

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4862 and 4863 of 2013

- 1.V.Rajkumar (died)
- 2.Thulsi Rajkumar
- 3.Prashanti Rajkumar
- 4.Vishnu Nischal Rajkumar

... Petitioners

(Petitioners 2 to 4 brought on record as legal heirs of the deceased sole petitioner viz., V.Rajkumar vide Court Order dated 26.02.2018 made in C.M.P.Nos.4954 and 4955 of 2013 in C.R.P.Nos.4862 and 4863 of 2013)

1.M/S.R.V.Gurusamy Naidu
Educational Trust
RVG Hr.Secondary School Campus
Karuchikottai – 642 112
Udumalpet.

- 2.Santhosh
- 3.R.Vimala

... Respondents in
C.R.P.No.4862 of 2013

1.M/S.G.Ramasamy Naidu
Charitable Trust
RVG Hr.Secondary School Campus

Karuchikottai – 642 112
Udumalpet.

2.Santhosh
3.R.Vimala

... Respondents in
C.R.P.No.4863 of 2013

PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.12.2012 made in I.A.Nos.600 and 601 of 2012 in O.S.Nos.421 and 403 of 2006 on the file of IV Additional District Court, Coimbatore.

For Petitioners : Mr.R.Aranganathan

For Respondents : Not ready in notice

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 03.12.2012 made in I.A.Nos.600 and 601 of 2012 in O.S.Nos.421 and 403 of 2006 on the file of IV Additional District Court, Coimbatore.

2. The petitioners 2 to 4 are the legal heirs of one V.Rajkumar, the first plaintiff in O.S.No.421 of 2006 and O.S.No.403 of 2006 on

the file of IV Additional District Court, Coimbatore. Pending Civil Revision Petitions, the said Rajkumar died and the petitioners 2 to 4 were brought on record as legal heirs of the deceased Rajkumar vide order dated 26.02.2018 made in C.M.P.Nos.4954 and 4955 of 2013 in C.R.P.Nos.4862 and 4863 of 2013 respectively. The said Rajkumar and one Manoharan filed two suits O.S.Nos.421 and 403 of 2006 against R.V.Gurusamy Naidu Educational Trust and G.Ramasamy Naidu Charitable Trust, first respondents in C.R.P.Nos.4862 and 4863 of 2013 respectively, respondents 2 and 3 and other defendants claiming permanent injunction restraining the second respondent, the intermiddler from in any way acting as the Trustee or Managing Trustee or Secretary of the first respondents' Trust and for a direction to the respondents 2, 3 & 6th defendant to handover all the records, books of accounts, properties, minute books, bank dealings etc. of the first respondents Trust to the first plaintiff/deceased Rajkumar and other reliefs.

3. The plaintiffs filed applications I.A.No.344 of 2006 in O.S.No.421 of 2006 and I.A.No.997 of 2006 in O.S.No.403 of 2006 under Section 92 C.P.C. for leave to file the suits. In I.A.No.997 of 2006 in O.S.No.403 of 2006, leave was granted on 23.08.2006. In

O.S.No.421 of 2006, an application under Section 92 C.P.C. has been filed and it was numbered as I.A.No.1017 of 2006 earlier, in which, notice was ordered on 04.09.2006. While the suits and applications are pending, the plaintiffs filed various applications for various reliefs mentioned therein. The respondents in C.R.P.No.4862 of 2013 filed I.A.No.600 of 2012 in I.A.No.344 of 2009 (earlier application I.A.No.1017 of 2006) in O.S.No.421 of 2006 to hear I.A.No.344 of 2009 first. The respondents in C.R.P.No.4863 of 2013 filed I.A.No.601 of 2012 in O.S.No.403 of 2006 to hear I.A.No.716 of 2011 (earlier I.A.No.34 of 2007) to revoke the leave already granted to the plaintiffs at the first instance before hearing the other applications.

4. According to the respondents, unless applications for granting leave or application to revoke the leave already granted are heard and decided first, other applications cannot be heard. They further contended that I.A.No.344 of 2009 was heard, both the parties advanced arguments and the said application was posted for passing orders. At that stage, the plaintiffs filed applications to reopen the applications. According to the respondents, suits filed by the plaintiffs are vexatious and filed only to harass the respondents.

The plaintiffs do not have any public interest and only to vindicate their personal grievances, they have filed the suits. Even during the life time of Founder Trustee, the petitioners had misunderstanding with the Founder Trustee and were not discharging their duties and not attending the Trust Board meetings and they have voluntarily resigned.

5. The plaintiffs filed separate counter affidavits and denied all the allegations made in the affidavits filed in support of the applications and contended that they are exposing public acts. The respondents are mismanaging the Trust by forging and fabricating the documents. All the applications must be heard together, otherwise the plaintiffs will be put to hardship.

6. The learned Judge considering the averments made in the affidavits, counter affidavits and materials available on record, allowed the applications.

7. Against the said order dated 03.12.2012 made in I.A.Nos.600 and 601 of 2012 in O.S.Nos.421 and 403 of 2006, the present two Civil Revision Petitions are filed by the petitioners.

8. The learned counsel for the petitioners contended that the learned Judge has failed to properly appreciate the scope of Section 92 C.P.C. Even when an application filed under Section 92 C.P.C. is pending, the Court has power to grant injunction restraining the second respondent, who is intermiddler from any way acting as a Trustee or Managing Trustee or Secretary of the first respondents Trust. The learned Judge failed to see that all the applications filed by the first petitioner are maintainable and all the applications have to be heard together.

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

10. From the materials available on record and the impugned order passed by the learned Judge, it is seen that both the suits are filed by the first petitioner and one Manoharan against the Public Trust alleging mismanagement of the Trust by second respondent and others. They seek permanent injunction restraining second respondent from acting as a Trustee or Managing Trustee or Secretary of the first respondents Trust. In view of such relief, the plaintiffs can file suit only with leave of the Court. Section 92 C.P.C.

reads as follows:

Section 92 C.P.C.

“(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree,—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has 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;
- (d) directing accounts and inquires;
- (e) declaring what proportion of the trust property

or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863) or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with provisions of that sub-section.

11. As per Section 92 of C.P.C, the Advocate General or two or more persons interested in the Public Charitable or Religious Trust can file a suit for the reliefs mentioned in the said section after obtaining leave of the Court. The words "having obtained leave of the Court may institute a suit" mean that leave of the Court is pre-condition for instituting the suit. The purpose behind such condition is to prevent vexatious or frivolous suit against the Trust and

Trustees. The suit can be instituted only to vindicate public purposes and a person cannot file a suit to settle his private grievances or dispute with the Trustees. The Court may order notice to the respondents in the application for leave to institute the suit and after hearing the objection of the respondents, pass orders either granting or rejecting the leave to institute the suit. The Court in a given case can grant leave to the plaintiff without hearing the defendant. In both the cases, the Court must be satisfied before granting leave. If leave was granted without hearing the defendant, he is entitled to file an application to revoke the leave granted to the plaintiff.

12. The issue whether leave to institute a suit against the Public Charitable or Religious Trust is a pre-condition and without deciding the application for leave, whether other applications filed by the plaintiffs can be heard and decided was considered and decided in the following reported cases:

(i) 2004 (1) CTC 321 (L.M. Menezes and others Vs. Rt. Rev. Dr. Lawrence Pius and others):

"30. Leave must precede the institution of suit. Prior to granting leave, there can be no suit. Leave is

essentially a matter of discretion. When trustees are able to satisfy the Court that there is no evidence to support the allegations or that evidence is not sufficient or the intention of the parties are not bona fide or that action is being initiated for selfish personal ends and not with the object of any public good, it is open to the Court to revoke the leave. The court has to take an objective decision on consideration of facts of each case. The Court should go into the questions of bona fide of plaintiffs and their capacity to represent the public and also see whether they are really interested in the Trust and are not those whose motives are impure. After appearance, the defendants may ask for revocation of leave and where the plaintiffs have failed to prove that they have any interest in the Trust, ex parte leave is liable to be revoked. The learned single Judge taking into consideration of the facts and circumstance of the case found that though the respondents are respectable persons in the locality, they are not persons interested in the trust as contemplated under Section 92 Civil Procedure Code and revoked the leave."

(ii) AIR 2000 Punjab and Haryana 116 (Sant Lal Vs. Sudakar and others):

"20. It appears, on the basis of the foregoing discussion that the previously prevailing controversy on

the question whether an order of the Court, granting or refusing leave, under S.92, CPC is of administrative nature or otherwise, is of no consequence. In deed, no opinion on this question, is expressed by the Supreme Court in R.M.Narayana Chettiar's case, (AIR 1991 SC 221) supra. A plain reading of Section 92, CPC indicates that leave of the Court is a principal condition or a condition precedent for the institution of a suit against a public trust for relief, set out in the said section, but, having in mind the underlying objective and the language used in Section 92, CPC, the Supreme Court has held in clear terms as a rule of caution, the Court should normally unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under Section 92, CPC to institute a suit. The defendants could bring to the notice of the Court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under Section 92, CPC are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons....."

(iii) 2007 (1) KLT 538 (Vidyodaya Trust Vs. Mohan Prasad):

"28.It therefore appears to be relevant to clarify

that a separate independent petition must be filed for leave under Section 92 narrating all the relevant details. Of course when the proposed plaint or copy thereof is also filed along with the leave application, reference can be made in the leave application to the averments in the plaint and they can be incorporated by reference in such application for leave. In such a case repetition of the plaint averments in the application for leave may not be essential. At any rate the practice of filing an LA. For leave in a suit which is yet to be filed is not all correct. Courts must therefore insist on a proper independent and separate application for leave. The same must be numbered as an independent O.P. That should be the proper, correct and ideal course which must be followed by the Courts. Only after the leave application is allowed and leave granted, needless to say, can the plaint be numbered. An order granting leave in the Original Petition for leave is a condition precedent for numbering and entertainment of the plaint. This clarification/direction is issued so that there is no incongruent practices followed in different parts of the State."

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(iv)2011 (2) KantLJ 307 (Donor Bellur Thammaiah's Charities and Sri Swamy Ramadas Melu Sakkare Uppara Vidya Vardhaka Mysore(R) V. G.M.Gadkar):

"33.While granting leave the Court was expected to examine the averments in the plaint and to find grounds for the cause of action. To ascertain whether the apprehension in the mind of the plaintiffs justify any interference of the Court for the management of the trust and to supersede the trust but that has escaped notice of the learned District Judge."

(v)AIR 2002 Kerala 47 (Govindan V. Koovalaseeri Sree Mahadevear Kshethram Trust and others):

"17.In the decision in Amrithakumari V. Ramanathan (1988) 2 Ker 305: (1998 AIHC 4171) a single Judge of this Court has observed as follows:

"I am also of the view that the leave petition has to be considered independently. Leave petition should contain all facts just be a petition filed for prosecuting a suit as an indigent person. It should contain the statement of facts, grounds on which the plaintiff relies and also the relief sought for in the plaint. Suit can be instituted only after the leave is granted. Hence, the lower Court should take care to see that leave petitions alone are filed any prejudice was caused to the petitioners to any extent. But I make it clear that it is the duty on the part of the Court to

see that suit is numbered only after leave is granted."

"21.It is clear from the above rulings of this Court as well as the Supreme Court that even though leave to sue under Section 92 of the C.P.C can be granted by the Court on the prima facie satisfaction regarding the allegations made against the respondents either without giving notice to the respondents or after giving notice to the respondents and hearing them, there will be no properly instituted suit under law before formal leave is granted by the Court under Section 92 of the C.P.C. And no interlocutory order in the proceedings can be passed by the Court before granting permission to institute the suit under Section 92(1) of the C.P.C."

13.In all the above decisions, it is uniformly held that leave to institute the suit against the Public Charitable or Religious Trust is a pre-condition, there will be no properly instituted suit under law before formal leave is granted, the Court must examine the averments in the plaint to find out the grounds for cause of action and only after satisfying that intervention of the Court is necessary for proper management of the Trust, Court can grant leave to institute the suit. Only after leave is granted other Interlocutory Application can be considered and orders can be passed.

14. In the present case, the learned Judge has held that application for leave to institute the suit and application for revoking leave already granted must be heard first before other applications filed by the petitioners for interim relief pending suit can be heard and decided. There is no irregularity in the impugned order of the learned Judge as Section 92 of C.P.C, contemplates leave of the Court to institute the suit and decisions referred to above it had been held that leave to institute the suit is a pre-condition and without deciding the application for leave to institute, other Interlocutory Application can not be heard.

15. In the result, both the Civil Revision Petitions are dismissed as devoid of merits. No costs.

12 .03.2018

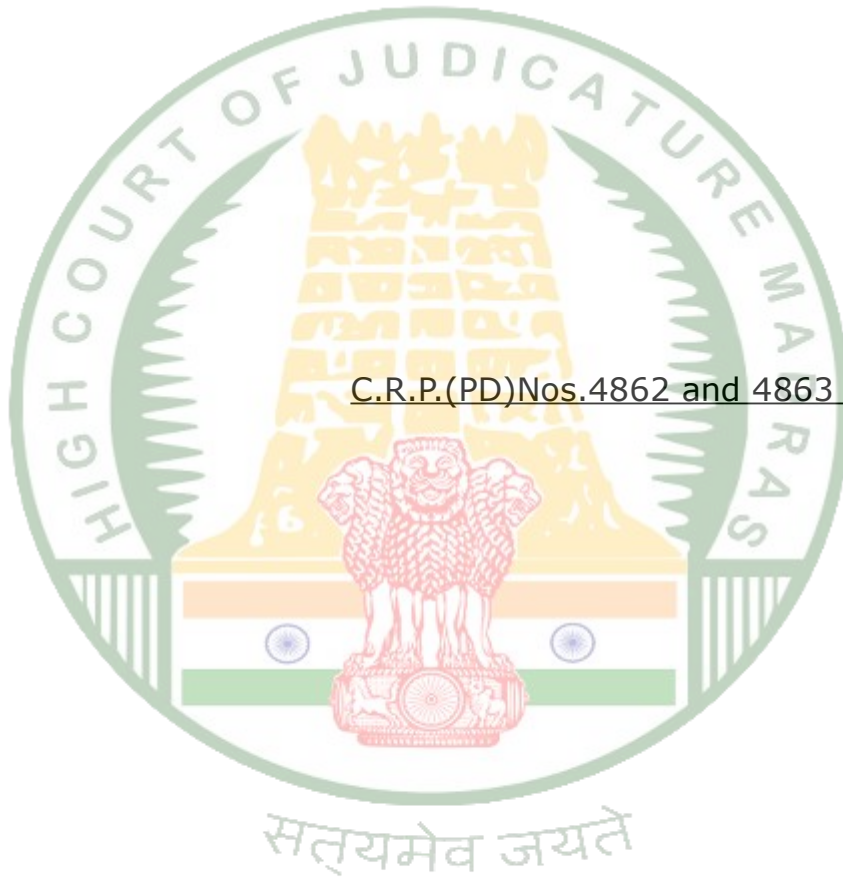
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To
The IV Additional District Judge,
Coimbatore.

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V.M.VELUMANI, J.

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