Tamilnadu Recognised Private Schools (Regulation) Act 1973 which stipulated that the constitution of a school committee must include the Headmaster and Senior Teachers and a parent Teacher nominee will not come to the aid of the applicants.

21. Section 92 of the Code of Civil Procedure had used the words 'persons interested'.

22. In ***AIR 1919 Mad 384, T.R. Ramachandra Iyer and another -vs- P.A. Parameswaran Munbu and others***, this Court had held that "the interest which required of a person wishing to sue under Section 92 CPC must be a substantive and not a sentimental or remote interest."

23. In ***AIR 1974 SC 2141, Swami Paramatmanand Saraswati and another -vs- Ramji Tripathi and another***, the Supreme Court held that "It is clear that the plaintiffs are not suing to vindicate the right of public but are seeking a declaration of their individual or personal right or person in whom they are interested, then the suit would be outside the scope of Section 92, CPC."

24. In 2004 (1) CTC 321, *L.M. Menezes and others -vs- Rt. Rev. Dr. Lawrence Pius and others*, a Division Bench of this Court held that

"Para 27 : The words 'persons interested' is incorporated with the object of preventing the people interfering with the administration of charitable Trust without any real interest. The interest required must be a clear and substantive interest in the particular trust, but not merely a remote, fictitious or contingent one."

25. It has been contended by the learned counsel for the applicants that the litigation should not be viewed as an adversarial litigation and the Court must have the welfare of the trust.

26. I hold that the welfare of the trust also includes preventing vexatious litigations being thrust on the trust.

27. In 2008 (3) CTC 868, *Vidyodaya Trust -vs- R. Mohan Prasad and others*, the Supreme Court held that "The object of Section 92, CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by Suits filed against them. Public trusts for charitable and religious 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. In the Suit against public trusts, if an 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."

28. It is clear that the applicants are engaged in speculative litigation. They could use their experiences as former Headmaster / Assistant Headmaster, Senior Teacher to teach under privileged children as a social cause, impart education in Government Homes for Children in need of care and protection and for children in conflict with laws, juvenile homes or atleast in prisons so that the convicts may come out empower with education. I am not impressed with their bona fide. They cannot be categorised as 'persons interested'.

29. Seeking permission of the Court to intervene in a Trust primarily with a view to control its properties and bank accounts cannot be permitted and I find no reason to grant the relief sought. Accordingly, the application is dismissed. Consequently, C.S.D.No. 24437 of 2017 stands

rejected."

Sd/.C.V.K.J.
25.10.2017

//Certified to be a true copy//

Dated this the day of 2017.

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.