IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 22.02.2018	Date of Pronouncing Order 21.06.2018

CORAM:

THE HON'BLE MR.JUSTICE **D. KRISHNAKUMAR**

C.R.P.(PD).No.3957 of 2017 and
C.M.P.No.18487 of 2017

1.Saraswathi Vidyalaya
Educational & Charitable Trust
Represented by its Trustee
Mr.Prakash
Having its Registered Office at
No.403, Orakkadu Road,
Sholavaram,
Chennai - 600 067.

2. A.V.Prakash

3. P.Jayasudha ..petitioners

Vs.

1. A.V.Sridhar

2. S.Lakshmikantham ..Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order made in I.A.No.192 of 2017 in O.S.No.58 of 2017 on the file of the Subordinate Judge Court at Ponneri dated 22.09.2017.

For Petitioners : Mr.Ravikumar Paul,
Senior Counsel for
Mr.R.Krishnaswamy

For Respondents : Mr.N.Venkateswaran,
for RR1 & 2

ORDER

This Court has earlier reserved the orders on 21.12.2017 and upon perusing the papers, as this Court needed clarification, the matter was again listed for clarification on 22.02.2018 and orders were reserved.

2. In a suit for declaration and permanent injunction filed by the respondents, the petitioners / defendants filed an application in I.A.No.192 of 2017 in OS.No.58 of 2017 to reject the plaint on the ground that the first petitioner / first defendant is a public educational charitable trust. Hence, under Section 92 of the Civil Procedure Code, the respondents / plaintiffs have to obtain leave to sue at the time of filing the said suit. On perusal of the plaint filed by the respondents, the respondents / plaintiff have filed the said suit under Order VII Rule 1 read with Section 92 of the Civil Procedure Code. Originally, the aforesaid plaint was presented before the learned District Court, Tiruvallur. The same was returned with an endorsement that the value

of the suit is Rs.16,000/- and as per the endorsement in the re-presentation of the said plaint papers, the respondents / plaintiffs have stated that the suit is filed by the two life time trustees against the two life time trustees of the private trust. The learned District Court considering the value of the suit, returned the plaint by stating that the dispute is between private trustees and the same has to be filed before the proper jurisdictional court. The respondents / plaintiffs have submitted the aforesaid plaint before the Sub Court, Ponneri and the same was numbered as O.S.No.58 of 2017 on the file of the Sub Court, Ponneri. The petitioners / defendants have filed an application in IA.No.192 of 2017 under Order VII Rule 1 of the Civil Procedure Code by raising the ground that the respondents / plaintiffs have filed the suit without obtaining the necessary leave and hence, the said suit is liable to be rejected and the same is barred by law. After filing the counter affidavit on behalf of the respondents/ plaintiffs, the Sub Court, Ponneri dismissed the said application by holding that the aforesaid suit trust is a private trust and the grounds raised by the petitioners / defendants can be decided at the time of trial in the suit.

3. The learned counsel for the revision petitioners would submit that the suit is barred by law without filing an application under Section 92 of the Civil Procedure Code. The court below has lost its sight by holding that the suit trust is public trust which is not correct. The observation of the court below that the "suit trust is run by the family members of the founder of the Trust and therefore it is a private trust", is totally unsustainable and the same is liable to be set aside. Hence, the revision petitioners have filed the present Civil Revision Petition.

4. It is also brought to the notice of this Court that the petitioners have filed the plaint before the Principal District Court, Tiruvallur under Order VII Rule 1 read with Section 92 of the Civil Procedure Code for declaration, to remove the second defendant as the Managing Trustee of the first defendant's Trust, to appoint a third party to administer the school and for permanent injunction. At the time of re-presenting the papers by the respondents / plaintiffs before the District Court, it was stated that the prayer as sought for in the suit is declaration and permanent injunction against the petitioners 2 and 3 herein and also to remove the Managing Trustee of the first defendant private trust. Therefore, the suit is maintainable before the Sub Court, Ponneri. On

re-presentation of the papers before the Sub Court, Ponneri, the same was received by the Sub Court, Ponneri. The revision petitioners have filed an application in I.A.No.192 of 2017 to reject the plaint on the ground that the respondents / plaintiffs have not obtained necessary leave to sue under Section 92 of the Civil Procedure Code for filing the suit.

5. The learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in the case of ***Charan Singh & Another Vs. Darshan Singh & Others*** reported in ***CDJ 1974 SC 025***, *wherein* in paragraph 11 it is held as follows.

> *"11. There were two parts of the said relief - one a declaration that the plaintiffs as Bhakats of the Satra were entitled to possess their own Basti and paddy lands and the other that they had a right to access to the use of the Satra for various religious purposes. Such a relief could not come under clause (h) because it was mainly concerned with the establishment of the rights of the plaintiffs in the lands as well as in the religious institution. In the plaint of the instant case the relief claimed is not primarily for the establishment of the right of the public to the religious institution. It recites the facts*

as to the right without mentioning any appreciable dispute concerning it, mainly alleges breach of duty on the part of the trustee and the plaintiffs seek the Court's aid against the trustee for forcing him to discharge his obligations by due performance of his duties. In our judgment therefore the Courts below were right in taking the view that the present suit was a suit for a decree under S.92 of the Code and since it was not filed in conformity with the requirement Of the said provision of law it was not maintainable. The contrary view taken by the Division Bench of the High Court in the Letters Patent Appeal is not correct."

6. The learned counsel also relied on the decision of the Hon'ble Supreme Court in the case of ***Subra Bibi Vs. Hazi Kummu Mia*** reported in ***1968 CDJ SC 008 :: 1969 AIR SC 884***, wherein in paragraphs 5 and 7, it is held as follows.

"5. It is evident that this section has no application unless three conditions are fulfilled : (1) the suit must relate to a public charitable or religious trust, (2) the suit must be founded on an allegation of breach of trust or the direction of the Court is required for administration of the trust, and (3) the reliefs claimed are those which are mentioned in the section.

"7. Having examined the various clauses of the

Wakf deed, we are of opinion that the mere fact that there are certain provisions in favour of the family members of the founder along with some other provisions in favour of the public, the case will not be taken out of the provisions of s. 92, Civil Procedure Code. The reason is that there is a substantial portion of the income of the Wakf properties to be spent for purposes of charitable and religious nature. The proper test for holding whether the Wakf would fall within the purview of s. 92, Civil Procedure Code is to examine whether the Wakf has been created substantially for a public purpose. Applying the test to the present case, we are of opinion that the Wakf created 'by Haji Elahi Bux on November 18, 1936 falls within the purview of s. 92, Civil Procedure Code. This view is borne out by the decision of the Calcutta High Court in S. Massirat Hossain v. Hossain Ahmad Chodhury.(1) That case related to a wakf estate, the net annual income of which was about Rs. 1,300 and out of this a sum of Rs. 353 was set apart for public purposes of a charitable or religious nature, It was held by the learned Judges that the amount by no means was a trifling or a disproportionate pro- (1)42 C .W. N. 3 4 vision in favour of the public and consequently the suit was maintainable under s.92 of the Civil Procedure Code. Reliance was placed by the High Court in support of its decision upon the pronouncement of the Judicial

Committee in Vaidya Nath Aiyyar v. Swaminatha Ayyar(1)where the founder of the trust directed by his will that two-thirds of the income of his property would go to his wife and the remaining one-third would go first towards the discharge of certain debts and thereafter to establish a Chatram for the feeding of the poor. There was a further provision that after the wife's death, two-thirds of the income given to her would be applied to charity and one-third, to the members of the family. On these facts the Judicial Committee 'agreed with the findings of the court below that the Chatram so established was a public trust."

7. The High Court of Delhi in the case of ***Hamid Ahmed Vs. Asad Mueed & Ors*** reported in ***2010 (7) RCR Civil 1218 :: 2009 (162) DLT 520***, in paragraphs 28, 29 and 30 it is held as follows.

"28. Merely because the suit is filed by one plaintiff only and not by two will not lead to inference that the suit is not under Section 92 of the Code of Civil Procedure. It will not change the nature of the suit but it rather shows the defect in the suit. Considering the entirety of the plaint it is inevitable to infer that the reliefs which are available under sub section (1) of section (92) of the Code of Civil Procedure have been

claimed by the plaintiff.

29. Since it has been held that the relief claimed primarily by the plaintiff are which can be granted under section 92 (1) of the Code of Civil Procedure, the plaintiff was liable to obtain leave of the Court. In the circumstances, since the suit is under section 92 of the Code of Civil Procedure and the leave of the Court has not been sought and has not been granted and the plaint has been instituted by one plaintiff only, the plaint is liable to be rejected under Order VII rule 11 of the Code of Civil Procedure.

30. Therefore, for the foregoing reasons, the application IA 11871 of 2008 under Order VII Rule 11 (d) of the Code of Civil Procedure is allowed and the plaint is rejected. The suit should have beenfiled by the plaintiff under section 92 of the Code of Civil Procedure and in compliance of its requirement. All the pending applications are disposed of in the facts and circumstances, since the plaint has been rejected. The parties are, however, left to bear their owns costs."

8. Per contra, the learned counsel for the respondents would submit that the suit has been filed as if the first petitioner trust is a private trust and the Subordinate Court have territorial jurisdiction to

entertain the suit in respect of the value of the suit and the District Munsif Court has no jurisdiction in the trust matters.

9. The learned counsel for the respondents has also relied upon the decision of the High Court of Bombay in the case of ***Chatrabhuj Mavji Merchant Vs. Sumati Morarjee And Ors*** reported in ***1991 (4) BomCR 289***, wherein in paragraph 4 it is held as follows.

> *"4. The question arising is whether the suit is within the jurisdiction of the City Court. The trust figuring in the suit is a private trust governed by the terms of the trust deed and the Trusts Act. This Act does not in terms signify the forum for suits alleging breach of trust and redress therefor. However, several section in the Act ordain access to a 'Principal Civil Court of original jurisdiction' (Principal Court) for various matters. Section 7 which deals with persons competent to create a trust prescribes the permission of the said Court when the creation is by or behalf of a minor. Section 11 which permits a modification of the purpose of trust and the directions of the author with the consent of all beneficiaries competent to contract, allows such a Court to give consent for a beneficiary incompetent to contract. A trustee directed to sell within a specified time will get exoneration of the*

charge of prejudice when the Principal Court authorises extension of time vide section 22. A trustee's right to reimbursement for out-of-pocket expenses incurred for the trust goes beyond a mere charge if the expense has been incurred with the sanction of this Court under section 32. Section 36 lays a restraint upon a trustee vis-a-vis lease of trust property for a term exceeding 21 years or without reserving yearly rent except with the permission of the principal Court. Section 41 empowers this Court to permit application of corpus, wholly or in part, where the income therefrom is insufficient for trusts of certain types. One of the 3 ways enabling a trustee to renounce a trust after acceptance is with the permission of the Court under section 46. Unreasonable and mala fide exercise of discretionary power of a trustee can be controlled by a Principal Court section 49. Section 53 prohibits a trustee from acquiring any interest in trust property except with the permission of this Court. Section 72 empowers this Court to control and applied for discharge from his office by a trustee. Section 72 confers on the Principal Court a power to determine incapacity of a trustee in certain cases. The beneficiary can under section 74 petition this Court without filing a suit for the appointment of a new trustee. The used provision section 34 is where a trustee without instituting a suit may apply by petition to the principal Court for opinion, advice or direction vis-a-vis *the management or administration of trust property. Where the questions raised in the petition relate to detail, difficulty or importance, the Court may refer the petitioner to a suit."*

10. In the case of ***Kuldip Chand and Another Vs. Advocate-General to Government of H.P. and Others*** reported in ***(2003) 5 SCC 46***, in paragraph 39, the Hon'ble Supreme Court held as follows.

"39. When the complete control is retained by the owner - be it appointment of a chowkidar, appropriation of rents, maintenance thereof from his personal funds - dedication cannot be said to be complete. There is no evidence except oral statements of some witnesses to the effect that Raj Kumar Bir Singh became its first trustee. Evidence adduced in this behalf is presumptive in nature. How such trust was administered by Raj Kumar Bir Singh and upon his death by his successors-in-interest has not been disclosed. It appears that the family of the donor retained the control over the property and therefore, a complete dedication cannot be

inferred far less presumed. Furthermore, a trust which has been created may be a private trust or a public trust. The provisions of Section 92 of the Code of Civil Procedure would be attracted only when a public trust comes into being and not otherwise."

11. In the case of ***Vidyodaya Trust Vs. Mohan Prasad R. and Ors*** reported in ***AIR 2008 SC 1633***, in paragraph 10, the Hon'ble Supreme Court held as follows.

" 10. A suit under Section 92 is a suit of a special nature which presupposes the existence of a publicTrust of a religious or charitable character. Such a suit can proceed only on the allegation that therewas a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is,therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of

their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 (see N. Shanmukham Chetty v. V.M. Govinda Chetty, Tirumalai Devasthanams v. Udiavar Krishnayya Shanbhaga, Sugra Bibi v. Hazi Kummu Mia and Mulla: Civil Procedure Code (13th edn.) Vol. 1, p. 400). A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate

their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.

12. In the case of ***Vimal Kishor Shah and Others Vs. Jayesh Dinesh Shah and Others*** reported in ***(2016) 8 SCC 788***, in paragraph 46, the Hon'ble Supreme Court held as follows.

> *46. "So far as legal remedies available to the author of the Trust/settlor, Trustees and the beneficiaries for ventilating their several grievances in respect of their rights duties, removal and obligations under the Trust Deed and the Trust Act are concerned, they are specifically provided in Sections 7, 11, 34, 36, 41, 45, 46, 49, 53, 71, 72, 73 and 74 of the Trust Act. These sections, in specific terms, confer jurisdiction on Civil Court and provides that an aggrieved person may approach the principal Civil Court of Original Jurisdiction for adjudication of his grievances. This clearly shows the intention of the legislature that the legislature intended to confer jurisdiction only on Civil Court for deciding the disputes arising under the Trust Act, 1882."*

13. From the aforesaid judgments, according to the learned counsel for the respondents, the respondents have rightly approached the Sub Court, Ponneri which have the territorial jurisdiction for the relief as prayed for in the suit. Therefore, the suit is maintainable and

the contentions of the petitioners are not sustainable.

14. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

15. The main issue raised by the petitioners is that the petitioners have filed the suit under Section 92 of the Civil Procedure Code before the Principal District Court and the same has been returned with an endorsement as mentioned below.

> ***"How the plaint is maintainable before this Court, as the dispute is private trustees and to be filed before the proper jurisdictional (Pecuniary) Court."***

16. The petitioners have represented the said papers before the Sub Court, Ponneri and the same was numbered as O.S.No.58 of 2017. The respondents / plaintiffs themselves filed the suit under Section 92 of the Civil Procedure Code. On perusal of the memo of valuation, it is relevant to refer the memo of valuation as follows. The respondents / plaintiffs have represented the papers by stating the value of the

property before the court below and the same has been filed in typed set of papers which reads as follows.

"1. Suit for declaration as Null and Void Resolution dated 01.09.2016, 02.09.2016 & 20.10.2016. Notional Value of Rs.5,000/- CF is paid Rs.150/- Under Section 25(d) of Tamil Nadu Court Fees Act.

2. Suit for declaration dated 27.10.2016 is Null and Void notional value of Rs.500/- CF is paid Rs.150/-.

3. Suit to remove the 2nd Defendant as Managing Trustee 1st Defendant notional value of Rs.500/- CF is paid Rs.150/-.

4. Suit for permanent injunction with natural Rs.1000/- CF is paid Rs.30/- Under Section 27(d) of TNCF Act. That value of Rs.16,000/- Total CF is paid Rs.480/- fixed CF is paid Rs.520/- may be filed."

17.From the above, it is seen that the value of the suit property is at Rs.16,000/-, total court fee paid is at Rs.480/- and CF is paid at Rs.520/-. Since the value of the suit property is below one lakh rupees, the suit has to be presented before the District Munsif Court, Ponneri, which is having pecuniary jurisdiction to deal with the case. If the value of the suit is beyond one lakh rupees and upto 10 lakh rupees, then, the Sub Court, Ponneri has got pecuniary jurisdiction to deal with the suit.

18.Even assuming the contention of the petitioners/defendants that the suit trust is a private trust is accepted, the respondents/plaintiffs are not clear in presenting the plaint under Section 92 of the Civil Procedure Code and now after numbering the said suit, it cannot be stated that the suit is maintainable, since the dispute involved in the present suit is only in respect of a private trust and not a public trust. If that being the contention, the respondents/plaintiffs have to approach only before the competent jurisdictional Court to present the suit. The respondents/plaintiffs have filed the plaint under Section 92 of Civil Procedure Code and as per the mandatory requirement of the said section, they have to obtain necessary leave as contemplated therein. The respondents / plaintiffs without obtaining leave as contemplated under the said provision, have presented the suit under Section 92 of the Civil Procedure Code before the Sub Court, which is barred under the law. Therefore, the suit filed by the respondents is not maintainable.

19.The learned counsel appearing for the petitioners has rightly pointed that the aforesaid suit filed by the respondents/plaintiffs is not maintainable mainly on the ground that the present suit has been filed under Section 92 of the Civil Procedure Code, without obtaining necessary leave of the court. The dispute between the parties under the suit arises only in respect of a private trust and therefore, the respondents / plaintiffs have to file the suit only before the competent Court, having jurisdiction. Hence, the order passed in IA.No.192 of 2017 is liable to be set aside and it is open to the respondents / plaintiffs to seek appropriate remedy in the manner known to law.

20. In view of the above said facts and circumstances and the decisions cited supra, this Civil Revision Petition succeeds and the same is allowed. The impugned order passed in I.A.No.192 of 2017 in O.S.No.58 of 2017 on the file of the Sub Court, Ponneri is set aside and the plaint filed in O.S.No.58 of 2017 is struck off.

D.KRISHNAKUMAR. J,

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21. Before parting with the case, this Court, having examined the merits of the case set up by the parties in the present proceedings, grants liberty to the respondents / plaintiffs to approach the competent forum, seeking appropriate remedy in the manner known to law and the observations made in this order shall not stand in the way of the respondents/plaintiffs in approaching the competent forum. No costs. Consequently, the connected miscellaneous petition is closed.

21.06.2018

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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To

The Subordinate Judge Court,
Ponneri

Pre-delivery Order
in C.R.P.(PD).No.3957 of 2017 and
C.M.P.No.18487 of 2017