

**Reserved on : 24.07.2018**

**Pronounced on : 03.08.2018**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

**THE HON'BLE MR.JUSTICE N.SATHISH KUMAR**

**Application No.60 of 2018 in**

**C.S.908 of 2017**

1. Mrs.Regeena  
Jeppiar Engineering College,  
Jeppiar Nagar,  
Rajiv Gandhi Salai,  
Chemmancherry, Chennai – 600 119.

2. S.Murali  
Jeppiar Engineering College,  
Jeppiar Nagar,  
Rajiv Gandhi Salai,  
Chemmancherry, Chennai – 600 119.

... Applicants

Vs.

1. Ms.Jeppiaar Sheela  
2. Ms.A.Karol Udaya Baskar  
3. Ms.Nisha Mol Bronson  
4. Jeppiar Educational Trust  
Rep. By Managing Trustee,  
O.d No.12, New No.29,  
Ganapathi Street,  
Royapettah, Chennai – 600 014.

5. Sathyabama Educational Trust,  
Rep. By Managing Trustee,  
Sathyabama University Campus,  
Jeppiar Nagar,  
Rajiv Gandhi Salai,  
Chemmancherry, Chennai – 600 119.

6. Mrs.Remibai Jeppiar

7. Mrs.Vijaya Rajeswari

8. Dr.Chinnadurai

9. Dr.Babu Manoharan

10. Dr.Mariazeena Hohnson

11. Ms.Marie Johnson

12. Ms.Jessie Priya

... Respondents

This application has been filed under Order XIV Rule 8 of O.S. Rules Read with Section 92 and 151 of Code of Civil Procedure to to revoke the leave granted on 23.10.2017 in A.No.6404 of 2017 n C.S.No.908 of 2017.

Applicants : Mr.P.R.Raman, Senior Counsel  
for Mr.C.Seethapathy

Respondents : Mr.Iyyathurai, Senior Counsel  
for Mr.V.B.Perumalraj – R1 to R3

Mr.V.Raghavachari – R4,5,6,10,11,  
Mr.M.S.Soundarajan – R 7 & 8  
Mr.S.Rajasekar – R9 & R12

### **ORDER**

This application has been filed by the seventh defendant to revoke the leave granted by this Court to institute the suit.

2. The main ground of the applicant is that the suit filed by the plaintiff certainly is not in public interest. The plaint averments itself shows that the plaintiff has chosen the suit as a platform to launch herself in the first defendant Trust. Her private and personal interest are the only driving factor for filing the suit. The plaintiff was a Trustee of the first defendant Trust, she having been made a Trustee by Late Dr.Jeppiar, the Founder of the Trust. However, she subsequently resigned from the first defendant Trust, soon after the demise of late Dr.Jeppiar along with the defendants 6, 10 and 11. The third defendant has been elected as a Managing Trustee of the first defendant Trust on 24.06.2016. However, she thereafter engaged in acts and omissions detrimental to the interest of the Trust, compelling us to remove her from the position of Managing Trustee. The 8<sup>th</sup> and 9<sup>th</sup> defendants had influenced the third defendant to engage in fabrication of records and documents and executed document titled "Supplementary Trust Deed" dated 20.01.2017, which reads as though the 8<sup>th</sup> and 9<sup>th</sup> defendants have been inducted as Trustees into the first defendant Trust. The Trustees of the first defendant, except the third defendant, have been vigilant and have at all times administered the Trust to the best of their abilities. Though she resigned from the first defendant Trust well over a year back, she has now insinuated, though not made any direct mention that her resignation from the first defendant Trust was not

voluntary. Only in order to enter into the Trust, with the connivance of the 8<sup>th</sup> and 9<sup>th</sup> defendants, she had lodged a police complaint against them.

3. It is the contention of the applicant that the suit is not filed in the public interest and on the other hand, she is seeking a back door entry into the Trust as her resignation was accepted and recorded on the same day. Further, the suit is also not maintainable as it is misjoinder of cause of action. The first and the second defendants are completely independent institutions and only commonality is the presence of the third defendant in both the Board of Trusts which cannot by itself amount to bundling of causes of action, more so since the complaints of the plaintiffs concerning the first defendant are entirely different from the allegations of impropriety committed by the defendants 3, 8 and 9 in respect of the second defendant Trust, there is no commonality of cause of action. Hence, prayed for revoking the leave granted to institute the suit in application No.6404 of 2017.

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4. The first plaintiff filed a counter denying the allegations contending that the application for grant of leave was instituted because the functioning of the Trustees and the various resolutions passed and Supplemental Trust Deeds executed are not in accordance with the provision of the Deed of Trust and the properties and the institutions are

being mismanaged and fraudulent documents are created to transfer/encumber the trust properties without prior permission of this Court. The 9<sup>th</sup> and 12<sup>th</sup> respondents have instituted C.S.No.904 of 2017 seeking declaration to declare that the Supplemental Deed of Trust dated 20.01.2017 executed by the 6<sup>th</sup> respondent as void ab initio.

5. It is the contention of the respondent that after the demise of Jeppiar, various acts of forgery and fraudulent transactions have taken place and the properties of the Trust are transferred and encumbered detriment to the objects of the Trust. Several trustees have been inducted in a fraudulent manner and meeting of the Trustees also conducted in violation of the Trust Deed and Supplemental Deeds have been executed in a fraudulent manner. Admittedly, the founder Trustee died only on 18.06.2016. On the same day the alleged resolution has been passed and there has been mal administration and mismanagement of the Trust. Hence, prayed for dismissal of the application.

6. The learned counsel for the applicant would submit that the suit is filed on the ground of alleged mal administration and irregularities in the Trust. The plaintiff being one of the Trustee previously, subsequently when the institution owed 150 crores, she has resigned. Now, in order to get entry into the Trust, she has raised various frivolous allegations in the

plaint. The entire allegations in the plaint would go to show that in order to vindicate her personal right, she has included the plaintiffs 2 and 3 as the persons interested in the Trust and filed the suit. The allegation of forgery and fraud played with regard to the documents itself clearly indicate that the suit itself is nothing but to vindicate her personal right and it is not in the public interest.

7. Mr.V.Raghavachari, the learned counsel appearing for the defendants 8, 9 and 3 submitted that the first plaintiff, who had abandoned the institution and ran away when the dues of the institution are mounting, now filed the suit only to get into the Trust after the dues have been cleared by the existing trustees. All other trustees are family members. Except the plaintiff, others have no issue. The plaintiff's husband is the 6<sup>th</sup> defendant and her daughter is the 11<sup>th</sup> defendant. The entire pleadings in the plaint shows that it is nothing but personal dispute. Hence, both the counsels submitted that the leave granted by this Court has to be revoked. In support of their contentions they also relied upon the judgments reported in **1974 (2) SCC 695 [Swami Paramatmanand Saraswati and another Vs. Ramji Tripathi and another]**, **2008(4) SCC 115 [Vidyodaya Trust Vs. Mohan Prasad R and others]** and **2016 (6) SCC 126 [Aurobindo Ashram Trust and others Vs. R.Ramanathan and others]**.

8. The learned Senior Counsel for the respondent/first plaintiff would submit that the plaintiff was originally a trustee and subsequently, she had resigned. On 29.06.2015 a resolution is said to have been passed by the defendants without one month notice as per the Trust Deed. Several third parties also inducted and non Christian member also inducted as a Trustee, which would go against the very object of the trust. The above conduct would lead to mismanagement of the institution. Further, in the Trust Deed there is express provision for selling or encumbering or transferring the Trust properties. Whereas, the Trust properties have been leased out on a long term basis without the permission of the Court. It is clearly breach of trust. The management shall be vested with the members of the family. Prior permission of the Court is also necessary for dealing with the property. But nothing has been done. The manner in which the Trust properties have been transferred against the very Trust Deed itself clearly indicate that there is a breach of Trust. The founder Trustee died on 18.06.2016 and on 24.06.2016, the alleged resolution has been passed inducting several new other trustees detrimental to the Trust Deed. Hence, as per the Trust deed, when there is a breach of trust any person who is interested in the Trust can maintain a suit. Hence, prayed for dismissal of the application. He has also placed reliance on the judgments reported in **2015 (6) CTC 515 [G.V.Selvam Vs. G.V.Sampath and others]** and **2018**

**Sathyanarayana Charitable Trust rep. By its Managing Trustee,  
K.R.Purushothaman and others].**

9. In the light of the above submissions, now it has to be analysed whether the leave granted to institute the suit is liable to be revoked.

10. The suit has been filed for the following reliefs :

a) To formulate a Scheme whereby the Institutions and Properties of the first and second defendant Trust are maintained and carried on in accordance with the objects and the Clauses of the Deed of Trust and the Supplemental Trust Deeds executed by the Founder Trustee;

b) Directing the removal of the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants as Trustees of the 1<sup>st</sup> and 2<sup>nd</sup> defendant Trust on the ground of breach of Trust and fraud committed by them in conducting the affairs of the Trust;

c) Consequently, declare that the Resolution dated 24.06.2016 and corresponding Supplemental Trust Deed dated 04.06.2016

bearing Document No.79 of 2016 as null and void;

d) Consequently declare that the Resolution dated 24.06.2016 and the corresponding Supplemental Trust Deed dated 28.06.2016 bearing document No.96 of 2016 as null and void;

e) Consequently, declare that the Resolution dated 28.06.2016 of the 1<sup>st</sup> defendant Trust including the 10<sup>th</sup> and 11<sup>th</sup> defendants as Trustees of the 1<sup>st</sup> defendant Trust as illegal and null and void;

f) Consequently, declare that the Resolution dated 18.06.2016 and the corresponding Supplemental Trust Deed dated 20.01.2017 bearing Document No.9 of 2017 inducing the 8<sup>th</sup> and 9<sup>th</sup> defendants as Trustees of the 1<sup>st</sup> defendant Trust as null and void;

g) Granting a decree of permanent injunction restraining the defendants 2 to 11 or their men, staff, agent, or any person or persons claiming through or under them from dealing with

or alienating or transferring or encumbering the properties and institutions belonging to the 1<sup>st</sup> and 2<sup>nd</sup> defendant Trust in any manner whatsoever.

11. One of the allegations in the plaint would show that against the clause in the Trust deed, the properties to an extent of 21600 sq.ft. have been leased out for 98 years and 11 months on lease for annual rent of Rs.1000/- per acre. Further the lease deed also stipulates a power to hypothecate or create a charge or other encumbrances and/or mortgage. It is the contention of the learned counsel for the applicant that since the UGC has revised the norms and the education institutions should have the property in their name, only to meet such norms, such transfer is effected.

12. It is to be noted that whether such transfer has been effected only for complying the UGC guidelines or not cannot be gone into at this stage. It is also well settled that the suit in the name of scheme suit, the parties cannot be permitted to vindicate their private rights. Further, the averments made in the plaint clearly contain averments with regard to the alleged breach of trust. The fact that the alleged transfer of certain properties in violation of the terms of the Trust is not in dispute. Such transfer is also effected without any permission of this Court. It is also to be noted that the only allegation in the plaint that has to be looked into at

the first instance as to find out whether the suit falls within the ambit of Section 92 of Code of Civil Procedure.

13. In the judgment reported in **1974 (2) SCC 695 [Swami Paramatmanand Saraswati and another Vs. Ramji Tripathi and another]** in paragraph 14 the Honourable Supreme Court has held as follows :

“It is, no doubt, true that it is only the allegations in the plaint that should be looked into in the first instance, to see whether the suit falls within the ambit of S. 92 of Code of Civil Procedure. But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in facts or reason but is made only with a view to bring the suit under the section, then a suit purporting to be brought under s. 92 must be dismissed.”

14. In the judgment reported in **2018 (2) CTC 762 [CH.Mahesh Kumar Reddy and three others Vs. Sathyanarayana Charitable Trust rep. By its Managing Trustee, K.R.Purushothaman and others]** has

relied on the judgments reported in **1974 (2) SCC 695 [Swami Paramatmanand Saraswati and another Vs. Ramji Tripathi and another]**, **2008(4) SCC 115 [Vidyodaya Trust Vs. Mohan Prasad R and others]** and **2016 (6) SCC 126 [Aurobindo Ashram Trust and others Vs. R.Ramanathan and others]**.

15. It is also well settled that the Court has to consider as to whether the pleadings in the plaint prima facie show the interest of the plaintiff and there is any breach of trust. The Court cannot conduct roving enquiry, while hearing the application for revoking the leave granted to institute the suit, with regard to the allegations made by the respective parties. Though certain relief is also claimed in the suit to set aside the resolution under which the plaintiff's resignation was allegedly accepted and other Trustees have been inducted. Merely because, the other prayers were included in the scheme suit, leave cannot be revoked at the threshold. There is no specific bar for inclusion of other prayers in the suit filed under section 92 of Code of Civil Procedure.

16. In **1974 (2) SCC 695 [Swami Paramatmanand Saraswati and another Vs. Ramji Tripathi and another]** the Apex Court decided the scope of Section 92 of the Code of Civil Procedure and that the majority of the suit depends upon the allegation in the plaint and it is not within

the ambit of the averments in the written statement. Apart from the allegation of transfer of land, allegations are also made in the plaint that the resolutions were passed without following the mandatory period of notice and non Christian member also included as a Trustee, which is also against the norms of the Trust Deed. So, all these allegations clearly indicate that there is breach of Trust. Hence, merely because the first plaintiff happens to be one of the daughter of the Founder Trustee and she has laid the suit against the family members and the other members who are subsequently inducted on the basis of the resolution in the year 2016, this Court is not in a position to hold that the entire suit is filed only to vindicate her right. The allegations in the plaint has to be decided only in the trial to find out as to whether the scheme is necessary to run the Trust. Similarly, with regard to the other allegation of misjoinder of cause of action, this Court is of the view that, that alone is not a ground to revoke the leave and those allegations have also to be seen at the time of trial. Hence, this Court is of the view that the leave granted by this Court cannot be revoked.

17. Accordingly, this petition is dismissed.

03.08.2018

**N.SATHISH KUMAR, J.**

vrc



**Order in**  
**A.No. 60 of 2018 in**  
**C.S.908 of 2017**

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