

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5877 of 2017
Date of decision : 05.09.2017

Apeejay Education Society and another ...Petitioners

Versus

Shirin Paul and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.L. Tikku, Sr. Advocate with
Ms. Manju Goyal, Advocate and
Ms. Yashmeet, Advocate for the petitioners.

ANIL KSHETARPAL, J.

The defendant Nos.1 and 7 have filed this revision petition against the order dated 16.08.2017 passed by Civil Judge, dismissing the application filed under Section 151 CPC praying for dismissal of the suit having become infructuous.

This case presents a sad story, when the parties do not allow the trial Court to proceed with the case. The suit was instituted on 29.09.2013. Even the written statement has not been filed till this time. One application or the other is being filed and the trial Court is not being permitted to proceed with the trial of the suit. Earlier, defendant No.9 had filed an application under Order 7 Rule 11(d) of the Code of Civil Procedure for rejection of the plaint. The aforesaid application was ordered to be dismissed by a detailed order dated 09.04.2015. Thereafter, the defendant Nos.1 and 9 filed an application under Section 151 CPC for dismissing the suit on the ground that the suit has become infructuous.

Learned Civil Judge has decided three applications by a common order i.e. application under Section 151 CPC, another application under Order 8 Rule 10 CPC filed by the plaintiffs and yet another application filed by the defendants under Section 148 read with Section 151 CPC for enlargement of time for filing written statement. Learned trial Court has noticed that almost same contentions have been raised in the application under Section 151 CPC, which have already been considered and decided vide order dated 09.04.2015. It has further been noticed that the defendants would be at liberty to take all permissible defences in the written statement, however, the suit cannot be dismissed as have been rendered infructuous.

I have heard the learned Senior Counsel for the petitioners at length and with his able assistance gone through the documents available on the file. Learned Senior Counsel for the petitioners has submitted that originally, the suit was filed under Section 92 of the Code of Civil Procedure. An application for leave to file the suit under Section 92 CPC was also filed. However, while deciding the application under Order 7 Rule 11 CPC and application filed by the plaintiffs for grant of leave under Section 92 of CPC, the plaintiffs had made a statement that let this suit be tried as an ordinary civil suit and, therefore, now the suit itself has become infructuous because the nature of the relief sought for in the suit is exclusive to the suit under Section 92 of the Code of Civil Procedure and not in ordinary civil suit.

Defendant No.1 is a Education Society. It is the case of the plaintiffs that the plaintiff No.1 is a life member of the society whereas

plaintiff No.2 is daughter of plaintiff No.1 and her father was a life member in the society. The plaintiffs had claimed following reliefs, while filing the suit:-

- “a) Leave under Section 92 of the Code of Civil Procedure be granted;*
- b) A decree framing a scheme for the management and administration of the defendant No.1 society;*
- c) An appropriate decree removing all the persons who are holding themselves out as executive members of the defendant No.1 society including the defendant Nos.2 to 12 followed by appointment of independent, public minded persons as executive committee members of the defendant No.1 (and if considered appropriate by the learned Court from amongst the family members of the different branches of the descendants of Late Pyare Lal);*
- d) An appropriate decree/order directing enquiry into the dealings and transactions of the defendant No.1 society by the defendant Nos.2 to 12 and such other persons and decree for such sum against the defendant Nos.2 to 12 as may be found due and payable upon such enquiry.*
- e) A decree directing the defendant Nos.2 to 12 and all other persons found to be in control of defendant No.1 as agents of the defendant Nos.2 to 12 and all other persons found to be in control of defendant No.1 as agents of the defendant Nos.2 to 12 to render true and faithful accounts of all their dealings and transactions in respect of the assets and affairs of the defendant No.1 society and decree for such sum as may be found due and payable upon such amounts being taken.*
- f) A decree of perpetual injunction restraining the defendant Nos.2 to 12, their men agents and assigns from dealing with disposing of or and/or in any manner*

encumbering any of the assets and properties of the defendant No.1 society.

g) A decree of perpetual injunction restraining the defendant Nos.2 to 12, their men agents and assigns from holding themselves out as executive committee members of the defendant no.1 society or otherwise intermeddling with the assets, properties, business dealings and transactions of the defendant No.1 society.

h) Cost of the suit be awarded in favour of the plaintiffs and the against the defendants.

i) Any other or further relief that this Hon'ble Court may deem fit and proper be also passed in favour of the plaintiffs and against the defendants.”

I have seen the orders passed by the Court while deciding applications under Section 92 CPC for grant of leave of the Court and Order 7 Rule 11 CPC filed by defendant No.9 for rejection of the plaint. Learned Court has concluded as under:-

“Perusal of the pleadings reveals that the plaintiffs have contended that defendant No.1 is a society ‘in the nature of a public trust’ and have further contended that in case the same is held to be a trust created for public and charitable purpose, by way of abundant caution, prayer has been made for leave under section 92 CPC. Therefore, it is rather the contention of the plaintiffs that defendant No.1 is a society and it has not even once been emphatically stated that it is a public charitable trust within the meaning of section 92 CPC. If that were so, the situation before the Ld. predecessor court would definitely have been to peruse the pleadings as a whole and to thereupon consider as to whether the leave as desired is to be granted. Perusal of order dated 21/09/2013 clearly reveals that Ld. predecessor

court considered it to be a suit and registered it as such, no occasion arising in light of the pleadings for the plea to have been considered and therefore either allowed or declined. Further, the plaintiffs also pressed upon ad interim applications which were considered and appropriate decision passed thereupon. Therefore, there is little doubt about the instant suit having been treated as an ordinary civil suit and proceeded with as such. Further, the plea of defendant No.9 (contesting defendant) has also been clear and emphatic to the effect that defendant No.1 is only a society and not a public charitable trust and hence her contention in questioning the proceedings of suit at hand on the basis of plaintiffs not having been granted/refused leave to contest within the meaning of section 92 CPC is without basis. Section 92 CPC would have applicability wherein an express contention of the plaintiff is to the effect that the suit is being filed against a public charitable trust within the meaning of section 92 CPC. That was however not the case in instant suit, wherein the express contention of the plaintiffs was to the effect that defendant No.1 is a society and only abundant caution had been exercised to avoid any technical issue at a later stage. Under given circumstances, granting or refusing the leave at the first instance was neither practicable nor necessary. Merely stating the suit to be one under section 92 CPC would not be sufficient if the pleadings in the plaint as such do not support the said observation, as has been the case in instant suit. It is pertinent to note that even in the application under section 92 CPC filed at this stage by the plaintiffs, nothing new has been pleaded and it has only been reiterated that defendant No.1 is only in the nature of a public trust, all the while being a society. The earlier taken plea of abundant caution has again been reiterated and the matter stands at the same

pedestal from where it began at the time of presentation/institution of instant suit. The only difference at this junction is that the contesting defendant has rather expressly denied defendant No.1 to be a public charitable trust and both the contesting parties are therefore on the same page on this aspect. Hence, there arises no occasion to dwell upon the application under section 92 CPC as filed by the plaintiffs. By similar analogy, the application under order 7 rule 11 (d) CPC as filed by the defendant, contending on the one hand that necessary leave under section 92 has been not granted and claiming in the same breath that defendant No.1 is not a public charitable trust, would not help their desire for the plaint to be rejected at this stage. As discussed hereinbefore, there was no express plea before the Ld. predecessor court in order to have allowed or declined the leave as envisaged under section 92 CPC. Having treated the pleadings before it as a suit, registering the same, hearing arguments upon ad-interim applications and adjudicating the same and thereafter having issued summons to the defendants, Ld. predecessor court clearly intended to treat the pleadings as a civil suit. It would also be apt to observe at this stage that the contention of the plaintiffs about having been granted an implied leave is also without basis, as has been rightly pointed out by the defendant under reference to a cited authority that there is nothing like an implied leave. The plea of the defendant about the plaintiffs desiring the plaint to be treated as a petition has been refuted by the plaintiffs themselves and therefore needs no further consideration. As far as the authorities relied upon by the defendant are concerned, I tend to agree with the contention of the plaintiffs that the same are applicable in a situation where a party expressly pleads that the suit is being filed against a public charitable

trust as defined in section 92 CPC and that not being the case in the instant suit, these authorities have no applicability upon the facts and circumstances of instant suit. The application as moved by the defendant for rejection of plaint can therefore not be allowed and is therefore declined. Both the applications are disposed off accordingly.”

From the reading of the order, it is clear that the suit was treated as an ordinary civil suit. Prima facie, I do not find any merit in the submission of learned counsel. My attention has not been drawn to any provision of law which bars the jurisdiction of the Civil Court to entertain an ordinary civil suit claiming the reliefs which are in the nature of reliefs provided under Section 92 of the Code of Civil Procedure. Under Section 9 of the Code of Civil Procedure, the Civil Court has jurisdiction to entertain and decide all civil suits unless barred. Section 9 of the Code of Civil Procedure is extracted as under:-

“9. Courts to try all civil suits unless barred - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I] - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]”

However, in my considered opinion, it is too early to conclude that since the suit is not being treated as suit under Section 92 CPC, therefore, the suit should be dismissed as infructuous as the nature of reliefs sought for are exclusive to the suits instituted under Section 92 CPC. Petitioner(s)-defendant(s) would be entitled to take all permissible defences at the time of the trial of the suit. At this stage, it would not be appropriate for the Court to finally comment upon the submission that such relief can only be granted in a suit filed under Section 92 CPC only and not in an ordinary suit, lest, it may cause prejudice to any of the parties. The defendants have already been permitted to file written statement by enlarging the time upto 11.09.2017, therefore, no further order is required.

Since, the suit was instituted in the year 2013, learned trial Court is requested to expedite the trial of the suit.

Revision petition is dismissed.

05.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No