IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON 18.07.2017

DELIVERED ON 08.09.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.161 of 2013
and
M.P.No.1 of 2013
and
C.M.P.Nos.6188 of 2016
and 16767 of 2016

1.P.Elumalai

2.M.P.Thirugnanam ... Appellants

Vs.

1.Pachaiyappa's Trust Board,
Rep. by its President,
Office at Pachaiyappa's College Campus,
Shenoy Nagar,
Chennai 600 030.

2.R.Ganesan

3.Nanjil Kennady

4.P.M.Anbumani

5.V.Sukumar Babu

6.R.Prabhakaran

7.Dr.R.Thandavan

8.P.V.Kalyanasundaram

9.M.K.Mohan

10.S.Seran

11.Advocate General

12.Administrator General
and Official Trustee,
High Court, Chennai.

13.Isari K.Ganesan

14.A.Vetriazhagan

15.C.Saravanan

16.Dr.M.K.Loganathan

17.G.Sivasubramaniam

18.M.Padmanabhan

19.The Interim Administrator,
Pachaiyappa's Trust Board,
Pachaiyyapa's College Campus,
Shenoy Nagar,
Chennai 600 030.

20.P.Balakrishnan

21.P.Dhanagopal

22.K.Loganathan

23.Thiru S.Jayachandran

24.Dr.R.Prabhakaran

25.Dr.V.Ramanathan

26.K.Hemanath
27.K.V.Durai Mohan

28.T.Pachaiyappan

(12th defendant impleaded as per order passed in Appln. No.4703/07 in C.S.No.993/2001, dated 29.06.2007)

(Defendants 13 to 18 impleaded as per order passed in Appln. No.5585/2009 dated 17.11.2009 in C.S.No. 993/2001 dated 29.06.2007)

(19th respondent impleaded as per order passed in C.S.No.993/2001 dated 30.01.2013)

(RR 23 to 28 impleaded as party respondents vide order of Court dated 29.03.2016 made in CMP No.4959 of 2016) ... Respondents

Prayer:

Appeal filed under Order XXXVI Rule I of OS Rules read with Clause 15 of Letters Patent praying to set aside the judgment and decree in so far as in rejecting to frame a scheme in respect of Govindu Naicker Trust by bifurcating the Trust together with its movable and immovable properties, from the Management of Pachaiyappa's Trust to appoint five or more trustees which includes from among the members of Testator's Vanniyar Community passed by His Lordship Mr.Justice S.Rajeswaran in C.S.No.993 of 2001 dated 30.01.2013 and allow the appeal wholly as prayed for by the plaintiffs in the above suit with costs throughout.

For Appellants : Mr.T.R.Rajagopalan, S.C
for Mr.T.R.Rajaraman

For Respondents : Mr.M.Devendran
for R.1 and R.23 to R.27

Mr.S.Thiagarajan, S.C
for Mr.S.Giridharan for R.28

R.2 to R.18 Not necessary parties
R.19 to 22 No Appearance

JUDGMENT

ABDUL QUDDHOSE,J

This Original Side Appeal has been preferred against the judgment and decree dated 30.01.2013, passed by the learned Single Judge in C.S.No.993 of 2001.

2. The appellants in this appeal are the 3rd and 4th plaintiffs in the suit. The remaining plaintiffs in the suit namely, 1, 2 and 5 have been arrayed as respondent Nos.20, 21, and 22 in this appeal as they have not joined with the appellants in filing this appeal.

3. The Plaintiffs filed the suit against the defendants under Section 92 of the Code of Civil Procedure seeking the following reliefs:

"a)Frame a scheme in respect of Govindu Naicker Trust by bifurcating the Trust Govindu Naicker Trust' from the Management of Pachaiyappa's Trust.

b)Appoint 5 or more Trustees which includes from among the members of Testator's Vanniya community;

c)Issue a direction directing that the management of Govindu Naicker Trust and its properties which includes movables and immovables and handed over or vested with the Trustees so appointed in the scheme;

d)Direct the defendants herein to deliver possession of the properties along with records of Govindu Naicker Trust to the trustees appointed by this Court;

e)Direct the defendants to furnish a true and proper accounts to the Govindu Naicker Trust from the period from 1990 till the handing over of the Management of the suit Trust and possession of the properties of the Trust to the Trustees appointed by this Court;

f)direct the defendants to reimburse the monies of the said Trust diverted unauthorisedly to Pachaiyappa's Trust and other Trust under its control; and

g)make such other provisions under the Scheme as may be required for the proper administration of the suit Trust and its properties."

4. The Plaint averments in brief are as follows:

a) They are interested persons in the welfare of Govindu Naicker Trust.

b) The Will executed by Govindu Naicker dated 25.03.1846 created the Govindu Naicker Trust (hereinafter referred to as the Suit Trust). The objects of the Suit Trust are

(i)to promote education and educational charities

(ii)to grant pension to his descendants

(iii)to do religious charities

c)Some properties of the Suit Trust were encroached and no action taken by the trustees of the first respondent Trust . Attempts were made by the trustees of the first respondent to sell Kancheepuram properties belonging to the Suit Trust.

d)The Pachaiyappa's Trust (Taking over of Management) Act, 1981 (Tamil Nadu Act 11 of 1981) was passed in view of mal-administration and irregularities committed by trustees of the first respondent Trust. The suit Trust was shown as an independent Trust under the Tamil Nadu Act 11/81 which was amended on 02.10.1987 to include take over of other Public Trusts under the control of Pachaiyappa's Trust under the Tamil Nadu Ordinance 7/87.

e)Diversion of funds from suit Trust to the first respondent Trust. No charities performed in the suit Trust. Only a basic school from classes 6 to 8 run in Pachaiyappa's property, on rent. In 1990, there were 198 students and in 1999, the strength of the school was reduced to 46 students. As of now, the school is closed and the property has been put to commercial use by the first respondent Trust. W.P.No.1863 of 1996 was filed by the teachers questioning such use.

f)Religious charities as per the Will of Govindu Naicker not performed by the trustees of the first respondent Trust. The income of the Trust is in the range of Rs.35 to 40 lakhs per year and despite substantial income, the trustees of the first respondent has not developed the suit Trust. They have so far diverted several crores of rupees and siphoned off funds belonging to the suit Trust.

g)Only after the issuance of the legal notice on 05.03.2001 by the appellants/plaintiffs, income and expenditure statements and balance sheets were prepared for the suit Trust by the first respondent Trust for the years 1991 to 1999-2000. Expenses for commemoration of the first respondent Trust were met with the funds of the suit Trust. The property belonging to the suit Trust at Jehangir Street, Second Line Beach, Chennai was shown as property belonging to the first respondent Trust. Income from that property was also diverted for other purposes. Income of suit Trust utilised for administrative expenses of the first respondent Trust and this amounts to breach of the suit Trust.

h)The income of the suit Trust was mainly used to promote the interest of the first respondent Trust. Suit Trust treated as a financier for the first respondent Trust.

i)Funds of the Trust is not used for developing the institutions established by the suit Trust. Only Rs.10,000/- per annum is being spent for the suit Trust out of approximately Rs.35 lakhs to Rs.40 lakhs income being generated by the suit Trust every year. 99% of the income of the suit Trust is diverted.

j)No budget is prepared annually by the first respondent Trust. The audit statements for the period 1990 to 2000 clearly proved that some of the institutions run by the first respondent are managed from and out of the funds of the suit Trust.

k)Audited statements show that Rs.14 lakhs was borrowed by the suit Trust from other Trusts in the management of the first respondent Trust. The suit Trust is shown as a debtor inspite of generating substantial income every year. There is mishandling of funds by the first respondent Trust.

l)The trustees of the first respondent Trust took interest only to develop the first respondent Trust and no steps taken at any point of time to establish any institution in the name of the suit Trust.

m)The trustees never took interest to recover loans given out of the funds belonging to the suit Trust. The loans were given without legal sanction.

5. The respondent Nos.1 to 18 in this appeal, are the defendant Nos.1 to 18 in the suit. The nineteenth respondent in this appeal is the Interim Administrator, who was appointed to conduct elections on 26.05.2013 and was administering the first respondent Trust till the completion of elections by order of the learned Single Judge of this Court dated 16.10.2012 in Application Nos.4062, 4129, 4497 and 4498 of 2012.

6. The Interim Administrator Mr.T.N.Seshan was directed to take charge of the management of the first respondent Trust and administer the Trust until the new Board of Trustees takes charge after

the elections to the Trust Board is completed. The election to the first respondent was conducted under the charge of the Interim Administrator and after completion of elections to the first respondent Trust, the Interim Administrator was discharged on 06.06.2013 by common order of the learned Single Judge dated 28.06.2013 passed in Application Nos.1633, 1371, 1372 and 1374 of 2013 and O.A.Nos.167 and 181 of 2013.

7. Therefore, the Interim Administrator has no role to play now, though he is arrayed as respondent No.19 in this appeal.

8. The defences raised by the first respondent and its trustees in the written statement are as follows:

a)They denied mal-administration of the suit Trust and siphoning off funds from the suit Trust for purposes not dedicated under the Will of Govindu Naicker.

b)The suit is barred by the provisions of the Will and testament of Govindu Naicker dated 25.03.1846.

c)The estate of Govindu Naicker is vested with first respondent Trust as per the Will and testament of Govindu Naicker. The scheme decree dated 12.02.1909 govern the administration and management of the first respondent Trust and as per the scheme decree, the suit Trust will have to be managed only by the first respondent Trust.

d)The distinction, which is sought to be made between the estate of Govindu Naicker and the first respondent Trust as though they are separate, independent and different entities is contrary to the Will of the testator Govindu Naicker.

e)The proposal to bifurcate the estate of Govindu Naicker from the first respondent Trust and to appoint a separate Board of trustees with five or more trustees from among the members of the testator's Vanniyar community is not the declared intention of Govindu Naicker under his Will.

f)The suit falls outside the scope of Section 92 CPC since its requirements are not satisfied. The Plaintiffs are not aggrieved persons and they do not have locus standi to file a suit under Section 92 CPC against the first respondent Trust.

9. After considering the pleadings of both parties, the following issues were framed by the learned Single Judge on 04.08.2003:

> *"1.Whether Govindu Naicker Trust is an independent and separate Trust from that of the Pachaiyappa's Trust?*
>
> *2.Whether the Board of Management of*

Pachaiyappa's has committed breach of trust by mismanaging and diverting the properties and funds of Govindu Naicker trust to that of Pachayiappa's Trust and other Trusts?

3.Whether the plaintiffs have the locus standi to institute the suit as they are not 'aggrieved persons' and hence, the suit is beyond the scope and ambit of Section 92 of the Code of Civil Procedure?

4.Whether the testator Govindu Naicker had stated in terms of his "WILL" dated 25.3.1846 that the trustees who are administering the Pachaiyappa's Trust should administer the trust created by him?

5.Whether a separate scheme is required to be framed for the management and control of Govindu Naicker Trust?

6.Whether it is correct to state that the Govindu Naicker estate is a separate and an independent estate and it has no nexus with the Pachaiyappa's Trust?

7.Whether the maintaining of separate

accounts for the estate of Govindu Naicker would lead to the conclusion that the estate of Govindu Naicker has a separate existence?

8.To what relief the parties are entitled? "

10. There is a conclusive finding by the learned Single Judge in paragraph Nos.59 and 60 of the impugned judgment that the Suit Trust is a separate and independent Trust, which is reproduced hereunder:

"From the above, it is very clear that the testator Arnary Govindu Naicker created a Trust and entrusted the same with the trustees of the Pachaiyappa's Trust for their management of the trust created by Arnary Govindu Naicker, which means, the suit trust is a separate and independent trust which has been entrusted to the trustees of the Pachaiyappa's Trust for its management, as the testator clearly indicated that he doubts very much about the management of the trust after his demise and that is why when he himself was alive, he created the trust and reposing confidence in the trustees of Pachaiyappa's Trust and entrusted the properties for its effective management to pursue the objects of the trust. As rightly pointed by the learned senior counsel for the

defendants 2 to 10 and the learned counsel appearing for the defendants 13 to 18, nowhere in the Will, the testator referred to his community name and he only preferred to give the benefits to the students and youths of Hindu religion and not to any particular community or to the community he belongs to.

In such circumstances, I am of the view that the suit Trust is a separate and independent Trust and it is not a mere endowment or estate mingled and annexed to the Pachaiyappa's as contended by the defendant's 2 to 10 and 13 to 18. Therefore, I am inclined to accept the view of Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the plaintiffs that the suit Trust is a separate and independent Trust."

11. The respondents/defendants have not challenged the conclusive finding of the learned Single Judge that the suit Trust is a separate and independent Trust by either filing a separate appeal or by filing a cross objection. Hence, the said finding that the Govindu Naicker Trust is a separate and independent Trust has now become final.

12. Mr.T.R.Rajagopalan, learned Senior Counsel for the

appellants submitted the following arguments:

(a)The suit was filed for framing a scheme under Section 92 of the Code of Civil Procedure to bifurcate the Suit Trust from the first respondent Trust and for appointment of five Trustees to the Suit Trust including from Vanniar Community. He argued that the first respondent Trust is being mismanaged and the conduct of its trustees amounts to breach of Trust. He alleged that properties of the suit Trust are being diverted and the income arising there from have either been siphoned off by the trustees of the first respondent Trust for other purposes or utilised for the benefit of the first respondent Trust, which is not the intention of the testator Govindu Naicker under his Will dated 25.03.1846.

(b)The plaintiffs in the suit are interested persons in the suit Trust. According to the learned Senior Counsel, plaintiffs 1 to 3 are the sons of late Ponnusamy Naicker and Mrs.Pattammal, and descendants of late Govindu Naicker, who is the testator of the suit Trust. The fourth plaintiff is a journalist and a social worker. He was associated with several weekly magazines namely Tharasu, Netrikkan etc.,. He owned a magazine called Evukanai, in which, he had served as Editor. He was very much interested in social causes and social justice, a cause for which, late Govindu Naicker founded the suit Trust. The fifth plaintiff is a practising lawyer and was an old student of Pachaiyappa's

College and C.Kandaswami Naidu College. He was also one of the writ petitioners who filed writ petition in W.P No.1192 of 1984 questioning the take over management of Pachaiyappa's Trust by the State Government Committee and as such he was also one of the persons considered to be a person interested who fought for the interest of the suit Trust. Therefore, according to the learned Senior Counsel for the appellants, the Plaintiffs are interested persons to the suit Trust and they satisfy the requirements of Section 92 CPC for the purpose of filing a suit under that Section.

(c)The learned Senior Counsel then took us to the Will Ex.P.8 dated 25.03.1846 to highlight the declared intention of the testator Govindu Naicker under his Will. As per the Will Ex.P.8 dated 25.03.1846 executed by Govindu Naicker, the then Trustees of Pachaiyappa's Trust were named, who were *C.Srinivasa Pillai, L. Vencatapathi Nayudu, A. Vencatachala Chettiyar, M. Somasundra Mudaliyar, C. Arunagiri Mudaliyar, D.S.Ramanjulu Nayudu, T.Viraswami Pillai and P.Rajarathinam Mudaliyar.* According to the learned Senior Counsel, the Will Ex.P.8 dated 25.03.1846 of Govindu Naicker only empowers the named trustees to appoint trustees for the Suit Trust. Therefore, the claim of the respondents that whoever was appointed as trustees for first respondent Trust will continue to be the trustees of the suit Trust is incorrect. He contended that Govindu

Naicker under his Will Ex.P.8 dated 25.03.1846 had confidence only in the named trustees of the first respondent Trust and the trustees who were either inducted or elected later are not empowered to deal with the properties of the suit Trust. He referred to the Will of Govindu Naicker Ex.P.8 and highlighted the relevant portion therein to substantiate his contentions, which are reproduced hereunder:

> *"This indenture made the Twenty-fifth day of March in the year of Christ One Thousand Eight Hundred and Forty-six between Arnary Govindu Naicker, a Hindu Inhabitant of Madras of the one part and C.Srinivasa Pillai, L. Vencatapathi Nayudu, A.Vencatachala Chettiyar, M. Somasundara Mudaliyar, C. Arunagiri Mudaliyar, D.S. Ramanjulu Nayudu, T. Viraswami Pillai and P.Rajaratnam Mudaliyar being the Trustees for the time being of a certain charitable Fund called "Pachaiyappa's Charity" of the other part. Whereas the said Arnary Govindu Naicker is desirous out of his means to promote the interests and well being of his fellow subjects of the Hindu Community by useful benefactions. And whereas the said Arnary Govindu Naicker considers that by no other disposal of a portion or his means can he so well contribute to that end as by establishing a permanent fund for the*

better education of children and youths of that community and whereas the said Arnary Govindu Naicker hath confidence in the said Trustees of Pachaiyappa's Charities that they will faithfully and in all future time perform the Trusts of that charity and in particular those dedicated to the purposes of education."

13.Hence, according to the learned Senior Counsel, the trustees inducted/elected thereafter as per the scheme of the first respondent Trust can never be the trustees of the suit Trust. However according to him, this practice was being followed all these years even without reference to the recitals contained in the Will of Govindu Naicker.

14.According to the learned Senior Counsel for the appellants, the first respondent Trust is being mismanaged and its trustees have siphoned off funds belonging to the Suit Trust. According to him, there were encroachments in the properties belonging to the Suit Trust, for which, no action was taken to remove the encroachments by the trustees of the first respondent Trust. He also submitted that attempts were made by the trustees of the first respondent Trust to sell Kancheepuram property, which is not permissible as per the Will of Govindu Naicker.

15. The learned Senior Counsel submitted that for a long number of years, the first respondent Trust is being mismanaged and its trustees, whoever may be the persons, have been siphoning off the funds showing scant respect for the noble objects of the Trust. According to him, there are around 22 separate and independent Trusts managed by the first respondent Trust. He submitted that income from each of the separate and independent Trust was being diverted either to the first respondent Trust or for other purposes, which violates the objects of each of the Trust.

16.The learned Senior Counsel submitted that due to mismanagement, mal-administration and irregularities in the first respondent Trust, the Government of Tamil Nadu took over the management of the first respondent Trust under The Pachaiyappa's Trust (Taking over of Management) Act, 1981 (Tamil Nadu Act 11 of 1981). Since the original enactment did not cover the suit Trust, the Act was amended on 02.10.1987 to include all the Trusts including the suit Trust, which was under the management of the first respondent Trust. Even under the schedule to the Act 11 of 81, the suit Trust was shown as a separate and independent Trust.

17. As seen from the suit records, the Pachaiyappa's Trust taking over of the Management Act, 1981 was challenged in W.P.No.1192 of 1984 and this Court allowed the writ petition. The appeal in W.A.No.1996 of 1987 and the Civil Appeal in C.A.No.3427 of 1998 before the Hon'ble Supreme Court also confirmed the decision in W.P.1192 of 1984. Subsequently, the Board of trustees of the first respondent Trust once again took over the management in October 2000. The period of Trust board expired in the month of September 2005. Even before expiry of the period, on an application in Application No.3358 of 2005 in application No.2378 of 2005 made by the then President of the Trust, this Court passed orders on 17.09.2005 to hand over charge of the Trust to the Administrator General and the Official Trustee on or before 28.09.2005. Accordingly, the Administrator General and Official Trustee took charge of the first respondent Trust on 28.09.2005 and was administering the Trust. Thereafter, pursuant to the orders of the learned Single Judge of this Court, fresh elections were conducted by the Administrator General and Official Trustee. The new Trust Board consisting of six trustees assumed office on 09.10.2009. Again fresh elections were conducted with regard to graduate constituencies and the remaining three

trustees assumed office on 05.03.2010. According to the learned Senior Counsel, the first respondent Trust, which is vested with many properties and is also running several educational institutions is having a long history of mismanagement, mal-administration by its trustees. According to the learned Senior Counsel, due to frequent disputes and mal-administration by its trustees, the first scheme decree dated 03.02.1826 was being amended from time to time by decree dated 23.10.1832 and again, by a decree dated 30.10.1832 and 06.08.1841. On 12.02.1909, this Court framed a new scheme for the management of first respondent Trust, which came into force on 01.04.1909. This was amended by this Court subsequently, on 19.07.1920, 14.12.1920 and 16.07.1963. The Division Bench of this Court finally amended the new scheme on 24.09.2008 in O.S.A.Nos.47 and 58 of 2007 and M.P.No.2 of 2007 in O.S.A.No.58 of 2007.

18. The learned Senior Counsel then referred to paragraphs 14, 15, 16, 17, 18, 19 and 20 of the plaint to highlight the mal-administration, mismanagement and siphoning of funds by the trustees of the first respondent Trust. He submitted that expenses of some of the institutions run by the first respondent Trust were met by the income of the suit Trust. He referred to the audited statements of the suit Trust for the year 1990 -1991 to 1999 - 2000 to establish the

fact that the funds of the suit Trust were being utilised for the first respondent Trust as well as other trusts under its management. All these factors according to learned Senior Counsel will prove that the first respondent is being mismanaged by its trustees and there is a clear breach of the terms of the suit Trust. Hence, according to him, a scheme will have to be framed separately for the suit Trust and new trustees will have to be appointed and amongst the new trustees members from the Vanniyar community to which, the testator Govindu Naicker belongs must also be appointed, who will henceforth manage the affairs of the suit Trust. The learned senior counsel also submitted that the possession of the movable and immovable properties belonging to the suit Trust will have to be surrendered to the new trustees to be appointed by this Court under the new scheme to be framed by this Court.

19. The learned Senior Counsel also referred to the judgment and decree passed by the learned Single Judge of this Court in C.S.No.242 of 1986 pertaining to P.T.Lee Chengalvaroyan Naicker Trust, which was also one of the several trusts under the Management of the first respondent trust. According to the learned Senior Counsel, P.T.Lee Chengalvaroyan Naicker executed a Will on 04.12.1870 and a codicil on 30.04.1873 bequeathing major portions of his estate for

religious and charitable purposes. It was provided by him in the Will that the trustees, who are administering Pachaiyappa's Trust(first respondent Trust) could add four respectable persons and well educated people from Vanniyar Community to take charge of the properties and conduct the charities and endowments. P.T. Lee Changavaroyan Naicker Trust is one amongst the Trust along with the suit Trust that is being managed by the first respondent Trust. The Plaintiffs in that suit C.S.No.242 of 1996 alleging maladministration, mismanagement and siphoning of funds by both the first respondent Trust as well as the State Government subsequent to its take over sought for a separate scheme decree under Section 92 CPC for P.T.Lee Chengalvaroyan Naicker Trust. The learned Single Judge of this Court accepted the contention of the plaintiffs and passed a judgment and decree in favour of the plaintiffs and held that a scheme shall be framed in accordance with the wishes of the testator P.T.Lee Chengalvaroyan Naicker under his Will dated 04.12.1870 and a codicil dated 30.04.1873 by bifurcating the Trust from Pachaiyappa's Trust (first respondent Trust). According to the learned Senior Counsel, the judgment and decree dated 10.09.1997 passed in C.S.No.242 of 1986 has become final, which is also not disputed by the learned counsel for the respondents.

20. The reliefs sought for by the plaintiffs in that suit C.S.No.242 of 1986 are similar to the reliefs sought for by the appellants herein as regards the suit Trust. He referred to the operative portion of the judgment, which is reproduced hereunder:

> *"The plaintiffs have asked for several prayers. Therefore it has to be suitably answered now. I hold that a scheme shall be framed in respect of P.T. Lee Chengalvaroya Naicker Trust by bifurcating the Trust from the Pachaiyappa's trust, and that the suit trust viz., P.T.Lee Chengalvaroya Naicker Trust be separated and stand bifurcated from the Pachaiyappa's Trust. As regards the wishes of the founder, the founder has indicated in his will that there must be at least four persons belonging to the members of Vanniyakars to be appointed as trustees. I feel that at the time of framing of scheme, it will be suitably considered whether it is in the interest of the trust to appoint members of the Vanniyakars not more than four as trustees and in view of the wishes of the testator, if so, it is just and proper and necessary to appoint only four persons from among the members of the Vanniya Community as trustees or as per the*

wishes of the Chengalvaroya Naicker or more than four in number. Regarding the qualification of the persons to be appointed as trustees, the same shall be finalised and fixed at the time of settling the scheme. I also hold that the management of Chengalvaroya Naicker Trust and its properties shall be handed over to the trustees to be appointed under the scheme to be framed and shall vest with the trustees so appointed under the scheme. I further direct that the defendants 2 to 7 shall furnish a true and proper account of P.T.Lee Chengalvaroya Naicker Trust from the date of their taking over of the office of the Management of the Pachaiyappa's Trust under the Tamil Nadu Act 11 of 1981, till the handling over of the management by Pachaiyappa's trust to the trustees to be appointed by this Court. It is further directed that the defendants 2 to 7 do reimburse the monies to the P.T.Lee Chengalvaroya Naicker Trust diverted unauthorisedly to the Pachaiyappa's trust and other trusts, with interest. The extent of liability thereunder shall be determined separately by an auditor to be appointed in that regard by this Court. It *is also necessary to order that the trustees 3 to 7 viz., the defendants are personally liable for surcharge for diversion, unauthorised investment and use of the funds of the P.T.Lee Chengalvaroya Naicker Trust.*

The Committee of Interim Trustees appointed in O.S.A.Nos.114/86, 123 and 126 of 1987 by a Bench of this Court on 23.09.1987 now reconstituted as per the order passed in O.A.No.489 of 1997 and 2856 of 1997, shall continue to manage and administer the estate until such time the scheme is settled and trustees are appointed by this Court, and after such appointment of trustees, the said Committee shall hand over possession of the properties of the trust, records, registers, account books etc., to the newly appointed trustee to be so appointed under the Scheme.

The suit shall stand decreed with costs as indicated above. The parties are at liberty to file into Court draft scheme for the approval of this Court within two weeks of this order. For costs of this suit, the plaintiffs shall be paid by the defendants 3 to 7 personally. The fee of the 9th

> *defendant is fixed at Rs.5,000/-. The records pertaining to the estate of P.T.Lee Chengalvaroya Naicker Trust shall be immediately handed over by the defendants 2 and 3 to the interim committee. The suit shall be called on 29.09.1997 for the approval of the draft scheme.*

21. According to the learned Senior Counsel applying the same analogy as laid down in the judgment of P.T.Lee Chengalvaroyan Naicker Trust, a scheme decree can also be passed for the suit Trust in accordance with the wishes of its testator Govindu Naicker under his Will Ex.P.8 dated 25.03.1846. The learned senior counsel has also submitted as in the case of P.T.Lee Chengalvaroyan Naicker Trust, there should be a representation for Vanniyar Community while appointing trustees for the suit trust under the scheme decree as Govindu Naicker is also a Vanniyar. He prayed that the present trustees of the first respondent, who are managing the properties of the suit Trust must immediately hand over possession of the properties both movable and immovable to the trustees to be appointed by this Court. As sought for in the plaint, the present trustees of the first respondent should also render true and proper accounts for the suit

Trust from the period 1999 till the handing over of the management of the suit Trust and he also sought for a direction to the trustees to reimburse the monies of the suit Trust diverted unauthorisedly to the first respondent Trust and other Trusts under its control.

22. During the course of his arguments, the learned Senior Counsel referred to portions of the cross examination of defendant's witness D.W.1 (M.V.Poornachandrababu), which is reproduced hereunder.

> *"(i)It is correct to state that the scheme under Ex.P.9, the first defendant was appointed to maintain the properties of Pachaiyappa Mudaliar and implement the objects of his Will.*
>
> *(ii)About 30 trusts are being managed under the first defendant. The Ex.P.9 scheme was created for the purpose of managing the properties of the first defendant Trust.*
>
> *(iii)Ex.P.9 was a scheme created only with regard to Pachaiyappa Mudaliar and not in respect to other Trusts managed by the first defendant. Govindu Naicker has mentioned in his Will that the trustees under the scheme of first defendant's Trust should manage the affairs*

of the Govindu Naicker Trust.

(iv)Administrator General and official Trustee has not been appointed under the Pachaiyappa's Trust scheme, but, was appointed by the Hon'ble High Court. In the Ex.P.9 scheme, there is no mention as to how the properties of Govindu Naicker Trust should be managed.

(v)It is correct to state that Charities created under the income of Pachiayappa Mudaliar Estate have been called as Pachiayappa Charities and charities stated from the income of other charities have been called as allied charities or other charities.

(vi)In the name of Govindu Naicker Charities only one secondary school is being run out of the funds of Govindu Naicker Trust. No other educational institutions are being run in the name of Govinda Naicker charities. It is correct to state that prior to 1976 there were two auditors to look after the affairs of the Pachiyappa's charities and other properties of Trust separately. After 1976, only one Auditor is looking after the affairs of both Pachiayappa's Charity and other Charity.

(vii)I do not know whether the trustees so nominated, appointed or substituted can manage the properties relating to other trusts. It has

been mentioned in Govindu Naicker Will that he had beliefs and confidence that the trustees under the Pachaiyappa's Trust scheme can manage the affairs of the Govindu Naicker properties.

(viii)After perusing Ex.P.20, it is correct to state that the annual income out of Pachaiyappa's estate during the year 1991-1992 is Rs.4,43,339/- It is correct to state that annual income out of Govindu Naicker estate during the year 1991-1992 is Rs.66,456.88. The said income excludes the income from the multi storeyed building of the Govindu Naicker Trust properties. The income out of multistoreyed buildings of the Govindu Naicker Trust properties is Rs.22,69,445/- as per Ex.P.20.

(ix) During the year 1999 – 2000 the income of Govindu Naicker Estate is around Rs.2,88,371.55 as per Ex-P28. In the same year the income from Govindu Naicker Multi-storeyed building is Rs.25,56,294.27(or)Rs.25,25,173.75 as per Ex-P28. In total, income from Govindu Naicker Trust in the year 1999 – 2000 is Rs.28,13,545.30. There is an excess of income over expenditure of Rs.7,72,598.85 as stated in Ex.P.28 for the year 1999 – 2000.

(x)Govindu Naicker secondary school holds classes for VI to VIII Standard only. The Govindu Naicker Secondary School is a

Government Aided School. About Rs.21,000/- per annum is being spent for running the Govindu Naicker Trust approximately.

(xi)No other educational institutions have been started in the name of Govindu Naicker Charities subsequent to 1865. Such school was also not upgraded either as Higher Secondary School or College subsequently.

(xii)The charities performed by allied Trusts are not shown in the accounts of Pachaiyappa's Charity.

(xiii)I am the party in C.S.No.242 of 1996. I am also party in O.S.A.No.114 of 1986, 123 of 1987 and 126 of 1987. Only on the basis of Ex.P.36, Ex.P.14 was notified.

(xiv)It is correct to state that we have not celebrated the commemoration day as per the scheme decree every year regularly and was celebrated only after Ex.P.17 notice.

(xv)The income of the multi storeyed building at No.23, Jahangir Street,, is not shown under the head of Govindu Naicker Estate. Witness adds that the separate accounts for multistoreyed building is shown and included in the Pachaiyappa's Charity account.

(xvi)Ex.P.28, a sum of Rs.8,57,131/- is taken as administration charges in the financial year 1999-2000. Similarly, in Ex.P.28 a sum of Rs.11,765/- is taken towards administration

charges for the financial year 1999-2000 from Govindu Naicker Estate Account. The aforesaid amounts had been taken for the administration of Pachiayappa's Charities and allied Charities.

(xvii)I do not know whether Court permission has to be sought for using the funds from one Trust to another Trust. For certain period, the defendants have obtained permission from the Hon'ble High Court for using the funds of Govindu Naicker Trust for meeting administrative expenses of Pachaiyappa's charities and allied charities. It is correct to state that the said fact is not stated in my written statement. I do not know whether I have filed any document showing the order of the Court seeking permission as stated above.

(xviii)Under Ex.P.19, the total strength of the students of Govindu Naicker Secondary School is shown as 198 students. In 1999-2000, the strength shown as 46 students in Ex.P.28.

(xix)In the audit report 1990-1991 under Ex.P.19 a sum of Rs.14,51,541/- was given as loan from Pachaiyappa's Trust and allied trusts to Govindu Naicker Trust for the construction of the multi storeyed building. In Audit report under Ex.P.19 it is mentioned that Rs.2,82095 was given out of allied charities account to the estate of Govindu Naicker Tust towards loan. In the audit report under Ex.P.19 for the year 1990-

1991 no separate account is mentioned in the name of Pachaiyappa's allied charities.

(xx)It is correct to state that the rental advance received from the property of Govindu Naicker estate is shown under Pachaiyappa's Trust deposit Account The income from allied charities including Govindu Naicker's Trust was earlier deposited in Pachaiyappa's Trust allied charities Account.

(xxi)It is correct to state that some meagre funds from the allied charities estate including Govindu Naicker as shown under Pachaiyappas's Management contribution fund to the pachiayappa's Trust educational institutions.

(xxii)When the Pachiayappa's managed by AGOT we have obtained Court orders for diverting the funds for meeting the administrative charges for Pachaiyappa's Trust and the orders for V.T.Thiruvengadathan Trust. The said order, the Court had approved the procedure of taking funds from allied trusts for meeting the administrative charges of Pachaiyappa's Trust.

(xxiii)It is correct to state that one Pattammal was receiving Pension from Govindu Naicker Trust. She is found in Ex.P.7 photograph. It is correct to state that plaintiffs 1 to 3 are the legal heirs of Pattammal are found in Ex.P.2 legal heir certificate.

23. After reading the relevant portions in the cross examination of D.W.1, the learned Senior counsel submitted that D.W.1 has admitted the following:

(a) Funds from the suit Trust have been diverted to the first respondent Trust and other Trusts.

(b)The scheme decree under Ex.P.9 pertains only to properties owned by the first respondent Trust. D.W.1 also admitted that under Ex.P.9 scheme decree there is no mention as to how the properties of the suit Trust are to be managed.

(c)D.W.1 also admits that no other educational institutions excepting for one school having classes from VI to VIII only has been started in the name of the Suit Trust subsequent to 1865.

(d)Only Rs.21,000/- per annum is being spent for running the suit Trust approximately, even though, the annual income out of suit Trust estate during the year 1991- 1992 is Rs.66,456.88/-. D.W.1 also admits that the income from Pachaiyappa's Trust for the same year was only Rs.4,48,339/-.

(e)D.W.1 admits that there were two auditors appointed to look after the affairs of Pachaiyappa's charities prior to 1976, but only one auditor is looking after the affairs from 1976 onwards.

(f) D.W.1 has also admitted that the multi storied building at Jahangir Street, Chennai – 600 001 belonging to the suit Trust is now shown as if it is belonging to the first respondent Trust.

24.The learned Senior Counsel submitted that the appellants have clearly established that the trustees both present and past have committed several irregularities in the Management of the first respondent. According to him, there is maladministration, mismanagement and siphoning of funds by the trustees of the first respondent Trust. The appellants have also established the fact that they are interested persons and they have satisfied the requirements of Section 92 CPC. The learned Senior Counsel has therefore prayed for a decree in terms of the suit.

25.As regards three miscellaneous petitions filed by the appellants namely M.P.No. 1 of 2013, C.M.P.Nos.6188 of 2016 and 16767 of 2016 filed in this appeal, the learned Senior Counsel for the appellants made the following submission:

(a)According to the learned Senior Counsel M.P.No.1 of 2013 was filed seeking for an order of injunction restraining the respondents

1 to 3 from diverting the funds of the suit Trust derived from its properties to the first respondent Trust and other Trusts managed by the first respondent Trust pending disposal of this appeal.

26.C.M.P.No.6188 of 2016 was filed by the appellants seeking for injunction restraining the respondents from dealing with or from putting up any construction over the properties of the suit Trust at No.29, 29A, 29B, 29C, 28A and 28B, Gandhi Road, Kancheepuram Town, Kancheepuram District pending disposal of the appeal. According to the learned Senior Counsel 23rd to 28th respondents were impleaded as a party to this appeal by order of this Court dated 29.03.2016 in C.M.P.No.4949 of 2016. According to him, 23rd to 27th respondents are the current trustees of the first respondent Trust and 28th respondent is the lessee, who has taken the Kancheepuram property owned by the suit Trust referred to above on lease from the first respondent for a period of 20 years under a Lease Deed dated 19.06.2015 registered as document No.3442 of 2015, SRO, Kancheepuram and commenced construction over the property in violation of the terms of the Will of Govindu Naicker Ex.P.8 dated 25.03.1846. The learned Senior Counsel further submitted that the first respondent Trust has no power to grant lease of the Kancheepuram property. Further, according to him, a sum of

Rs.50,00,000/- has been paid as donation to Pachaiyappa's Trust Staff Welfare Account, which is unlawful, illegal and violates the terms of the Will Ex.P.8 of Govindu Naicker and as proof of the payment, a receipt was also placed before us. According to the learned Senior counsel, the payment of Rs.50,00,000/- to Pachaiyappa's Trust Staff Welfare Account was not reflected in the lease deed and the respondents have not placed the alleged resolution passed by the Pachaiyappa's Trust to the Court.

27.The counter affidavit filed by the trustees of the first respondent in C.M.P.No.6188 of 2016 does not make any reference to any resolution being passed by the first respondent Trust for inviting offers. The lease deed was executed on 19.06.2015. Paragraph 3 of the counter affidavit filed by the 28th respondent states that a resolution was passed by the newly elected Pachaiyappa's Trust Board on 25.04.2015. According to the learned Senior Counsel, without conducting a public auction, which is mandatory for a Public Trust like that of the first respondent, the property at Kancheepuram belonging to the suit Trust was let out to 28th respondent for a period of twenty years. The first respondent and its trustees along with 28th respondent colluded together and unlawfully enriched themselves in violation of the terms of the Will Ex.P.8.

28.According to the respondents, they submitted a tender on 05.06.2015 and it was opened on 12.06.2015. The said offer being the highest, it was accepted by the Pachaiyappa's Trust and they executed a lease deed on 19.06.2015 in favour of 28th respondent. They referred to some notification being affixed at the property and also at the office of the Trust Board. However, these facts were not disclosed in the counter affidavit filed by the first respondent - Pachaiyappa's Trust. According to the learned Senior Counsel, another important fact to be noted is that the lease deed executed in favour of 28th respondent refers to alleged resolution No.70, dated 15.06.2015. However, the tender dated 05.06.2015 was opened on 12.06.2015 and the 28th respondent was granted lease on that day itself. These facts prove that documents have been fabricated by the trustees of the first respondent for the purpose of the lease of the Kancheepuram property in favour of 28th respondent. There was no resolution, no notification, no tenders were received and it was an underhand dealing, by which, the lease was granted to 28th respondent.

29.According to the learned Senior Counsel the alleged lease in favour of 28th respondent is also hit by the Doctrine of lis pendens under Section 52 of the Transfer of Property Act. The suit Trust being a public Trust, the property belonging to them, which has been leased out by the first respondent to 28th respondent has to be cancelled and there is no necessity for filing a separate proceeding for seeking the prayer as this Court has got enormous powers under Section 92 CPC. Hence, the learned Senior Counsel prayed for allowing C.M.P.No.6188 of 2016 in which, status quo was granted by this Court on 27.04.2016 until further orders.

30.Hence, according to the learned Senior Counsel, the alleged lease of Kancheepuram property in favour of 28th respondent is a collusive transaction between the trustees of the first respondent and 28th respondent. Further, the first respondent has executed a lease deed in favour of the 28th respondent despite the pendency of this appeal and 28th respondent knowingly entered into the lease and they are not a bona-fide lessee. The 28th respondent has allegedly taken the lease for its textile business for a long period of twenty years only to indirectly assist the first respondent to illegally retain possession of the valuable Kancheepuram property. The alleged lease is a bogus transaction and the learned Senior Counsel sought for cancellation of the lease in favour of 28th respondent and he submitted that being a Public Trust, this Court has got powers to cancel the lease under Section 92 CPC to safeguard the interest of the suit Trust.

31.Per contra, Mr.M.Devendran, learned Counsel for respondents 1, 23 to 27, made the following submissions:

(i)The suit is barred by the provisions of the Will of the testator of Govindu Naicker dated 25.03.1846. He submitted that the properties bequeathed under the Will of Govindu Naicker was vested absolutely with the first respondent Trust. He referred to the relevant portions of the Will by which the properties of Govindu Naicker was absolutely vested with the first respondent Trust. He also submitted that even during the life time of Govindu Naicker, his properties were managed by the first respondent Trust and Govindu Naicker the testator was working as a Gumastah (Agent) then. The relevant portion of the Ex.P.8 of Govindu Naicker which the learned Counsel relied upon is reproduced hereunder:

> *"being the Trustees for the time being for a certain Charitable Fund called "Pachaiyappa's Charity" of the other part. Whereas the said Arnary Govindu Naicker is desirous out of his means to promote the interests and well being of his fellow subjects of the Hindu Community by useful benefactions. And whereas the said Arnary Govindu Naicker considers that by no other disposal of a portion of his means can he*

so well contribute to that end as by establishing a permanent fund for the better education of children and youths of that community"

"Govindu Naicker hath confidence in the said Trustees of Pachaiyappa's Charities that they will faithfully and in all future time perform the Trusts of the charity and in particular those dedicated to the purpose of education".

"to allow the said Arnary Govindu Naicker during his life as Gumastah or agent of the Trustees of the presents for the time being to collect and receive the rents and profits of such Houses, Lands, Buildings and premises (rendering account of the same to such Trustees as hereinafter provided) and then to allow the said Arnary Govindu Naicker during his life to lay out a sufficient sum according to the discretion and direction of the said Trustees of these presents for the time being in keeping the said Houses and Buildings."

"To have and to hold the said several pieces or parcels of Land, houses, buildings and premises with their and every of their appurtenances to them said C.Srinivasa Pillai, L.Vencatapathi Nayudu, A.Venkatachala Chettiyar, M.Somasundra Mudaliar, C.Arunagiri Mudaliar, D.S.Ramanjulu Nayudu, T.Viraswami

Pillai and P.Rajarathnam Mudaliyar and to the survivors and survivor of them and the Executors, Administrators and Assigns of such survivor for all the Estate of him the said Arnary Govindu Naicker in the said several premises respectively upon the Trusts nevertheless and for the purposes hereinafter expressed concerning the same that is to say upon Trust to let to good and responsible tenants all such Houses, Lands and Buildings and premises (except the Building or Charity Choultry aforesaid at Conjivaram) at such rents as can be obtained for the same."

32.Therefore, the learned Counsel submitted that the appellants are barred from filing a suit under section 92 CPC seeking for a separate scheme decree for suit Trust. According to the learned Counsel, even though, the learned Single Judge has given a finding that suit Trust is a separate and independent Trust from that of the first respondent Trust has come to the correct conclusion by rejecting the prayer of the plaintiffs for a separate scheme for the suit Trust.

(i)The proposal to bifurcate the Estate of suit Trust from the first respondent Trust and to appoint five or more trustees from among the members of Vanniyar community is not the declared intention of the testator. According to the learned Counsel, the Will Ex.P8 of the testator Govindu Naicker did not give any communal colour based on caste considerations. The suit Trust is meant only to promote the interest and well being of the Hindu community by useful benefactions. According to the learned Counsel, there is no reference to Vanniyar community anywhere in the Will Ex.P.8. He referred to the particular portion in the Will Ex.P.8 which is reproduced hereunder:

> *"Whereas the said Arnary Govindu Naicker is desirous out of his means to promote the interests and well being of his fellow subjects of the Hindu Community by useful benefactions. And Whereas the said Arnary Govindu Naicker considers that by no other disposal of a portion of his means can he so well contribute to that end as by establishing a permanent fund for the better education of children and youths of that community".*

(ii)The plaintiffs have got no locus standi to file the suit against the first respondent under Section 92 of CPC as they are not interested persons in the Trust and they do not satisfy the requirements of

Section 92 CPC for filing the suit. The suit has been filed by the plaintiffs only with a malafide intention and ill conceived motive only to ventilate the private or personal grievances of the plaintiffs who claim to be the champion of their own caste and community. The plaintiffs are disgruntled elements coming forward desperately with ulterior motives to segregate the suit Trust from that of the first respondent Trust.

(iii)As regards, the bifurcation of Chengalvaraya Naicker Trust from the first respondent Trust is concerned, the learned Counsel submitted that in the Will of Chengalvaraya Naicker there is a specific recital that "with regard to the properties that may remain after the death of the testator all the trustees who are administering the charities of benevolent Pachaiyappas Mudaliar should add to themselves four persons among those who may be respectable and well educated in the Vanniyar caste people, who belongs to his caste and after his death, the aforesaid trustees should take charge of all the properties and conduct matters according to the Will". Similarly, in the said Will the said testator Chengalvaraya Naicker made it clear the entire Estate is only for the welfare of the Vanniyars and there were several clauses contained in the Will for the upliftment of the Vanniyar community. Only after taking into consideration all these factors, the

Hon'ble Court thought it fit to frame a separate scheme for Chengalvaroya Naicker Trust by bifurcating the said Estate from the first respondent Trust. According to the learned Counsel, there is no such clause in the Will of Govindu Naicker Ex.P.8 as it was contained in the Will of Chengalvaraya Naicker which refers to privileges for Vanniyar community. In the case of the suit Trust nowhere in the Will Ex.P.8 there is any mention about any particular caste, but, it broadly envisages to promote education and educational charities to students belonging to Hindu religion. The learned Single Judge has also given a clear finding that no caste or community wise member could be considered for appointment of trustees to the first respondent. According to the learned Counsel, the testator Govindu Naicker has made very clear that full discretion has been given to the trustees of the first respondent to appoint new trustees after the life time of the existing trustees.

(iv)There is no mismanagement and diversion of funds from the suit Trust. The properties of the suit Trust which were vested with the first respondent continue to remain with it for more than 150 years and the possession is also still with them. There is no diversion of funds from the suit Trust, but, on the other hand the first respondent Trust, which is maintaining about 18 separate accounts for separate

Estates and the objects of the respective Estates are to be performed without any interruption only to fulfil the wishes of philanthropists who have vested their properties with the first respondent Trust. It is from the suit Trust, loans have been granted to other Estates which are under the administration of the first respondent Trust and the said loans were later on cleared from the allied Estates and brought into the account of the suit Trust.

(v)The learned Counsel further submits that the first respondent started a school in the name of Govindu Naicker Secondary School, which is a feeders school to Pachaiyappas College School at George Town, the first respondent Trust being the administrator of the suit Trust has constructed a multi-storeyed building named as "Govindu Maaligai" at George Town, Chennai – 600 001, getting huge income by way of rentals. According to the learned Counsel by no stretch of imagination, the first respondent Trust can be foisted for mismanagement when they are performing all the objects of the testator without any demur.

(vi)The learned Single Judge has rightly rejected the prayer of the plaintiffs for framing a separate scheme for the suit Trust despite giving a finding that the suit Trust is a separate and independent Trust from that of the first respondent Trust. The learned Single Judge has also given a finding in Paragraph 59 of the Judgement that "Nowhere in the Will, the testator referred to his community name and he only preferred to give the benefits to the students and youths of Hindu religion and not to any particular community or to the community he belongs to. Therefore, according to the learned Counsel, the plaintiffs, with vested interest to favour the Vanniyar community, have sought for a scheme decree under Section 92 CPC.

(vii)The learned Single Judge has also rightly given a finding in Paragraph 58 of his Judgment that the Will of Govindu Naicker Ex.P.8 grants full permission to the first respondent to sell the properties of the suit Trust excepting Kancheepuram property. Though it is clear under the Will Ex.P8 of the testator Govindu Naicker that the first respondent has been given the discretion to sell the properties in case of necessity. Till date, no property has been sold by the first respondent Trust and they are intact.

(viii)The learned Counsel then referred to the Cross-examination of P.W.1 and P.W.2 to prove the point that the plaintiffs are not interested persons coming within the purview of Section 92 CPC. The loan availed from Indian Bank for construction of Govindu Maaligai was repaid out of the rental income from the suit Trust, the learned Counsel referred to a portion in the Cross-examination of P.W.1 which is reproduced hereunder:

> "It is correct to state that we have not filed any documents to show that my father, Ponnuswamy Naicker is the descendent of Govindu Naicker. We have not filed any document to show that my mother Pattammal is the descendant of Govindu Naicker".
>
> "It is true that the loan obtained from Indian Bank for construction of Govindu Maaligai has been repaid out of the rental income of the said properties".

(ix)The learned Counsel further submitted that P.W.1 has admitted in his Cross-examination that the defendants are not trying to sell the properties of the suit Trust. The relevant portion of the Cross-examination of P.W.1 is reproduced hereunder:

> "It is correct to state that we have not made any allegations against the defendants that they are trying to sell the properties of Govindu Naicker Trust at Kancheepuram. It is correct to state the defendants at no point of time made any attempts to sell any property of Govindu Naicker Trust."

x)The learned Counsel also submitted that P.W.1 has admitted in his Cross-examination that there are separate accounts for each Trust maintained by the first respondent. The relevant portion of the Cross-examination P.W.1, which was relied upon by the learned Counsel is reproduced hereunder:

> "There are separate accounts for each Trust maintained by the defendants Trust. The accounts are being maintained separately."

33. The learned Counsel for the respondents 1, 23 to 27, after dealing with the merits of the appeal and the defences available to them next made his submissions on leasing out the property at Kancheepuram by the first respondent to the 28th respondent and the alleged diversion of funds which is the subject matter of C.M.P.No.6188 of 2016 and M.P.No.1 of 2013 in this appeal. According to the learned Counsel, during the pendency of this appeal respondents 23 to 27, the present trustees of the first respondent had leased out 1.51 acres of the vacant land at Kancheepuram which belongs to Govindu Naicker Estate to 28th respondent under registered lease deed dated 19.06.2015. The said vacant land was lying vacant

for several decades not yielding any income which led to unlawful encroachments. Finding that the said property is lying idle, the respondents 23 to 27, thought it fit to lease out the said vacant land by inviting tenders and after following the due procedure in accordance with law in order to benefit the suit Trust. The lessee namely the 28th respondent had offered to construct building in the said land out of his own funds and further the said lessee has also agreed to construct the building only in the name of Pachaiyappa's Trust – Govindu Naicker Estate. Under the lease deed, the property was given on lease to the 28th respondent for a period of 20 years and after the expiry of the lease, the 28th respondent has agreed to deliver vacant possession of the said property together with the buildings put up by him without any right to claim compensation or right over the buildings constructed thereon. The monthly rent fixed under the lease deed is Rs.2,05,055/- with 10% increase for every five years. Considering the proposals made by the 28th respondent which are highly beneficial to the suit Trust, the first respondent had executed and registered a lease deed in favour of the 28th respondent. The learned Counsel further submitted that as per the terms of the Will of the testator Govindu Naicker Ex.P.8 absolute discretion was given to the first respondent to lease out any of the property of the suit Trust. Therefore, in exercise of the absolute powers conferred upon the first respondent and in consideration of the most beneficial offer made by the 28th respondent, the first respondent executed and registered a lease deed in favour of the 28th respondent. According to him, there is absolutely no illegality, impropriety in granting lease in favour of the 28th respondent.

34.The learned Counsel submitted that the lessee namely the 28th respondent had also offered voluntary donation of Rs.50 lakhs which has been deposited in the account of Pachaiyappa's Trust Staff Welfare Account. According to the learned Counsel, the land at Kancheepuram was leased to the 28th respondent only for the benefit of the suit Trust. The land was remaining idle for several years without being put to use either for the benefit of the suit Trust or was it earning any income. Further, only to avoid unlawful encroachments over the land, the first respondent was constrained to let out the property to the 28th respondent for a period of 20 years. The learned Counsel refutes the allegation of the appellants that the lease in favour of the 28th respondent is a fraudulent and collusive transaction and it is detrimental to the interest of the suit Trust.

35. According to the learned Counsel for the respondents 1, 23 to 27, there is no diversion of funds belonging to the suit Trust. All the properties of the suit Trust are still intact and the monies are

properly accounted for by the first respondent.

36.According to the learned counsel, the additional documents that the appellants seek to rely in this appeal for which they have sought permission of this Court under Order 41 Rule 27 CPC is not essential and necessary for adjudicating the appeal. According to learned Counsel, this Court will have to decide whether the suit Trust should be separated from the first respondent, to frame a separate scheme, to appoint trustees from Vanniyar community. But, the issue which is being raised by the appellants during the pendency of this appeal that the first respondent has fraudulently executed lease deed in favour of the 28th respondent for the Kancheepuram property is not necessary to be decided in this appeal as the plaintiffs never sought such relief in that plaint. Further, no such relief can be granted under Section 92 CPC.

37.The learned Counsel for the respondents 1, 23 to 27, relied upon the following decisions of the Supreme Court to substantiate his argument that the Courts while construing a Will has to ascertain the intentions of the testator. He referred to the relevant paragraphs in the Judgments to highlight the point that while construing a Will, the intention of the testator has to be gathered primarily from the language of the documents which is to be read as a whole without indulging in conjecture or speculation as to what the testator would have done if he had been better informed or better advised.

a) ***AIR 1953 Supreme Court 304 (Lakshmana Nadar and others v. B.Ramier).***

b) ***AIR 1951 Supreme Court 103 (Gnambal Ammal v. T.Raju Ayyar).***

38.The learned Counsel for the respondents 1, 23 to 27 after placing his submissions prayed that the appeal filed by the appellants does not deserve any merit and has to be dismissed by this Court. He also sought for dismissal of M.P.No.1 of 2013, C.M.P.Nos.6188 and 4959 of 2016.

39.Mr.R.Thiyagarajan, learned Senior Counsel for the 28th respondent who is the lessee under the first respondent by virtue of the lease deed dated 19.06.2015 registered as document No.3442 of 2015 at Sub Registrar Office at kancheepuram made the following submissions:

a)The relief sought for against the 28th respondent in C.M.P.No.6188 of 2016 is beyond the scope of the suit C.S.No.993 of 2001. The 28th respondent is a stranger to the suit and no relief can be sought for against the 28th respondent. He relied upon the decisions reported i) ***AIR 1917 Madras 112 Full Bench (Kalyana Venkataramana Aiyangar and another v. Kasturi Ranga Aiyangar)*** *and ii)* ***AIR 1975 Allahabad 36 Full Bench (Uma Shanker and others vs. Salig Ram and other)*** to substantiate his arguments that no relief can be sought for under Section 92 CPC against a stranger.

40.The learned Senior Counsel also referred to Page 12 of the Will of Govindu Naicker Ex.P.8 to substantiate his argument that the first respondent has got the absolute power to sell/alienate the properties of the suit Trust. The relevant portion of the Will which the learned Senior Counsel relied upon is reproduced below:

> *"The Trustees or Trustee of these presents for the time being at any time or times with the consent and approbation of the said Arnary Govindu Naicker during his life and of their own discretion after his death to sell and dispose of and convey all or any part of the pieces or parcels of Ground Houses or other hereditaments here by given and granted are intended so to be (except the Charity Choultry and ground thereunto attached at*

Conjivaram) to any person or persons whomsoever for such price or prices as to them the said C.Srinivasa Pillai, L.Vencatapathi Nayudu, A.Vencatachala Chettiyar, M.Somasundra Mudaliyar, C.Arunagiri Mudaliyar, D.S.Ramanjulu Nayudu, T.Viraswami Pillai and P.Rajaratnam Mudaliyar or the survivors or survivor of them or the Trustees of these presents for the time being shall seem reasonable and that upon the payment of the money arising by any such sale of the said premises or any part thereof it shall be lawful for the Trustees of these presents for the time being to sign and give receipts for the same and such receipts shall be sufficient discharges to the person or persons to whom the same shall be given for the money therein respectively acknowledged or expressed to be received and that such person or person his, her or their heirs, Executors, Administrators and Assigns shall not afterwards be answerable for any loss, misapplication or non-application of such money or be obliged or concerned."

41.The learned Senior Counsel also relied upon the finding of the learned Single Judge in Paragraph 58 of his Judgment which according to him, gives absolute powers for the first respondent to enter into lease agreement with 28th respondent.

42.According to the learned Senior Counsel, there was complete transparency in the matter of grant of lease in favour of the 28th respondent. He referred to Paragraph 3 of the Counter Affidavit filed by the 28th respondent to C.M.P.No.6188 of 2016 filed by the appellants which is reproduced below:

25.04.2015	The newly elected Pachaiyappa's Trust Board passed resolution to let out the vacant land at 29 Gandhi Road, kancheepuram Town comprised in S.No.1665/1 & 1665/2, measuring to an extent of 1.51 acres.
	Pursuant to the above resolution, the Secretary, Pachaiyappa's Trust Board has issued notification to let out the properties by way of tender cum auction.
	Since, I came to know about the notification affixed at the conspicuous place of the property and the office of the Trust Board, I obtained Tender Application from the Trust Office.
05.06.2015	I have submitted my tender application along with the required EMD for Rs.25,000/- (Rupees twenty five thousand only) by way of D.D.No.006568, dated 05.06.2015, drawn on I.D.B.I. Bank, kancheepuram, along with other required documents.
12.06.2015	Tender opened and auction was conducted.

Originally, I quoted Rs.1,65,000/- (Rupees one lakh sixty five thousand only) as rent per month for the above property in the Tender. (Rs.1,100/- Per cent – Total 151 cents = 1,100 x 151 = 1,65,000/-)

To get higher rent, the Secretary, Pachaiyappa's Trust Board has conducted open auction. In the auction, I have offered Rs.2,05,500/- per month i.e. Rs.1,360/- per cent. I have increased nearly Rs.40,000/- from my original offer. Since, no one has come forward with higher rent, my offer was confirmed as Highest Offer.

19.06.2015 As per the tender conditions, lease deed was executed by the Secretary in my favour and the same was registered as document No.3442/2015 at the office of the Sub-Registrar, kancheepuram.

I took possession of the property and started constructing the compound from September, 2015 onwards.

43.According to the learned Senior Counsel, there was no private negotiations with the trustees of the first respondent by the 28th respondent for finalizing lease as alleged by the appellants. Only through tender the 28th respondent being the successful tenderer was given lease of the property at Kancheepuram by the first respondent.

44.According to the learned Senior Counsel, a proper resolution was passed by the first respondent to lease out the property to the 28th respondent. If at all the appellants have any grievance with regard to the lease executed in favour of the 28th respondent, they have to file only a fresh suit challenging the execution of the lease.

45.The lease deed was executed on 19.06.2015, in favour of the 28th respondent and is a registered lease. The terms and conditions of the lease are contained in the lease deed and therefore, the allegation made by the appellants that it is a fraudulent and collusive transaction is absolutely false. The entire benefit arising out of the lease goes only to Govindu Naicker Trust / Pachaiyappa's Trust.

46.The learned Senior Counsel further submitted that the 28th respondent started construction work from September 2015 onwards. According to him, the appellants knew about the construction activity, but, did not interfere with the construction till about February 2016. Only on 19.03.2016, the appellants along with few strangers obstructed the construction work being carried out by the 28th respondent for the reasons best known to them. The 28th respondent has also lodged a Police complaint. Since the appellants have not succeeded in their unlawful attempt to disrupt the construction carried out by the 28th respondent, they have approached this Court by filing C.M.P.4959 of 2016 to implead 28th respondent and thereafter filed another C.M.P.No.6188 of 2016 seeking injunction restraining the 28th respondent from putting up construction and status quo was granted by this Court on 27.04.2016. According to the learned Senior Counsel, the C.M.P filed against the 28th respondent is devoid of any merit and deserves to be dismissed with costs.

47.The points for consideration in this appeal are as follows:

(i)Whether the plaintiffs in the suit are interested persons and are they entitled to file a suit under Section 92 CPC?

(ii)Whether there is breach of trust committed by the first respondent in the management of the suit Trust?

(iii)Whether the learned Single Judge despite giving a clear finding that the suit Trust is a separate and independent Trust, erred in not framing a separate scheme under Section 92 CPC for the suit Trust by bifurcating the suit Trust from the first respondent Trust?

(iv)Whether the learned Single Judge failed to appoint 5 or more trustees including members from the testator Govindu Naicker's

Vanniyar community and consequently, direct the management of the first respondent Trust to hand over possession of all the properties along with records to the newly inducted trustees of the suit Trust?

(v)Whether the learned Single Judge failed to direct the management of the first respondent Trust to furnish true and proper accounts for the suit Trust from 1990 onwards till the handing over of the management of the suit Trust and possession of the properties of the suit Trust to the newly appointed trustees?

(vi)Whether the learned Single Judge failed to direct the respondents to reimburse the money of the suit Trust diverted unauthorisedly to the first respondent Trust and other Trusts under its control?

vii)Whether this Court under Section 92 CPC is empowered to grant relief against the 28th respondent, who is an alleged lessee under the first respondent?

48.As there is a clear finding by the learned Single Judge in paragraphs 58 and 59 of his judgment, which was extracted **supra**, that the suit Trust is a separate and independent Trust, which finding has become final and no appeal or cross objection has been filed by the respondents, there is no necessity for us now to decide that issue in this appeal. The following documents were marked as Exhibits in the suit.

Sl. Nos.	*Name of Exhibits*	*Description*	*Date*
1.	P.1	Death Certificate of Tmt.Pattammal	10.11.2000
2.	P.2	Legal Heir Certificate of Tmt.Pattammal	18.08.2007
3.	P.3	Copy Application	6.4.1994
4.	P.4	Copy Application	6.4.1994
5.	P.5	Postal Acknowledgment Card from defendants	26.4.1994
6.	P.6	Copy of representation	18.7.1994
7.	P.7	Photographs	NIL
8.	P.8	Printed Copy of the Will	25.3.1846
9.	P.9	Printed copy of New Scheme	12.02.1909
10.	P.10	Copy of Writ Petition in W.P.No.1863 of 1996	14.02.1996
11.	P.11	Invitation copy	13.05.1988
12.	P.12	Printed copy of the Pachaiyappa's Trust (Taking Over of Management), Act, 1981	3.3.1981
13.	P.13	Certified copy of order in Application No.3590 of 1985 in C.S.SR.No.7123 of 1985	21.4.1986
14.	P.14	Printed copy of Ordinance	2.10.1987
15.	P.15	Administration Report	12th December 1980 to February 1985
16.	P.16	Administration Report	December 1980 to January 1987
17.	P.17	Copy of Legal Notice	5.3.2001

Sl. Nos.	*Name of Exhibits*	*Description*	*Date*
18.	P.18	Reply	5.4.2001
19.	P.19	Annual Report for the year 1990 - 1991	
20.	P.20	Annual Report for the year 1991 – 1992	
21.	P.21	Annual Report for the year 1992 – 1993	
22.	P.22	Annual Report for the year 1993 – 1994	
23.	P.23	Annual Report for the year 1994 – 1995	
24.	P.24	Annual Report for the year 1995 – 1996	
25.	P.25	Annual Report for the year 1996 – 1997	
26.	P.26	Annual Report for the year 1997 – 1998	
27.	P.27	Annual Report for the year 1998 – 1999	
28.	P.28	Annual Report for the year 1999 – 2000	
29.	P.29	Copy of Judgment and Decree in C.S.No.242 of 1986	10.09.1997
30.	P.30	Certified copy of Scheme decree	01.04.1999
31.	P.31	Paper Publication (Dinamalar)	22.07.2002
32.	P.32	Paper Publication (The Hindu)	03.01.2003
33.	P.33	Copy of representation of Thirugnanam, 4^{th} plaintiff	27.04.1981
34.	P.34	Original Certificate	14.11.1967
35.	P.35	Madras Press Club Card	Nil
36.	P.36	Certified Copy of Judgment in O.S.A.Nos.114 of 1986, 123 of 1987 and 126 of 1987	22.09.1987
37.	P.37	Certified copy of Judgment in C.S.No.38 of 1937	23.04.1937

Sl. Nos.	Name of Exhibits	Description	Date
38.	P.38	Certified copy of order in Application No.1480 of 1938 in C.S.No.38 of 1937	22.8.1938
39.	P.39	Certified copy of judgment in C.S.No.41 of 1989	12.4.1939
40.	P.40	Certified copy of affidavit in O.A.No.1062 of 2003	06.02.2003
41.	P.41	Certified copy of common counter affidavit in O.A.No.233 of 2003 and A.No.1062 of 2003	18.07.2003
42.	P.42	Certified copy of common order in O.A.No.233 of 2003 and A.No.1062 of 2003	3.3.2003
43.	P.43	Certified copy of common order in O.A.No.233 of 2003 and A.No.1062 of 2003	11.12.2003
44.	D.1	Authorisation letter	07.12.2007

49. A suit under Section 92 of CPC is a suit of special nature for the protection of public rights in the public Trust and Charities. The suit is fundamentally on behalf of the entire body of persons, who are interested in the Trust. It is for the vindication of public rights. A suit under Section 92 of CPC is by the representatives of a large number of persons, who have common interest. Thus, the suit binds not only the parties, named in the suit - title but all those, who are interested in the Trust.

50.The essential requirements for filing a suit under Section 92

CPC are as follows:

(a)There must be an alleged breach of any express or constructive Trust created for public purposes of a charitable or religious nature.

(b)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.

(c)The decree that is sought for may be for the following reliefs:

(i)Removing any trustee

(ii)Appointing a new trustee

(iii)Vesting any property in a trustee

(iv)Directing a trustee, who has been 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.

(v)Directing accounts and inquiries

(vi)Declaring what proportion of the trust Property or of the interest therein shall be allocated to any particular object of the trust.

(vii)Authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged.

(viii)Settling a scheme; or

(ix)Granting such further or other relief as the nature of the case may require.

51.The instant suit, out of which, the appeal has arisen was filed by the plaintiffs under Section 92 CPC against the first respondent Trust seeking for various reliefs and according to us, all of them fall within the scope of Section 92 CPC.

52.First of all, let us consider whether the plaintiffs are interested persons for the purpose of filing the suit under Section 92 CPC. The plaintiffs in the suit in order to show that they are interested persons to satisfy the requirement of Section 92 CPC made the following averments in paragraph 3 of the plaint which is reproduced below:

"The Plaintiffs submit that the Plaintiffs 1 to 3 herein are the sons of late Ponnuswamy Naicker and Mrs.Pattammal and descendants of late Govindu Naicker. The late Govindu Naicker was a religious and

charitable minded and a Philanthropist. He possessed substantial movable and immovable properties. The late Govindu Naicker executed a Will dated 25.03.1846 bequeathing major portions of his estate for religious, Charitable and education purposes called Govindu Naicker Trust hereinafter referred the 'Trust'. Mrs.Pattammal, the descendant, was the only late person receiving monthly pension from the said Trust till her death. Mrs. Pattammal died in the year 1994. The Plaintiffs 1 to 3 herein are the sons of the late Mrs.Pattammal. The fourth Plaintiff is a Journalist and a Social Worker. He was associated with several Weekly magazines viz., Tharasu, Netrikkan, etc., He owned a Magazine called "Evukanai" in which he had served as Editor. He was very much interested in social cause and social justice, a cause for which late Govindu Naicker founded the Trust. The 5th plaintiff is a practising lawyer and was an old student of Pachaiyappa's College and C.Kandaswami Naidu College. He was also one of the writ petitioners, who filed writ petition in W.P.No.1192 of 1984 questioning the take over Management of Pachaiyappa's Trust by the State Government Committee and as such he was also one of the persons *considered to be a person interested who fought for the interest of the Trust. He is also a Social Worker and interested in social cause for which the Trust was created. Further, the 4th and 5th plaintiffs are close relatives of the plaintiffs 1 to 3 herein, who are the descendants of late Govindu Naicker and are from Vanniya Community. As such all the plaintiffs are the persons interested in the welfare of the public trust viz, Govindu Naicker Trust."*

53.The Division Bench of this Court in **Kannan Adityan and others vs. Adityan and six others reported** in **1996 (2) LW 364** had the occasion to consider as to how the expression "person having interest in the Trust" has been interpreted by the Courts. The relevant portion of the said decision referring to various other decisions reads as follows:

....the Section provides that the Plaintiffs in a suit under Section 92, Code of Civil Procedure, must be persons having an interest in the Trust. Before 1887, the corresponding provision of law prevailing at that time required a direct interest in the Trust. The word "direct" was dropped in 1887 and thereafter the requirement was to have an interest. The words 'having an interest' have been subject

matter of judicial consideration in several judgments. In T.R.Ramachandra Aiyar Parameswaran Unni, (I.L.R.42 Madras 360), a Full Bench of this Court held that "interest" in Section 92, CPC denotes an interest which is present and substantial and not sentimental or remote or fictitious or purely illusory interest. In that case, a Hindu residing in Madras and another residing in Tellicherry instituted a Suit in the District Court of North Malabar under Section 92, Civil Procedure Code, in respect of a Hindu temple situated in Tellicherry. It was found that the former had gone to worship in the temple on one or two occasions in the past and might go there to worship in the future if business took him to Tellicherry and he relied on his right as a Hindu, who worshipped in that temple as entitling him to institute the Suit. The majority held that though as a Hindu he might have the right to worship in the temple, he had not on that ground alone the 'interest' required by Section 92 of the Code to maintain the Suit.

(iii)In Vaithianatha Aiyer v. S.Tyagaraja Aiyar, 1921 (41) MLJ 20, a Division Bench of this Court held that where the two plaintiffs instituting a Suit under Section 92 of the Code of Civil Procedure are the descendants of the founder of the charity, they have an interest

within the meaning of the said Section. The Bench observed that the fact that the Plaintiffs belong to the family of the founder would naturally give them an interest in the family charity so as to enable them to bring a suit under Section 92 of the Civil Procedure Code. The Bench distinguished the judgment of the Full Bench in T.R.Ramachandra Ayyar's case, ILR 42 Madras 360: 1919 (9) LW 492. The judgment of this Court was affirmed on appeal by the Privy Council in Vaidyanatha Ayar v. Swaminathyya Ayyar, AIR 1924 P.C. 221 (2): 1924 (20) LW 803. The judicial Committee held that the descendants in the female line from the founder of the charity have an 'interest' therein within the meaning of Section 92, Civil Procedure Code although they may not directly obtain any benefit from it.

(iv)In Ramaswami v. Karumuthu, AIR 1957 Mad 597, a learned Single Judge of this Court held that a person who was a Hindu and was residing only three miles away, and had saved the Trust properties from being sold away by a decree holder and had got the attachment released, and was a lessee in respect of the Trust to be by being the highest bidder at an auction held by the Commissioner of Court, is a person vitally interested in the Trust and its

proper management.

(v)In Harnam Singh v Gurdial Singh, AIR 1967 SC 1415, the residents of a village, where free food is served to visitors by an institution running a free kitchen, do not have any interest entitling them to file a Suit under Section 92, Code of Civil Procedure on the facts it was found by the Court that the institution was meant for Nirmala Sadhus and the Plaintiffs as lambarders and followers of Sikh religion cannot be said to have an interest entitling them to file a Suit as Nirmala Sadhus are not Sikhs.

(vi)In C.Kalahasti v. R.Sukhantharaj, 1975 T.L.N.J. 155: 1975 (88) LW 57, a Division Bench of this Court held that old students of a College are persons having an interest in the Trust which is in Management of the College.

(vii)In Kumudavalli v. P.N.Purushotham, AIR 1978 Madras 205: 91 LW 205, another Division Bench of this Court held that a resident of the locality, who has some nexus or connection with the Trust in the sense that he has interest in its well being and prosperity can under certain circumstances be taken to be a person having an interest in the Trust and in the

cause of a public school. Such presumptions could also be raised, if he is an old student of the school. The Bench said that if a fair inference could be drawn that a resident in the locality is subjectively interested in the well being of the school and, therefore, the Trust, then such an interest would come within the meaning of the expression "having an interest" and cannot be held to be illusory or hypothetical. In that case, the Bench also held that a remote relationship through the female line by itself cannot be such an interest sufficient to lay an action under Section 92, CPC.

54.Applying the principles laid down in the above referred decision of the Division Bench of this Court, we are of the considered opinion that the plaintiffs in the suit are certainly interested persons in the suit Trust for the purpose of instituting a suit under Section 92 CPC against the first respondent and its trustees as evident from the discussion in the forth coming paragraph.

55.The plaintiffs 1 to 3 are the sons of late Ponnusamy Naicker and Mrs.Pattammal, who are the descendants of the testator late Govindu Naicker. They have filed the legal heir ship certificate of Mrs.Pattammal to confirm that they are her legal heirs and the same is marked as Ex.P.2 in the suit. It is also admitted in the cross examination of D.W.1 that Pattammal was receiving pension from the first respondent Trust. The plaintiffs 1 to 3 have also given representations 1) dated 6.4.1994 marked as Ex.P.3 and 2) dated 23.4.1994 marked as Ex.P.4 to the first respondent Trust seeking enhancement of pension amount, which was earlier paid to their mother Pattammal, who died on 28.01.1994. Mrs.Pattammal, who was the descendant of Govindu Naicker was the only person receiving monthly pension from the suit Trust till her death in 1994. D.W.1 also admitted that Ex.P.7 is her photograph. The fourth plaintiff is a journalist and a social worker. He was very much interested in social causes and social justice, a cause for which late Govindu Naicker founded the suit Trust. The Membership Card issued by the Madras Press Club disclosing that he is Editor-in-charge Eavukanai, Tamil Weekly is marked as Ex.P.35. The fifth plaintiff is a practising lawyer and was an old student of Pachaiyappa's College and C.Kandasamy Naidu College. He was also one of the writ petitioners, who filed writ petition in W.P.No.1192 of 1984 questioning the take over management of the first respondent Trust by the State Government Committee under Act 11/1981. The credentials of the plaintiffs mentioned in paragraph 3 of the plaint are also not disputed by the trustees of the first respondent.

56.The next issue, which arises for our consideration is whether the trustees of the first respondent trust has committed breach of trust with regards to the suit Trust to enable the plaintiffs to obtain the reliefs sought for in the plaint.

57.We find from the records that there has been frequent allegations of maladministration, mismanagement, diversion and siphoning of funds against the trustees of the first respondent Trust for the past several decades and it continues even now. Due to maladministration, mismanagement and diversion of funds, the first respondent Trust has been the subject matter of several scheme decrees. As seen from the suit records, the first respondent Trust had its first scheme decree on 03.02.1826 and thereafter amended on 23.10.1832, 30.10.1832 and 06.08.1841. This Court by order dated 12.02.1909, framed a new scheme for the management of the first respondent Trust, which came into effect on 1.4.1909. The new scheme dated 12.02.1909 is marked as Ex.P.9 in the suit. As seen from the suit records, Ex.P.9 was also amended on account of several reasons on 19.07.1920, 14.12.1920 and 16.07.1963.

58.Due to the irregularities in the functioning of the first respondent Trust, the Government of Tamil Nadu took over the management of the first respondent Trust under the Pachaiyappa's Trust (Taking over of management) Act, 1981, Tamil Nadu Act 11 of 1981). Since the original enactment did not cover the suit Trust, the Act was amended on 02.10.1987 to include all the Trusts including the suit Trust, which were under the management of the first respondent Trust. The Pachaiyappa's Trust (Taking Over of Management), Act, 1981 was also marked as Ex.P.12 in the suit. The Act was challenged in writ petition No.1192 of 1984 and the learned Single Judge of this Court held Act 11 of 1981 to be unconstitutional and the said order was upheld by the Division Bench as well as by the Supreme Court in C.A.No.3427 of 1998.

59.As seen from the suit records, in Application No.3358 of 2005 in Application No.2378 of 2005, this Court passed orders on 17.09.2005 to hand over charge of the first respondent Trust to the Administrator General and Official Trustee on or before 28.09.2005. Accordingly, the Administrator General and Official Trustee took charge of the first respondent Trust on 28.09.2005 and was administering the Trust.

60.Thereafter, the Division Bench of this Court passed a modified scheme finally on 24.9.2008 in O.S.A.Nos.47 and 58 of 2007. As on date, the modified scheme decree passed on 24.9.2008 is applicable to the first respondent Trust and has not been modified by any Court of law.

61.Pursuant to the orders of this Court, fresh elections were conducted for the first respondent Trust by the Administrator General and Official Trustee. A new Trust Board consisting of six trustees assumed office on 09.10.2009. Again fresh elections were conducted with regard to graduate constituencies and the remaining three trustees assumed office on 05.03.2010. Thereafter, after conducting elections as directed by this Court, the Administrator General and Official Trustee handed over charge back to the first respondent. The above mentioned facts are not disputed by the respondents.

62.After perusal, we find Ex.P.9, the scheme decree passed by this Court on 12.2.1909 and amended on 19.07.1920, 14.12.1920 and 16.07.1963 and finally on 24.02.2008 in O.S.A.Nos.47 and 58 of 2007 does not cover the suit Trust. D.W.1 in his cross examination has also admitted that the scheme decree pertains only to Pachaiyappa's Trust (first respondent Trust) and there is no mention as to how the properties of the suit Trust should be managed.

63.We also observe from the cross examination of D.W.1 that there is only one Secondary School, which is run out of the funds of the suit Trust. D.W.1 has also admitted that prior to 1976, there were two auditors to look after the affairs of the first respondent Trust. After 1976, only one auditor was looking after the affairs of the Pachaiyappa's Charities and other Charities. D.W.1 has also admitted in his cross examination that only Rs.21,000/- per annum approximately is being spent for running the suit Trust.

64.We have also perused Annual Reports for the years 1990 to 2000, which have been marked as exhibits in the suit. Ex.P.19 is the Annual report for the year 1990-1991. Balance sheet for the suit Trust as on 31.3.1991 (Ex.P.19) discloses the loans granted by the suit Trust to a) Pachaiyappa's Trust – Multi storeyed Building Account b)C.K.N. Estate Account and c) Chellammal Estate Account. The same balance sheet discloses under loan schedule A that the suit Trust has availed loan from the first respondent Trust as well as from other Trusts under the management of the first respondent. The balance sheet also discloses properties owned by the suit Trust. Balance sheet as on 31.03.1991 (Ex.P.19) for the suit Trust is reproduced hereunder:

GOVINDU NAICKER ESTATE ACCOUNT, MADRAS

BALANCE SHEET AS ON 31.03.1991

DESCRIPTION	***Rs.***	***Rs.***	***Rs.***
Building as per Schedule-B			6,72,468.00
Fixed Deposit Receipts with T.D.F.C	42,000.00		
(Add) Fixed Deposit Receipts with T.D.F.C	1,000.00	-----	43,000.00
Deposit with M.E.S			897.00
Loan to Pachaiyappa's Trust - Multi Storeyed Building A/c Loan to C.K.N. Estate A/c Loan to Chellammal Estate A/c	25,06,294.27 5,362.20 15,000.00	------	25,26,656.47
Rent Due			28,100.39
Deposit with Hongkong Bank			5,295.00
Cash at Office Cash at IOB PCEC	3,000.00 5455.73		8,455.73
General Fund as on 1.4.1990 Add: Excess of Income over expenditure	17,81,421.28 6,333.22	17,87,754.00	
Rent advance		20,327.00	
Security Deposit:- Narayana Uduppu P.Azeez	 20,000.00 5,000.00	25,000.00	
Loan as per schedule – A Excess Rent Collection		14,51,541.09 250.00	
		32,84,872.59	32,84,872.59

LOAN SCHEDULE – A:

Description	***Rs.***
Loan from:	
Oletti Ranganayakiamml Estate	1,79,000.00
Pachaiyappa's Estate	1,00,000.00
P.C.(M)Building Fund A/c	1,39,000.00
Pachaiyappa's Trust Deposit A/c	20,000.00
Religious Charities A/c	25,000.00
Pachaiyappa's Trust Building Properties Maintenance A/c	1,00,000.00
P.C. 125th year celebration A/c	57,134.80
P.K.Vidyasagara Mudaliar Estate	1,00,000.00
Pachaiyappa's Endowment Fund A/c	3,49,311.20
Pachaiyappa's Benefit Fund A/c	1,00,000.00
Pachaiyappa's Allied Charities A/c	2,82,095.00
	14,51,541.00

<u>SCHEDULE OF BUILDING – B:</u>

Sl.No.	***ADDRESS***	***Rs.***
1.	382, Mint Street, Madras Bajana Koodam	.....
2.	383, Mint Street, Madras Bajana Koodam	38,220.00
3.	21-L Jahangir Street, Madras-1.	3,60,000.00
4.	23, Jahangir Street, Madras-1.	72,000.00
5.	28-A, Ghandhi Road, Kancheepuram (113 X 9 X 20)	20,340.00
6.	29-A, -do- -do-	50,670.00
7.	29-B, -do- -do-	25,452.00
8.	29-C, -do- -do-	69,570.00

Sl.No.	ADDRESS	Rs.
9.	37-C, -do- -do-	16,974.00
10.	52-A, Vilakdadi Koil Street, Kancheepuram	8,478.00
11.	59, Nallukara Street	10,764.00
12.	29, Ghandhi Road, Kancheepuram (Choultry Building)	-----
		6,72,458.00

65.The loans availed and granted by the suit Trust as seen from the Annual Report Ex.P.19 has been carried forward in all the remaining balance sheets ending with Ex.P.28 in the suit. The first respondent and its trustees have not disclosed whether these loans have been recovered if it is a case of lending or repaid if it is a case of borrowal. The first respondent has not filed any document to prove the recovery or the repayment of the loans. Exhibits P.19 to P.28 clearly reveal that the first respondent and its trustees have submitted falsified accounts.

66.The first respondent Trust has deliberately withheld submission of the true accounts in order to cover up the irregularities committed by them in the management of the suit Trust and other Trusts. There is no necessity for the first respondent Trust to borrow money on behalf of the suit Trust nor was there any necessity for suit Trust to lend money as it was having surplus funds.

67.Admittedly, D.W.1 in his cross examination has confirmed that only a sum of Rs.21,000/- per annum approximately is being spent on the suit Trust. Therefore, the first respondent ought not to have lent or borrowed huge sums of money. Further, as seen from the balance sheets Exs.P.19 to P.28, a sum of Rs.25,06,294.27 was lent to Pachaiyappa's Trust Multi Storeyed Building Account. In fact, the construction of the building for which, loan was allegedly availed and is disclosed in the balance sheet is owned by the suit Trust and not Pachaiyappa's Trust (first respondent Trust). The same balance sheets excepting for some minor variations is carried forward in the other balance sheets filed in the suit, which are marked as Exs.P.19 to P.28 referred to above. The trustees of the first respondent have neither in their written statement nor in their deposition have been able to explain the steps they have taken to recover the outstandings of the suit Trust. Admittedly, the balance sheets Exs.P.19 to P.28 were given to the plaintiffs only after the plaintiffs issued a legal notice dated 05.03.2001. All these admitted facts will clearly establish that the trustees of the first respondent have committed breach of the suit Trust by not managing the suit Trust in accordance with the wishes of the testator Govindu Naicker under his Will Ex.P.8.

68.We have perused Ex.P.29, the judgment and decree dated 10.09.1997 in C.S.No.242 of 1986 passed by learned Single Judge of this Court pertaining to P.T.Lee Chengalvaroyan Naicker Trust, which was also earlier managed by the first respondent Trust. Due to maladministration and irregularities committed by the first respondent, P.T.Lee Chengalvaroyan Naicker Trust was bifurcated from the first respondent Trust and a separate scheme decree was granted along with other reliefs for the said Trust. This is one more evidence to establish that the trustees of the first respondent have been continuously committing irregularities in the management of the Trusts under its management. The suit Trust, which is also under the management of the first respondent is also facing the same plight and the laudable objects for which the suit trust was created have been defeated.

69.Govindu Naicker, the testator of the suit Trust had confidence only in the original trustees of the first respondent named under his Will dated 25.03.1846 Ex.P.8. If not for that reason, there was no necessity for Govindu Naicker to mention the name of the trustees in his Will. He had confidence only in the named trustees for proper administration of his estate in accordance with his benevolent intentions. As seen from the recitals contained in the Will Ex.P.8, the testator Govindu Naicker had confidence only in the named trustees mentioned under his Will Ex.P.8. We therefore, cannot countenance the stand of the trustees of the first respondent that the successors in interest to the named trustees under the Will are also empowered to administer the estate of the suit Trust. No prudent person, who has bequeathed large number of properties both movable and immovable for charitable and religious objects will allow the properties to be managed by persons after his life time, who are total strangers to him. We are convinced that all these factors will clearly establish that Govindu Naicker under his Will Ex.P.8 had confidence only in the named trustees and not in the trustees, who are successors in interest to the named trustees.

70.The objects of the suit Trust as seen from the Will Ex.P.8 is (i) to promote education and educational charities (ii) to grant pension to the descendants of the testator Govindu Naicker (iii) to do religious charities. Admittedly, as seen from the cross examination of D.W.1 only Rs.21,000/- per annum approximately is spent on the suit Trust. Admittedly, according to D.W.1, only one secondary School having classes from VI to VIII is run by the suit Trust on rent that too in the first respondent property. D.W.1 also admits that subsequent to 1865, no other school was started in the name of the suit Trust. D.W.1 has also admitted in his cross examination that the multi storeyed building at Jehangir Street, Chennai 1 belonging to the suit Trust is now shown as if it is belonging to the first respondent Trust. He has also admitted that even during the year 1991-1992, the annual income of the suit Trust was Rs.66,456.88, which excludes the income from the multi storeyed building of the suit Trust. The income of multi storeyed building of the suit Trust as admitted by D.W.1 in Ex.P.20 is Rs.22,69,445/-. The income of the first respondent Trust for the same year was only Rs.4,43,339/-. We find that the statement of D.W.1 clearly establishes the fact that even though the suit Trust was earning manifold income than that of the first respondent Trust, more money was spent on the first respondent Trust than the suit Trust.

71.The trustees of the first respondent have also not placed records to show that the descendants of Govindu Naicker are being paid pension as per the wishes of Govindu Naicker. The contention of the plaintiffs that their mother Pattammal, a descendant of Govindu Naicker was the last pensioner is also not disputed by the trustees of the first respondent. The request for enhancement of pension by the letters of the plaintiffs in Exs.P.3 and P.4 have also not been given due consideration by the trustees of the first respondent.

72.One of the other objects of the suit Trust was to do religious charities. Excepting for statement made in the proof affidavit of D.W.1 that the defendants have performed and are performing the religious and educational activities as predicated by Arnary Govindu Naicker in that daily bajans and poojas are being conducted in G.N.Bajana Koodam and two songsters, an archaga and mrithangist and sweeper have been employed for the said purpose, the defendants have not examined any witness or produced documents to establish their statement. We are also convinced from the above facts that the trustees of the first respondent have not done religious charities as per the wishes of the testator under his Will Ex.P.8.

73.For the reasons stated above, we come to the conclusion that there is breach of Trust committed by the first respondent in the management of the suit Trust.

74.In view of the breach of the suit Trust by the first respondent, we are of the considered view that the learned Single Judge ought to have framed a separate scheme under Section 92 CPC for the suit Trust.

75.The next issue, which arises for our consideration is whether 5 or more trustees including members from the Vanniyar community are to be appointed for the suit Trust and the Management of the first respondent Trust must be directed to handover possession of all properties along with the records to the newly inducted trustees of the suit Trust.

76.We have perused the contents of the Will Ex.P.8. The Will Ex.P.8 does not give any privilege for the Vanniyar community to become trustees of the first respondent Trust as in the case of P.T.Lee Chengalvarayon Naicker Trust, wherein the founder of that Trust had indicated in his Will that there must be atleast four persons belonging to the members of Vanniyar Community appointed as trustees. The beneficiaries under the Will Ex.P.8 of Govindu Naicker must be only people from the Hindu community at large and there is no special privilege given to Vanniyar community either in the appointment of trustees or as a beneficiary. The relevant portion of the Will Ex.P.8, which deals with the beneficiaries under the Will are as follows:

"Whereas the said Arnary Govindu Naicker is desirous out of his means to promote the interest and well being of his fellow subjects of the Hindu Community by useful benefactions. And whereas the said Arnary Govindu Naicker considers that by no other disposal of a portion of his means can he so well contribute to that end as by establishing a permanent fund for the better education of children and youths of that community."

77.In view of the testator's clear intention under the Will Ex.P.8, that the beneficiaries should be only from the Hindu Community at large without any special privilege for any particular caste, we cannot grant the relief to the appellants that out of the trustees to be appointed for the suit Trust Vanniyar community must also have a representation. Instead, we have come to the conclusion that the new scheme to be framed for the suit Trust shall include a maximum of 5 trustees without any preference for any caste. We also direct the Management of the first respondent Trust to hand over possession of all the properties of the suit Trust along with records to the Chairman of the Interim Management Committee appointed by us under this Judgment.

78.We also direct the Management of the first respondent Trust to furnish true and proper accounts for the suit Trust from 1990 onwards till the handing over of the Management of the suit Trust and possession of the properties of the suit Trust to the Chairman of the Interim Management Committee appointed by us under this Judgment.

79.The next issue, which arises for a consideration is whether the trustees of the first respondent should be directed to reimburse the money of the suit Trust diverted unauthorisedly to the first respondent Trust and other Trusts under its control.

80.Since irregularities and breach of suit Trust has been continuing for the past several decades and no action has been initiated against the successive trustees and further the present trustees were not the trustees at the time of filing of suit C.S.No.993 of 2001, we are of the considered view that there is no sufficient evidence available on record against the present trustees for proving their guilt. The appellants have also not placed evidence before this Court to prove the guilt of the present trustees of the first respondent Trust. We therefore, reject the prayer of the appellants to direct the respondents trustees to reimburse the money of the suit Trust diverted unauthorisedly to the first respondent Trust and other Trusts under its control.

81.Insofar as the miscellaneous petitions filed by the appellants in this appeal, we give the reasoning and our conclusions in the forthcoming paragraphs.

82.M.P.1 of 2013 was filed by the appellants seeking for an order of injunction restraining the respondents 1 to 3 from diverting the funds of the suit Trust to the first respondent Trust and other Trusts managed by the first respondent Trust pending disposal of this appeal. As we have come to the conclusion that there is breach of suit Trust and funds of the suit Trust have been diverted to the first respondent Trust and other Trusts, prima facie case has been made out by the appellants for the grant of injunction. In order to prevent further diversion of funds from the suit Trust and if it is allowed to continue, it will be detrimental to the noble objects of the suit Trust. Undoubtedly, there is balance of convenience in favour of the suit Trust for the grant of the injunction. Irreparable loss will also be caused to the suit Trust if such an injunction is not granted by this Court. We are therefore, granting an order of injunction as prayed for by the appellants in M.P.1 of 2013.

83.As regards, C.M.P. No.16767 of 2016, filed by the appellants, the additional documents which the appellants seek permission of this Court under Order 41 Rule 27 CPC, relates to events subsequent to the Judgment and decree of the learned Single Judge dated 30.01.2013 and pertain to the award of lease of the Kancheepuram property by the first respondent in favour of the 28th respondent. According to us those documents are relevant and very much essential to prove that the lease of the Kancheepuram property in favour of the 28th respondent is not valid. We are satisfied with the contents of the affidavit filed by the appellants and do not agree with the stand of the respondents that they are not required for the purpose of the dispute under Section 92 CPC. We therefore, allow C.M.P No.16767 of 2016 filed by the appellants under Order 41 Rule 27 CPC and take the additional documents on record for our consideration.

84.As regards, C.M.P. No.6188 of 2016 filed by the appellants seeking for injunction restraining the respondents from dealing with or from putting up any construction over the properties of the suit Trust at No.29, 29A, 29B, 29C, 28A and 28B, Gandhi Road, Kancheepuram Town, Kancheepuram District hereinafter referred to as the Kancheepuram property pending disposal of this appeal, we are in agreement with the appellants that injunction and further directions for cancellation of lease and for re-delivery of possession will have to be granted by this Court for the following reasons:

a)The lease deed dated 19.06.2015 executed by the first respondent Trust in favour of the 28th respondent is invalid since the kancheepuram property is owned by the suit Trust and not by the first respondent Trust. There is a clear finding of the learned Single Judge that the suit Trust is a separate and independent Trust, which has not been challenged by the first respondent and the finding has now become final. Therefore, the first respondent Trust on its own does not have the authority to deal with the Kancheepuram property owned by the suit Trust. Admittedly, the Kancheepuram property belongs to the suit Trust. But, in the recitals to the lease deed dated 19.06.2015, the first respondent Trust has declared itself to be the absolute owner of the Kancheepuram property. There is no mention of the suit Trust in the lease deed dated 19.06.2015.

b)There is no transparency by the first respondent Trust in granting lease of the property for a period of 20 years in favour of the 28th respondent.

c)The Board resolution No.70, dated 15.06.2015 passed by the first respondent Trust for executing the lease in favour of the 28th respondent permits lease only for a period of three years, whereas the lease deed grants lease in favour of 28th respondent for a period of twenty years.

d)There was no public tender by the first respondent before granting lease in favour of the 28th respondent. The first respondent or the 28th respondent have not produced any relevant document to prove that there was a public tender and that many parties participated in the said tender and the 28th respondent was the successful tenderer. The Board resolution dated 25.04.2015 allegedly passed by the first respondent Trust for inviting tenders for the lease of the kancheepuram property and referred to in the counter affidavit of the 28th respondent has also not been placed before the Court. The first respondent in its counter affidavit to C.M.P.No.6188 of 2016 filed by the appellant has not referred to the resolution dated 25.04.2015 mentioned by the 28th respondent in its counter affidavit.

e)There was no advertisement given in newspapers for the purpose of giving wide publicity for the long term lease of the Kancheepuram property. The respondents have also not disputed the fact that no advertisement in newspapers were given calling for offers from the public for the lease of the property at Kancheepuram.

f)The first respondent has not fixed any reserve price before leasing out the property to the 28th respondent. The first respondent has also not placed before this Court a Rental Valuation Report prior to letting out the property to the 28th respondent.

g)The Hon'ble Supreme Court in its decision reported in ***(1994) 1 SCC 475 (Committee of Management of Pachaiyappa's Trust vs. Official Trustee of Madras and Another)*** and cited by the learned Senior Counsel for the appellants, has clearly laid down the methodology to be adopted for alienation of properties belonging to public Trust. The Apex Court has extracted in its Judgment the role of a Trustee as explained by **Cardozo, J** which is reproduced hereunder:

> *"A Trustee is held to something stricter than the morals of the market place. Not honesty alone but the punctilio of an honour the most sensitive, is then the standard of behaviour..... only thus has a level of conduct for fiduciaries being kept at a higher level than that trodden by the crowd."*

Paragraphs 27 and 28 of the said Judgment of the Supreme Court deals with sale of property of a religious endowment is reproduced hereunder:

> *"27.In Chenchu Rami Reddy v. Govt. of A.P. while*

dealing with sale of property of a religious endowment governed by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, this Court has held that what is true of public property is equally true about the property belonging to the religious institutions and endowments and has further pointed out: (SCC pp.397-98, para 10)

....the trustees or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution. Those who are willing to purchase by private negotiations can also bid at a public auction. Why would they feel shy or be deterred from bidding at a public auction? Why then permit sale by private negotiations which will not be visible to the public eye and may even give rise to public suspicion unless there are special reasons to justify doing so? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment."

"28.The aforesaid observations in the context of

public property and property belonging to religious and charitable endowments and institutions would equally apply to trust property as in the present case."

Therefore, in the matter of grant of lease, licenses and Award of Contract by Public Trust, Court requires the Public Trust to apply standards or norms which are not arbitrary, irrational or irrelevant. People expect higher standards in case of sale of the property by a Public Trust.

h)Another decision of the Hon'ble Supreme Court reported in ***1989 Supp (2) SCC 356 (R.Venugopala Naidu and Others vs. Venkatarayulu Naidu Charities and Others)*** held in paragraphs 9, 10 and 13 as follows:

> *"9.The legal position which emerges is that a suit under Section 92 of the Code is a suit of a special nature for the protection of public rights in the public trusts and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under*

Section 92 of the Code and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are on the suit-title are the only parties to the suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust all such interested persons would be considered in the eye of law to be parties to the suit. A suit under Section 92 of the Code is thus a representative suit and as such binds not only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that Explanation VI to Section 11 of the Code constructively bars by res judicata the entire body of interested persons from re-agitating the matters directly and substantially in issue in an earlier suit under Section 92 of the Code."

"10.Mr.G.Ramaswamy, learned counsel appearing for the respondent trust has argued that only the two persons who filed the original suit can be considered as "parties" in terms of clause 14 of the scheme-decree and according to him since the appellants were not the plaintiffs they have no locus standing to file any application under clauses 13 and 14 of the scheme-decree. According to the learned counsel Section 92 of the Code brings out a

dichotomy in the sense that there are "parties to the suit" and "persons interested in the trust". According to him persons interested in the trust cannot be considered parties to the suit although the judgment/decree in the suit is binding on them. He has also argued that a suit under Section 92 of Civil Procedure Code is different from a suit filed under Order I Rule 8 of Civil Procedure Code. We do not agree with the learned counsel. A suit whether under Section 92 of Civil Procedure Code or under Order I Rule 8 of Civil Procedure Code is by the representatives of large number of persons who have a common interest. The very nature of a representative suit makes all those who have common interest in the suit as parties. We, therefore, conclude that all persons who are interested in Venkatarayulu Naidu Charities which is admittedly a public trust are parties to the original suit and as such can exercise their rights under clauses 13 and 14 of scheme-decree dated September 9, 1910."

"13.The subordinate court and the High Court did not go into the merits of the case as the appellants were non-suited on the ground of locus standi. We would have normally remanded the case for decision on merits but in the facts and circumstances of this case we are satisfied

that the value of the property which the trust got was not the market value. Two persons namely S.M.Mohamed Yaaseen and S.N.M.Ubayadulla have filed affidavits offering Rs.9 lakhs and Rs.10 lakhs respectively for these properties. In support of their bona-fides they have deposited 10 per cent of the offer in this Court. This Court in Chenchu Rami Reddy v. Government of Andhra Pradesh has held that the property of religious and charitable endowments or institutions must be jealously protected because large segment of the community has beneficial interest therein. Sale by private negotiations which is not visible to the public eye and may even give rise to public suspicion should not, therefore, be permitted unless there are special reasons to justify the same. It has further been held that care must be taken to fix the reserve price after ascertaining the market value for safeguarding the interest of the endowment."

Therefore, any decision rendered by this Court under Section 92 CPC is binding not only on the parties named in the suit but also on all the parties interested in the suit Trust.

i)We are in agreement with the learned Senior Counsel for the appellants that only through private negotiations and not through public auction has the first respondent given the Kancheepuram property on lease to the 28th respondent. As regards, whether it is a fraudulent or collusive transaction, it cannot be decided in this proceeding under Section 92 CPC, but can be decided only in a separate civil suit between the parties.

j)The respondents have also not given any convincing answer as to why Rs.50 lakhs was paid as donation to the Pachaiyappa's Trust Staff Welfare Account by the 28th respondent for the purpose of obtaining lease of the Kancheepuram property. The Kancheepuram property belongs to the suit Trust and the deposit of the sum of Rs.50 lakhs into Pachaiyappa's Trust Staff Welfare Account has created suspicion in our minds about the true intent and bona-fides of the 28th respondent to obtain lease of the Kancheepuram property from the first respondent.

k)According to the first respondent and its trustees, tenders were submitted on 05.06.2015 and it was opened on 12.06.2015. The offer of the 28th respondent being the highest, it was accepted by the first respondent and they executed lease deed on 19.06.2015 in favour of the 28th respondent. The respondents also referred to some notification being affixed at the property and also at the office of the Trust Board. No such notification was placed before us for our consideration. The respondents have also not given the details of the tenders submitted by the various tenderers who were interested in taking the Kancheepuram property on lease from the first respondent.

l)The first respondent knowing fully well that there has been serious allegations of irregularities and breach of Trust and further a clear finding has been given by the learned Single Judge that the suit Trust is separate and independent Trust, the first respondent ought to have approached the Court for its permission before granting lease of the Kancheepuram property to the 28th respondent.

m)There was no necessity for the first respondent Trust to let out the Kancheepuram property for a period of 20 years without giving wide publicity. Further, the suit Trust being flush with funds far in excess of the income required for its Management, there was no necessity for the first respondent to let out Kancheepuram property which is a vacant land to the 28th respondent. The first respondent has also permitted 28th respondent to put up construction for commercial purpose at its costs over the land which will certainly be detrimental to the interest of the suit Trust in the near future.

n)The lease deed 19.06.2015 in favour of the 28th respondent is hit by Section 52 of the Transfer of Property Act. The 28th respondent being a transferee pendente lite without leave of the Court ought not to have taken the Kancheepuram property on lease from the first respondent. The principles specified in Section 52 of the Transfer of Property Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action in a suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was party to the suit. The principle of lis pendens embodied in Section 52 of the Transfer of Property Act being a principle of public policy, no question of good faith or bona-fide arises. The Judgment under Section 92 CPC is a Judgment in rem and any Judgment passed in favour of the appellants will certainly impact the lease deed executed by the first respondent in favour of the 28th respondent. The appeal O.S.A.No.161 of 2013 is a continuation of the suit C.S.No.993 of 2001 and the lis pendens continues even during the appeal.

o)It is seen from the records that the conduct of the 28th respondent, prima facie, does not seem to be bona-fide. As seen from paragraph 4 of his affidavit, he seems to be aware of other suits filed by the first respondent Trust to evict encroachers from the kancheepuram property. Being aware of the suits filed by the first respondent Trust against encroachers, the 28th respondent as a lessee would certainly have knowledge about the judgment and decree dated 30.01.2013 passed by the learned Single Judge under Section 92 CPC and the present appeal. The 28th respondent has also not pleaded in his counter affidavit that he is a bona-fide lessee. Even though he has stated in his affidavit that the kancheepuram property was leased out to him by following the tender process in a transparent manner, he has not placed any document or evidence before this Court to substantiate the same. The notification issued by the first respondent inviting tenders from the interested persons and the names of the persons, who had participated in the tender are, not disclosed either in the counter affidavit filed by the 28th respondent or in the counter affidavit filed by the first respondent Trust. Even though the first respondent Trust and its trustees in their counter affidavit have made a statement in paragraph 12 that 20 persons have given their offers to take the kancheepuram property on lease, they have not placed any of the alleged offers before this Court. The 28th respondent is very much aware of the judgment passed by the learned Single Judge in C.S.No.993 of 2001 dated 30.01.2013 as seen from his admission made in paragraph 13 of his counter affidavit. As the learned Single Judge has given his clear finding that the suit Trust and the first respondent Trust are separate and independent, the 28th respondent ought not to have entered into a lease agreement in respect of the kancheepuram property with the first respondent Trust, as the said property is absolutely owned by the suit Trust and not the first respondent Trust. We are of the considered opinion that the 28th respondent is not a bona-fide lessee and therefore, he is not entitled for any protection from this Court in respect of the kancheepuram property.

p)Admittedly, the kancheepuram property is owned by the suit Trust, which is also confirmed by the first respondent in paragraph 12 of the counter affidavit filed by the first respondent Trust. The 28th respondent ought to have paid the sum of Rs.50 lakhs as consideration for the lease to the suit Trust instead of depositing the amount with Pachaiyappa's Trust Staff Welfare Account. If really the lease transaction was a bona-fide one, the first respondent ought to have directed the 28th respondent to deposit the sum of Rs.50 lakhs into the account of the suit Trust. All these factors clearly establish that the first respondent Trust has committed breach of the suit Trust and has also diverted the properties of the suit Trust discarding the noble objects of the suit Trust.

q)The first respondent and the 28th respondent do not deserve any protection from this Court in view of their improper, unauthorised and illegal conduct. Despite the 28^{th} respondent knowing fully well that the kancheepuram property is absolutely owned by the suit Trust has deposited a sum of Rs.50 lakhs into the Pachaiyappa's Trust Staff Welfare account as a consideration for the lease at the behest of the first respondent Trust. He is only entitled for refund of Rs.50 lakhs and other sums paid by him from the first respondent Trust and not entitled for any protection in respect of kancheepuram property, which he has taken on lease illegally and unauthorisedly.

r)As held by the Hon'ble Supreme Court reported in 1999 (3) SCC 115 (Executive Officer, Arthanareswarar Temple vs. R.Sathyamoorthy and others), Courts have a general "parens patriae" jurisdiction over religious and charitable trusts. Paragraph 17 of the said judgment is reproduced below:

> *"Further, the Courts have a general "parens patriae" jurisdiction over trusts for charitable and religious purposes and a question of public interest was involved because of the contentions raised by the Commissioner, HR&CE."*

By exercising "parens patriae" jurisdiction this Court is empowered to protect the sanctity of the suit Trust and safeguard its properties and take action whatever required in the circumstances of the case. The origin of doctrine of "parens patriae" was also traced and the doctrine explained by the Hon'ble Supreme Court reported in 2011 (4) SCC 454 (Aruna Ramachandra Shanbaug vs. Union of India). “Parens patriae” jurisdiction, as explained in the said decision is the right of sovereign and imposes duty on the sovereign, in public interest, to protect persons under disability, who have no rightful protector. As held by the Hon'ble Supreme Court in the decision reported and referred to above in 1999 (3) SCC 115, “parens patriae” jurisdiction can also be exercised by the Courts in respect of public and charitable trusts. The appellants and other persons interested in the suit Trust cannot be left high and dry and remediless against the 28th respondent, who has obtained an invalid lease deed dated 19.06.2015 executed in his favour by the first respondent Trust and has also alleged to have taken possession of the Kancheepuram property from the first respondent Trust under the said lease deed. The Court cannot remain a mute spectator when illegality has been committed against a public Trust before its very eyes.

s)The relief sought for by the appellants in C.M.P.No.6188 of 2016 against the 28th respondent is only an ancillary relief, which falls well within the scope of section 92(h) of the Civil Procedure Code. In the plaint filed in C.S.No.993 of 2001 under Section 92 CPC, the plaintiffs had sought for the following reliefs:

"a)Frame a scheme in respect of Govindu Naicker Trust by bifurcating the Trust Govindu Naicker Trust' from the Management of Pachaiyappa's Trust.

b)Appoint 5 or more Trustees which includes from among the members of Testator's Vanniya community;

c)Issue a direction directing that the management of Govindu Naicker Trust and its properties which includes movables and immovables and handed over or vested with the Trustees so appointed in the scheme;

d)Direct the defendants herein to deliver possession of the properties along with records of Govindu Naicker Trust to the trustees appointed by this Court;

e)Direct the defendants to furnish a true and proper accounts to the Govindu Naicker Trust from the period from 1990 till the handing over of the Management of the suit Trust and possession of the properties of the Trust to the Trustees appointed by *this Court;*

f)direct the defendants to reimburse the monies of the said Trust diverted unauthorisedly to Pachaiyappa's Trust and other Trust under its control; and

g)make such other provisions under the Scheme as may be required for the proper administration of the suit Trust and its properties."

As seen from prayer (c), (d) and (e), the plaintiffs had sought for a direction to the defendants to deliver possession of the properties along with records of the suit Trust to the trustees appointed by this Court. The reliefs that can be sought for under Section 92 CPC are enumerated in the said Section. All the reliefs, the plaintiffs had sought for in C.S.No.993 of 2001 come within the scope of Section 92 CPC. Section 92(h) CPC also permits granting such further or other relief as the nature of the case may require. The Hon'ble Supreme Court held as reported in 1975 (1) SCC 298 (Charan Singh and another vs. Darshan and others) that for a relief to be granted under Section 92(h) CPC, the other relief that is sought must be akin to or of the same nature as any of the reliefs mentioned in clauses (a) to (g) of Section 92 CPC. The relevant extract from paragraphs 7 and 8 of the said judgment is reproduced below:

> *"7.The relief sought for in the present case does not strictly or squarely fall within clause (e) or (g) but is very much akin to either and hence is covered by the residuary clause (h)."*
>
> *"8.The words "further or other relief" in clause (h) must on general principles of construction be taken to mean relief of the same nature as clauses (a) to (g)."*

While doing so, the Hon'ble Supreme Court has reiterated the principle laid down by the Privy Council in the case of **Abdul Rahim and Others vs. Mohamed Barkat Ali and Others** reported in **AIR 1928 PC 16** and explained its import. In **AIR 1928 PC 16** referred to supra, the Privy Council rejected the argument of the plaintiff that "such further or other reliefs as the nature of the case may require" in Section 92(h) CPC must be taken not in connection with the previous clauses (a) to (g) of Section 92 CPC, but in connection with the nature of the suit viz., any relief other than (a) to (g) that the case of an alleged breach of an express or constructive trust may require in the circumstances of any particular case. The relevant extract from the said Privy Council Judgment is reproduced below:

> *"The reliefs specified in sub-section (1)(a) to (h) do not cover any of the reliefs*

claimed in this suit unless the words "further or other relief" in clause (h) can be held to cover them. It is argued that the words "such further or other relief as the nature of the case "may require" must be taken, not in connection with the previous clauses (a) to (g), but in connection with the nature of the suit, viz., any relief other than (a) to (g) that the case of an alleged breach of an express or constructive trust may require in the circumstances of any particular case. Their Lordships are unable to accept this argument. First, because the words "further or other relief" must on general principles of construction be taken to mean relief of the same nature as clauses (a) to (g)."

"Secondly, because such construction would cut down substantive rights which existed prior to the enactment of the Code of 1908 and it is unlikely that in a Code regulating procedure the Legislature intended without express words to abolish or extinguish substantive rights of an important nature which admittedly existed at that time."

"The conclusion is that, inasmuch as the suit out of which this appeal arises did not claim any such relief as is specified in sub-

section (1) of section 92."

Applying the principles laid down by the judgment of the Privy Council reported in **AIR 1928 PC 16** and **1975 (1) SCC 298** referred supra the reliefs granted by us against the 28th respondent fall well within the scope of Section 92(h) CPC as it is only an ancillary and consequential relief to the main reliefs granted by us which fall within the scope of Section 92(a) to (g) CPC.

In the case on hand, the plaintiffs have established that the first respondent and its trustees have committed breach of the suit Trust by mismanaging and diverting its properties and funds. They have also sought for a direction in the plaint to the first respondent Trust and its trustees to deliver possession of the properties diverted by them to the trustees appointed by this Court. Further, the 28th respondent has taken the kancheepuram property on lease from the first respondent Trust only during the pendency of this appeal. In view of all the factors referred to above, we are of the considered opinion that the 28th respondent is aware of the pending litigation and has knowingly entered into the lease deed dated 19.06.2015 with the first respondent. Suits filed under Section 92 CPC are of special nature and cannot be equated with ordinary civil suits. If alienations like that of the lease deed dated 19.06.2015 in favour of the 28th respondent are permitted to prevail, the purpose for which suits under Section 92 CPC are filed will be defeated by unscrupulous trustees. If alienations without permission of the Court are allowed pending disposal of the suit under Section 92 CPC, no public charitable Trust will be able to safeguard its properties and instead will only get itself entangled in unwanted litigation involving huge costs for the Trust, thereby draining its exchequer. Instead of utilising the funds for laudable objects, the Trust will end up paying huge sums towards litigation costs.

t)Equity in the case of Public Trusts has evolved the technique of following and/or tracing. This means that the beneficiary or the persons interested in a Trust may follow the property of the Trust held wrongfully in the hands of a third party and reclaim it. In the case on hand, the 28th respondent has taken the Kancheepuram property on lease from the first respondent Trust, who is not its owner. The first respondent had no right to let out the Kancheepuram property to the 28th respondent as it had no title over the same and there is a clear and unchallenged finding by the learned Single Judge that the first respondent Trust and the suit Trust are separate and independent. In Common Law, a man who had no title himself could give no title to another. The Legal Maxim Nemo dat quod non habet (no one gives who possesses not) will apply.

u)The ***Delhi High Court*** in its decision reported in ***ILR (1982) I Delhi*** following the ***House of Lords*** decision of ***Thomson vs. Clydesdale Bank (1893) AC 282,*** *applied the Common Law doctrine of tracing referred supra and held that the beneficiary under Public Trust may follow the property of a Public Trust wrongfully held by a third party and reclaim it. The conclusion given by the Delhi High Court is reproduced hereunder:*

> *(1)The plots in question are trust property. DLF are trustees. Their power of disposition is "cabin'd, cribb'd, confin'd, bound in". (Shakespeare : Macbeth III, IV, 24). The trustees hold the land for the use of beneficiaries. S. 313(1)(b) represents social control of land. It requires the coloniser to set apart land for a public purpose. This is the pre-condition of planning permission. The object is to promote social interest by permitting property to the devoted to the public purpose in perpetuity. The necessary element is public benefit, even though confined to persons living in a specified area. Only by imputing a trust the court can promote the legislative purpose underlying the statutory provision.*
>
> *(2)The principle of equity is that the*

trustee must not benefit from his position as a trustee. He must not put himself in a position in which his duty to the trust may conflict with his personal interest. He can get no advantage to himself out of the trust relation. He must not make a profit out of his trust. Human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he was bound to protect. It has therefore been deemed expedient to lay down this positive rule. (Bray v. Ford (1986) AC 44 (22) at p.51 per Lord Herschell).

(3)Equity has evolved the technique of tracing. This means that the beneficiary may follow the property into the hands of third party and reclaim it, until it comes into the hands of a bona fide purchaser for value without notice. (See Thomson v. Clydesdale Bank (1893) AC 282) (23). Analytically, there is an equitable ownership in the inhabitants of the colony against every body who can be reached by a court of equity as well as an equitable right in personam as against the trustee.

(4)It is an obvious breach of trust for

trustee to occasion the destruction of the trust property or to alienate it improperly. (Tuder on Charities 6th ed. p.445). DLF have alienated the property. They have made an absolute sale. Thereby trust has been destroyed. An absolute estate and trust are incompatible. They are a contradiction in terms. They are mutually destructive. Paradoxically the trust was destroyed by the founder by its own act. The property passed "absolutely", as is stated expressly in the sale deed. This is a breach of trust. The beneficiaries have a remedy in cases of breach of trust. They are entitled to follow the property. A charity once established does not die though its nature may be changed. (Commissioner of Inland Revenue v. National Anti-Vivisection Society 28 Tax Cases 311 (24) at p. 375 per Lord Simonds). The Court can apply the doctrine of cypress.

The newest dodge of the newest statue is subjected to the critical scrutiny of the courts whenever there is complaint of breach of trust. The precise nature of complaint here is that DLF are treating the public purpose are antithetical. What is held by private individuals and used for their private benefit cannot be said to subserve public purpose. Here public purpose is paramount. The private ownership is eaten *away to such an extent that all that remains is a nominal ownership. Private property is converted into a trust by annexing to it the equitable obligation to deal with it for a public purpose. This is the statutory hypothesis of S.313 (1)(b).*

(5)The edifice of charity is built on the foundations of the statue. S. 313(1)(b). 'Public purpose' is the public element in charity. Dedication of property to 'public purpose' is complete. As the dedication is complete, a trust in favour of the charity is created. (S.Shanmugham Pillai v. K.Shanmugham Pillai, AIR 1972 SC 2069) (25). The duty to use the property for public good makes it inalienable in perpetuity.

85.We are in agreement with the conclusion of the Delhi High Court referred supra and applying the same Common Law doctrine of tracing, we hold that the lease in favour of the 28th respondent is invalid and void ab initio and this Court has the power to cancel the lease dated 19.06.2005, (registered as document No.3442/2015) executed by the first respondent in favour of the 28th respondent and reclaim possession of the Kancheepuram property back to the suit

Trust.

86.Therefore, we are of the considered opinion that this Court has got the powers under Section 92(h) CPC to cancel the lease deed dated 19.06.2015 executed by the first respondent in favour of the 28th respondent and direct the 28th respondent to deliver possession of the Kancheepuram property to the Chairman of the Interim Management Committee appointed by us under this Judgment. We are in agreement with the learned Senior Counsel for the appellants that the cancellation of lease and re-delivery of possession of the Kancheepuram property is only an ancillary relief falling within the purview of Section 92(h) CPC.

87.The stand of the learned Senior Counsel of the 28th respondent that being a stranger to the suit, no relief can be granted in favour of the appellants against him cannot be countenanced as a Judgment under Section 92 CPC, is a Judgment in rem and binds all parties. The Judgments relied upon by the learned Senior Counsel for the 28th respondent namely ***AIR 1917 Madras 112 Full Bench and AIR 1975 Allahabad 36 Full Bench*** are not applicable to the facts of the present case as there is no dispute about the ownership of the property, as it undisputedly belongs to the suit Trust, whereas in the judgments relied upon by the learned Senior Counsel, the ownership of the property itself was in dispute. In the Judgments relied upon by the learned Senior Counsel, suit was filed not only against the Trust but also against strangers as the ownership of the property was in dispute. But, in the case on hand, the lease deed dated 19.06.2015 was entered into during the pendency of the appeal and long after the Suit C.S.No.993 of 2001 was filed under Section 92 CPC. Therefore, we are of the considered opinion that the judgments relied upon by the learned Senior Counsel for the 28th respondent are not applicable for the facts of this case.

88.The 28th respondent if aggrieved by the cancellation of the lease and the consequential order has the remedy to seek compensation from the first respondent and its trustees who had granted lease unauthorisedly in his favour under separate proceedings and the first respondent and its trustees have the right to defend the said proceedings if so instituted by the 28th respondent.

89. In view of our findings in the earlier paragraphs, we have arrived at the following conclusions:

a)The plaintiffs in the suit are interested persons and they are entitled to file a suit against the first respondent and its trustees under

Section 92 CPC.

b)We agree with the conclusive finding of the learned Single Judge that the suit Trust (Govindu Naicker Trust) is a separate and independent trust, but we are of the view that the learned Single Judge ought to have framed a separate scheme for the suit Trust and appointed new trustees.

c)We are convinced after perusing the pleadings, documents, depositions as well as after hearing the arguments of both sides that the first respondent Trust and its trustees have committed breach of the suit Trust (Govindu Naicker Trust) which, necessitates framing of a separate scheme under Section 92 CPC for the suit trust (Govindu Naicker Trust).

d)We are appointing an Interim Management Committee for the suit Trust headed by Hon'ble Mrs.Justice **Chitra Venkataraman** (Retd.), a former Judge of this Court as Chairman, who shall forthwith take over the entire management of the suit Trust (Govindu Naicker Trust) from the first respondent Trust. The Chairman of the Interim Management Committee is empowered to appoint a maximum of 5 Committee members from the Hindu community preferably giving representations to educationalists, Hindu religious scholars, chartered accountants and legal professionals having a blemishless track record and integrity for the effective implementation of the noble objects of the suit trust(Govindu Naicker Trust).

e) The Chairman of the Interim Management Committee shall be paid a monthly remuneration of Rs.1,00,000/- (Rupees One Lakh only) from and out of the funds of the suit Trust. The Chairman after appointing the other members of the Interim Committee shall fix their remuneration and their terms and conditions of service. The Chairman apart from her monthly remuneration shall also be paid any other incidental expenses incurred by her from and out of the funds of the suit Trust.

f)The trustees of the first respondent shall hand over all the properties, account books and other documents of the suit Trust (Govindu Naicker Trust) to the Chairman of the Interim Management Committee on or before **22.09.2017** and shall continue to render assistance without any demur as and when their assistance is sought for by the Chairman of the Interim Management committee.

g)The Chairman of the Interim Management Committee is empowered to seek further directions from this Court till a separate scheme is settled and finalized by this Court for the suit Trust and for that purpose engage lawyers, who shall be paid from and out of the income arising out of the suit Trust.

h)The Chairman of the Interim Management Committee shall give an advertisement in two prominent newspapers one in English and the other in Tamil about the proposed framing of a separate scheme for the suit Trust and calling for submission of draft schemes for the suit Trust from the persons interested in the suit Trust as per Section 92 CPC and on receipt of the same place it before this Court for its consideration and approval.

i)The Scheme decree to be framed by this Court under Section 92 CPC for the suit Trust(Govindu Naicker Trust) shall comprise of 5 trustees from the Hindu community without preference to any particular caste giving representation to educationalists, Hindu religious scholars, chartered accountants and legal professionals having a blemishless track record and integrity for the effective implementation of the noble objects of the suit trust.

j)The Chairman of the Interim Management Committee is empowered to issue all directions necessary for the effective administration of the suit Trust which includes giving necessary instructions regarding payment of money, investments and salaries payable to the staff. The Chairman of the Interim Management Committee shall operate the bank accounts of the suit Trust from this date onwards till the finalization of the scheme decree. Until the copy of this Judgment is received, the trustees of the first respondent are permitted to operate the bank accounts of the suit Trust under written instructions of the Chairman of the Interim Management Committee for the effective management of the suit Trust.

k)The Chairman is empowered to inspect the books of account of the first respondent Trust (Pachaiyappa's Trust) and its allied Trusts as and when required to find out whether the first respondent Trust or allied Trusts are wrongfully withholding the funds of the suit Trust. The trustees of the first respondent Trust shall co-operate and give full assistance to the Chairman of the suit Trust in this regard.

l)We direct the first respondent and its trustees to forthwith hand over possession of all the properties of the suit Trust to the Chairman of the Interim Management Committee and continue to render assistance to the Chairman of the Interim Management Committee till the finalization of a new scheme for the suit Trust.

m) We allow M.P. No.1 of 2013, C.M.P No.6188 of 2016 and 14767 of 2016 and further hold that the lease deed dated 19.06.2013 registered as document No.3442/2015 SRO Kancheepuram in favour of the 28th respondent shall stand cancelled and the 28th respondent is directed to hand over vacant possession of the Kancheepuram property to the Chairman of the Interim Management Committee forthwith. The first respondent is also directed to hand over a copy of this Judgment to the Sub-Registrar Kancheepuram and effect cancellation of the lease dated 19.06.2015 (registered as document

No.3442/2015) in the registration records. Simultaneously, the Chairman of the Interim Management committee is also empowered to place this Judgment with the registration authorities an effect cancellation of the lease deed dated 19.06.2015 (registered as document No.3442/2015). If aggrieved by the cancellation of the lease dated 19.06.2015 and by the re-delivery of possession of the Kancheepuram property to the Chairman of the Interim Management Committee, the 28th respondent is given liberty by this Court to proceed against the first respondent and its trustees for inviting him to participate in the tender called for by them unauthorisedly. The first respondent and its trustees are also entitled to defend any legal action if so initiated by the 28th respondent against them.

n)We direct the first respondent Trust to forthwith refund the sum of Rs.50 lakhs (Rupees Fifty Lakhs only), to the 28th respondent, which was deposited by him to the credit of Pachaiyappa's Staff Welfare account and other sums paid to the first respondent Trust in consideration of the lease dated 19.06.2015. The refund shall be made in the presence of the Chairman of the Interim Management Committee by providing sufficient proof which includes bank statements disclosing payments/receipts and the Chairman shall certify the payments were indeed made by the 28th respondent. In case the 28th respondent has suffered any further losses, we give him liberty to claim compensation from the first respondent and its trustees by proving his claim in accordance with law. The first respondent and its trustees are also entitled to defend any legal action if so initiated by the 28th respondent against them for compensation or for other reliefs.

90.In the result, we set aside the Judgement and decree of the learned Single Judge dated 30.01.2013 and allow the appeal in terms of our conclusions referred to in paragraph 89 (a) to (n) **supra**. However, there shall be no order as to costs.

Post the matter on **02.01.2018** for submission of draft schemes by the Interim Management Committee under Section 92 CPC for approval of this Court and for further directions.

[R.S.A.,J.] **[A.Q.,J.]**

08.09.2017

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Speaking order / Non Speaking order
Index: Yes / No
Internet: Yes / No

Copy to

Hon'ble Mrs.Justice Chitra Venkataraman (Retd.),
Old No.176, New No.31,
4th Main Road,
Raja Annamalaipuram,
Chennai 28.

(Sent a copy of the Judgment
to the Hon'ble Mrs.Justice
through Special Messenger)

Note to Office:

Issue order copy
on 11.09.2017

RAJIV SHAKDHER, J.
AND
ABDUL QUDDHOSE, J.

cla/pam

Judgment in
O.S.A.No.161 of 2013
M.P.No.1 of 2013
and
C.M.P.Nos.6188 of 2016
and 16767 of 2016

Dated: 08.09.2017