BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.(MD).Nos.324 of 2011 1677 and 2151 of 2014 (NPD)
and
MP(MD)Nos.1 of 2014 and 2 of 2015

C.R.P.(MD).Nos.324

1.A.R.Rengaraj @ A.R.R.Raju
2.A.R.Sethuraman
3.A.R.Mohanram
4.A.R.Raguraman ..Revision Petitioners/ Respondents/Plaintiffs

Vs.

Aranamanai Raman Chettiar Chathiram
through Trustees,
1.A.R.Senthilkmar
2.A.R.Jeyaraman (Managing Trustee)
3.A.R.Udhayasankaran ... Respondents/ Petitioners/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to pass an order setting aside the fair and decreetal order passed by the Principal Sub Court, Kumbakonam dated on 30.09.2010 in I.A.No.59 of 2006 in O.S.No.199 of 2002.

For Petitioners : Mr.M.S.Balasubramania Iyer
For Respondents : Mr.M.V.Santha Raman

C.R.P.(MD).No.1677 of 2014

Aramanai Raman Chettiyar Annathana Chathiram,
Kumbakonam,
represented by its Managing Trustee,
A.R.Jeyaraman.
... Petitioner/ Petitioner/Plaintiff

Vs.

1.A.R.Raju @ A.R.Rengarajan
2.A.R.Sethuraman
A.R.Jayachandran (Died)
3.A.R.Mohan Ram

4.A.R.Reguraman ... Respondents/ Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the portion of the order of dismissal regarding removal of Trustees passed by the Principal Sub Court, Kumbakonam in I.A.No.33 of 2011 in O.S.No.199 of 2002, on the file of the Principal Sub Court, Kumbakonam dated 25.04.204 and allow the above said application in full.

For Petitioners : Mr.M.V.Santha Raman
For Respondents 2,3 & 4 : Mr.M.S.Balasubramania Iyer
R-1 : Died

C.R.P.(MD).No.2151 of 2014

1.A.R.Raju @ A.R.Rengarajan (died)
2.A.R.Mohan Ram
3.A.R.Reguraman ... Petitioner /Respondents 1,4 & 5

Vs

1.Aramanai Raman Chettiyar Annathana Chathiram, Kumbakonam, represented by its Managing Trustee, A.R.Jayaraman. ... 1st respondent/ Petitioner
2.A.R.Sethuraman ... 2nd respondent/2nd respondent
3.M.V.Renuka

(R-3 brought on record as LR of the 1st petitioner vide order dated 30.06.2015) ... 3rd respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside fair and decreetal order dated 25.04.2014 passed in I.A.No.33 of 2011 in O.S.No.199 of 2002, on the file of the Principal Sub Court, Kumbakonam, allow this revision.

For Petitioners : Mr.V.Balaji
For Respondent -1 : Mr.M.V.Santharaman
For Respondent -2 : Ms.K.R.Sivasankarai
For Respondent -3 : Mr.Niranjan Kumar

COMMON ORDER

Since the issues involved in all these Civil Revision Petitions are one and the same, they are disposed of by way of a common order.

2.As far as CRP (MD)No.324 of 2011 is concerned, it is filed seeking to set aside the fair and decreetal order passed by the

Principal Sub Court, Kumbakonam dated on 30.09.2010 in I.A.No.59 of 2006 in O.S.No.199 of 2002.

3.The factual matrix to be considered for the purpose of deciding the Civil Revision Petition are that the entire dispute between the parties to the lis emanated from and out of the scheme suit filed in O.S.No.199 of 2002, dated 28.01.2003. The public trust was constituted through a trust deed dated 01.10.1887 The public trust was functioning for the past 130 years and the great souls, who constituted the trust had certain visions and accordingly contributed their valuable properties during the relevant point of time. The disputes now arose between the legal heirs and the trustees are certainly painful. The trustees and some others are committing a sin towards the great souls, who constituted the trust with great ideas and ambitions. It is the duties and responsibilities of the trustees and legal heirs to ensure that the soul and spirit of those persons, who constituted the trust are respected and the deed is implemented in its real spirit. After all, out of greediness and out of selfishness the parties to the lis are creating disputes in respect of the properties belonging to the public trust, which was constituted, more specifically, in the year 1887.

4.Let us now consider the issues involved in the present civil revision petition. The scheme suit was filed in O.S.No.199 of 2002 on the file of the Sub Court, Kumbakonam. The list of documents and description of properties are set out in the scheme suit and the description of properties for the purpose of better appreciation is extracted here under :-

Thanjavur District, Kumbakonam registry, Kumbakonam Town Taluk, 114, Ullur Vattam, Ullur Village, Minicipal Limits.

Sl.No	Ward	T.S.No	Extent
01	I	Survey 33/1 Nanjai	1 Ac.30889 Sq.Ft
02	I	Survey 33/2 Nanjai	0 Ac.11504 Sq.Ft
03	I	Survey 33/63 Nanjai	0 Ac 13504Sq.Ft
04	I	Survey 38/0 Nanjai	0 Ac 18553 Sq.Ft
05	I	Survey 45/0 Nanjai	0 Ac 6876 S1.Ft.

1 to 5 lands are acquired under Land Ceiling Act, Hence, the prayer for permission is prayed for 1 to 5 lands.

Sl.No	Ward	T.S.No	Extent
06	I	Survey 47 Nanjai	0 Ac.13632 Sq.Ft
07	I	Survey 137 Nanjai	1 Ac.21425 Sq.Ft
08	6	Survey 147 Nanjai	6 Ac.3945 Sq.Ft
09	6	Survey 753 Nanjai	0 Ac. 32 Sq.Ft
10	6	Survey 753 Nanjai	0 Ac.733 Sq.Ft
11	6	Survey 754 Nanjai	0 Ac.7051 Sq.Ft
12	6	Survey 754 Nanjai	0 Ac.34737 Sq.Ft

13	6	Survey 759 Nanjai	0 Ac.23400 Sq.Ft
14	6	Survey 765 Nanjai	0 Ac.17031 Sq.Ft
15	6	Survey 766 Nanjai	0 Ac.16582 Sq.Ft
16	6	Survey 769 Nanjai	0 Ac.3687 Sq.Ft

(and other properties referred in doc.dt.31.12.1961 No.559/1962).

5.The learned counsel appearing on behalf of the revision petitioners made submissions that Interlocutory Application filed by the Trust is not maintainable. In order to substantiate his contention, the learned counsel for the petitioner states that a portion of the property was already alienated through the deed of exchange in the year 1970, in favour of one Smt.Lakshmi Ammal, wife of A.Ramasamy alias Rama Iyer (one of the Trustees). Thus, the property, which was handed over to the said Lakshmi Ammal by way of exchange deed in the year 1970, cannot be taken away by the trust by filing an Interlocutory Application, in the scheme suit, filed in O.S.No.199 of 2002. Further, the contention of the petitioners is that the said Lakshmi Ammal is to be treated as a third party for all purposes. More over, in respect of the property in dispute, she was not a trustee nor connected with the public trust. This being the factum, the transaction between the managing trustee and the said Lakshmi Ammal is to be treated as private and independent one and accordingly, the property already handed over through exchange deed cannot be dealt with by the trust under section 92 of CPC. In other words, Interlocutory Application, in scheme suit, in order to recover the possession is not maintainable. The scope of the Interlocutory Application, cannot travel beyond the scope of the main suit. In the present case, the relief sought for in the Interlocutory Application is travelling beyond the scope of the civil suit and therefore, the Interlocutory Application, itself is to be rejected in liminie.

6.Yet another ground raised by the learned counsel for the petitioners is that the property was transferred by way of exchange deed, during the year 1970, in favour of Smt.Lakshmi Ammal. Thus I.A now filed in the year 2006, after a lapse of about 36 years cannot be maintained, in view of the limitation prescribed in law. Thus, in all respects, the order of the Sub Court, Kumbakonam is liable to be set aside. Further it is contended that the description of properties are set out in the plaint filed in the scheme suit in O.S.No.199 of 2002. Certain particulars and details of the properties, which were transferred in favour of Smt.Lakshmi Ammal, are not found in the list of properties set out in the suit in O.S.No.199 of 2002

7.It is contended that the properties, which were transferred through exchange deed in the year 1970 are not part of the list of documents enumerated in the plaint in O.S.No.199 of 2002 In all respects, when the properties are not mentioned as properties belongs to the trust, then the same cannot be claimed after a lapse of about 36 years by filing an I.A. in the scheme suit.

8.The learned counsel for the petitioners contended that the very Interlocutory Application is not maintainable and the properties in question are no way connected with the public trust. Further, the same was already transferred in favour of a third party and once the property was transferred in favour of a third party, the same cannot be covered by way of an Interlocutory Application, in scheme suit filed in O.S.No.199 of 2002. Further, it is suggested by the learned counsel for the petitioners that the only option left out to the public trust is to file a separate suit for declaration and possession. This Court is not inclined to entertain such suggestive arguments on behalf of the petitioners.

9.The petitioners and the respondents in the said Interlocutory Application, are the plaintiffs in the scheme suit in O.S.No.199 of 2002. Therefore, it is to be construed that the dispute is amongst the plaintiffs themselves. Thus, the same cannot be resolved by way of an Interlocutory application, in the very same scheme suit.

10.The learned counsel appearing on behalf of the respondents strongly opposed the contents raised by the revision petitioners. The learned counsel for the respondents states that Section 92 of the Code of Civil Procedure enumerates in respect of the properties owned by the public trust. There cannot be any technicality in respect of the recovery of the properties, which belongs to the public trust. Once the public trust is created, then, the public interest is involved and when the public interest is the paramount consideration for maintaining the public trust then the I.A. filed for recovery of the trust properties cannot be construed as alien to the scheme suit. Further, it is contended that in the decree passed in O.S.No.199 of 2002 dated 28.01.2003, it is categorically stated that "All the properties referred in document dated 31.12.1961 in No.559/1962." Relying on the said document No.559/1962 dated 31.12.1961, the learned counsel for the respondents contended that the property now in dispute, which was in possession of Smt.Lakshmi Ammal and now with the petitioners are part of the properties described in document No.559 of 1962 dated 31.12.1961. When it is part of the properties listed out in the suit documents, it is also to be construed as the property belongs to the public trust. In other words, the respondents state that during the relevant point of time, when the scheme suit was filed, they had described certain properties, more specifically, 16 properties and thereafter included all other properties referred in document dated .31.12.1961 in No.559 of 1962. The purpose of including the said document No.559 / 1962, was that to include certain left out properties and other properties, mentioned in the said document belonging to the public trust, which were not specified with survey number, in the list of documents and the scheme suit has covered all those properties.

11.It is not in dispute that the property now in question is not covered under the said document No.559/1962. However, it is now disputed that the property transferred by way of exchange deed to Smt.Lakshmi Ammal cannot be re-claimed by the public trust. Such being the factum, this Court has to consider the issues raised between the parties to the lis.

1. The issues to be considered are that whether an interlocutory application in scheme suit for recovery of possession of the properties belonging to the public trust, can be entertained or not?
2. Whether the deed of exchange executed between the wife of one of the trustees and the managing trustee of a public trust, can be treated as valid document in the eye of law?
3. Whether the public trust is entitled to recover, the property which has been lying with the wife of a trustee Smt.Lakshmi Ammal and now from her legal heirs?

12.The learned counsel for the respondents relying on Section 65 of the Indian Trust Act, 1882, contended that whether the trustee wrongfully sells or otherwise transfers the public trust and afterwards becomes the owner of the property. The property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration. Though the Indian Trust Act, is inapplicable to a pubic Trust, the spirit of the particular provision has to be taken note of.

13.Relying on the provision, the learned counsel for the respondents states that the property originally belongs to the public trust and it was wrongfully alienated by way of exchange deed in the year 1970 by the managing trustee of the public trust, more so, in favour of the wife of another trustee namely Smt.Lakshmi Ammal , W/o. Mr.Ramasay (Rama Iyer). It is for all purposes, the act of execution of an exchange deed is to be treated as a wrongful act of the managing trustee and therefore, the said deed cannot provide a valid title or otherwise, in favour of Smt.Lakshmi Ammal. It is contended that the Scope of Section 92 is wide in nature and it covers to set right the irregularities and illegalities committed by the trustees of the public trust. Therefore, the scope of Section 92 cannot be confined, so as to institute a fresh suit for the purpose of recovering the properties, belonging to the public trust. In this regard, it is contended that the Hon'ble supreme Court of India, held that "modification clause in a scheme decree is both appropriate and convenient so that the scheme may be amended or modified speedily for better administration without taking recourse to the cumbrous procedure of a suit and there is nothing in Section 92 against it".

14. Thus, the Court cannot stand on the technicalities in respect of recovery of properties belonging to the public trust. The technicalities should not vitiate the very spirit of the original deed of a public trust. The learned counsel for the respondents referred to the Text on the original deed of trust executed on 10.09.1887, by stating that "the trust properties cannot be

possessed or enjoyed by the members of the family of the trust". Thus, the very transfer of the property belonging to the trust by way of an exchange deed is contrary to the terms and conditions stipulated in the original deed of trust.

15.The Courts can interfere, when the terms and conditions of the trust are tampered with by the trustees or by any other person. The terms and conditions originally set out in the public trust cannot be tinkered with by the succeeding trustees, more so, without any permission from the Court concerned. In the present case, the admitted facts are that the property originally belongs to the public trust. The managing trustee of the public trust transferred a portion of the property by way of an exchange deed in favour of Smt.Lakshmi Ammal, who is none other than the wife of Mr.Ramasay (Rama Iyer) one of the trustees of the public trust. This being the admitted facts, this Court has to consider whether such a deed of exchange entered into at the convenience of the managing trustee and one of the trustees can be held as a valid document?.

16.This Court is of an opinion that the ultimate object of the public trust is to be protected in all respects. The ultimate object of the public trust is to provide charities, which are to be done on enquiries. The charities are being performed continuously on the occasions specified. Thus, there cannot be any hindrance in respect of carrying out the very purpose and objects set out in the trust deed. Taking into consideration of the very object of the terms and conditions of the public trust, this Court is of an opinion that the properties dealt with by the managing trustee and one trustee, more specifically, by way of exchange deed in favour of the wife of the said trustee namely Mr.Ramasamy cannot be said to be in order.

17.Now the learned Counsel appearing for the petitioners has taken sincere efforts to convince this Court by stating that the property once transferred by way of exchange deed cannot be taken back. However, the trustee with the consent of the other trustees had executed the exchange deed. Therefore, he had knowledge about the transfer of the property in favour of Smt.Lakshmi Ammal. When the property was transferred with the consent and knowledge of all the trustees, then the same cannot be taken back after a lapse of 36 years from the date of exchange.

18.The learned counsel for the petitioners states that by virtue of the exchange deed, the valuable properties belonging to Smt.Lakshmi Ammal was also dealt with under the Land Reforms Act by the Government. Further it is contended that the compensation was paid by the Government to the trust and the amount was invested in the trust account. Therefore, the learned counsel for the petitioners states that the properties, which were exchanged, are to be returned back to Smt.Lakshmi Ammal, in the event of taking back the properties belonging to the trust.

19.The learned counsel appearing for the respondents contends by stating that the properties, which were taken away through the Land Reforms Act were dealt with by none other than the husband of Smt.Lakshmi Ammal, Mr.Ramasamy, who was also a trustee in the public trust. That is the reason why the present managing trustee is constrained to file the petition for recovery of possession.

20.This Court is of an opinion that undoubtedly the document was executed by the managing trustee of the public trust and exchange deed was also attested by two attestors. Attestation, whether can be considered as participation in the execution of the document?. Attesting the document is one aspect and being a party to the deed is another aspect. Merely because of the person attesting the document cannot be construed, as if, he became the party automatically to the transaction executed in the deed.

21.Thus this Court is unable to accept the contentions that other two trustees had attested the document executed by the managing trustee and therefore, it is to be construed that the trustees as a whole had executed the document. Even if such execution was made by the all the trustees, this Court is of an opinion that the properties belonging to the public trusts cannot be dealt with by the trustees contrary to the terms and conditions stipulated in the deed. The trustees are bound by the very conditions stipulated in the public trust deed. Even, if all the trustees together made an attempt to destroy the spirit of the deed, then also the Court can recover the same and uphold the very object of the trust deed. The character of public trusts is that the services mentioned in the deed are to be performed in accordance with the terms and conditions. There cannot be any deviation by the trustees also. Therefore, the very contention that the trustees had the knowledge and they have accorded consent for transferring the properties cannot have any merit consideration.

22.This apart, this Court is of an opinion that the arguments advanced by the learned Counsel for the petitioners that appropriate course would be to institute a fresh suit for recovery of possession. Even then the very same question in respect of limitation would arise. Undoubtedly, the revision petitioners are of an opinion that the property was already transferred in their favour and therefore, the trust cannot recover the same. Contrarily, this Court is of an opinion that the trust properties are to be dealt with, in the manner known to law and the trust and its properties are to be protected in order to carry out the objectives, in its original spirit and by following the terms and conditions stipulated in the original trust deed. Under these circumstances, the point of limitation, the point of consent and the point of filing of a fresh suit, all stand on the technical grounds. If all these grounds are accepted, then would amount destroying the soul and spirit of the public Trust. The paramount importance is to protect the noble ideas set out by those great souls, who constituted the public trust. If those ideas are diluted, discarded or destroyed, then the Court cannot shut it eyes and it is for the

Courts to oversee such deeds are properly implemented in its original sense. Accordingly, the reasons furnished in the order passed in I.A.No.59 of 2006 are certainly candid and convincing. Accordingly, the order passed in I.A.59 of 2006, dated 30.09.2010 in O.S.No.199 of 2002 on the file of the the Principal Sub Court, Kumbakonam is to be confirmed and the Civil Revision Petition is liable to be dismissed.

23.As far as CRP(MD)Nos.1677 and 2151 of 2014 are concerned, Aramanai Chettiyar Annathana Chathiram, Kumbakonam represented by its Managing Trustee, AR.Mr.Jayaraman, Son of Ramasamy, the petitioner in CRP(MD)No.1677 of 2014. The revision petition is preferred against the order passed in I.A.No.33 of 2011 in O.S.No.199 of 2002 on 25.04.2012 by the Principal Sub Judge, Kumbakonam. The respondents 1,4 and 5 in the said I.A.No.33 of 2011 in O.S.No.199 of 2002, are the revision petitioners in CRP(MD) No.2151 of 2014. Thus, against the order passed in I.A.No.33 of 2011, both the petitioners as well as the respondents 1, 4 and 5 therein, preferred separate civil revision petition.

24.The petitioner is the public trust. An interlocutory application was filed under Section 92 of CPC, for the relief of recovery of money due to the public trust and further for removal of the trustees, who are all the respondents in the said Interlocutory application. The grounds enumerated in the interlocutory application are that the petitioner is a public trust and Shri. A.R.Jayaraman is the Managing Trustee of the public trust and he is administrating the trust as per the scheme decree passed in O.S.No.199 of 2002. The revision petitioner trust earlier filed an I.A.No.59 of 2006, seeking the relief of possession simpliciter and the said petition was allowed by Sub Court, Kumbakonam on 30.09.2010. The trustees were directed to hand over the possession of the property belongs to the trust within a period of three months. The time limit granted by the Sub Court expired on 31.12.2010. However, the trustees/ respondents had not handed over the possession of the property, which was possessed by them.

25.In view of the changed circumstances the revision petitioner trust had to file an I.A. under section 92 of CPC, for the purpose of recovering the money/ mesne profits, derived from and out of the trust properties by the respondents herein. The claim of the revision petitioner is that from and out of the decree granted in scheme suit seven years before, the respondents have not deposited the income of the property, derived from and out of the trust properties. The activities of the respondents are causing financial loss to the trust. Even the revision petitioner claims that the trustees should deposit the entire dues to the trust and thereafter continue as trustees in the trust. On account of the illegal act of the respondents, the petitioner public trust is suffering a loss of Rs.60,000/- per month. Accordingly, Rs.7,20,000/- per year. The arrears of amount of loss is calculated as Rs.50,40,000/-. This apart, from the year 2010, the rental income for the buildings belong to the trust was enhanced and accordingly, monthly loss became Rs.1,00,000/-. Thus, for one year, the amount of loss is calculated as Rs.12,00,000/. In total the petitioner claims that the respondents should deposit Rs.62,40,000/- to the trust account. Future rental income and other income are also to be calculated and deposited by the respondents. On this ground, the revision petitioner claims that the respondents are liable to deposit the amounts collected form and out of the trust properties by the trustees (Respondents).

26.The respondents filed a counter statement in I.A.No.33 of 2011, by stating that the petitioner is not a managing trustee of Aramanai Ramasamy Chettiyar Annathaana Chathiram. In fact on 02.01.2001, a meeting was convened, in that meeting, the so called managing trustee A.R.Jayaraman was removed and in his place Mr.A.R.Mohanram, 4th respondent was appointed as Managing Trustee and the same was intimated to the Court also. The respondents are taking steps to implement the resolution passed in the meeting held. Further, it is stated that the Managing Trustee has not convened any meeting of the trust as per the directions given by the Court. Without conducting any meeting and without the consent of the trustees, the Managing Trustee has filed audit accounts, which is self serving. The Managing Trustee has committed several mischiefs and the respondents were constrained to bring to the notice of the Scheme Court. Further, it is contended that the respondents are not enjoying the income derived from the trust properties. The claim of the revision petitioner is false and misleading. The respondents claim that they are not liable to pay any amount to the trust. The respondents had not committed any breach of trust and therefore, the claim of removal from the trusteeship does not arise at all.

27.The learned counsel for the revision petitioner states the revision petitioner trust is a public trust, which was constituted on 10.09.1887 and it is performing charities as per the terms and conditions of the trust deed. The scheme suit was filed in O.S.No.199 of 2002 on the file of the Sub Court, Kumbakonam and decree was passed on 28.01.2013. Mr.A.R.Jayaraman and the respondents are also parties to the Scheme suit in O.S.No.199 of 2002. Subsequently, Mr.A.R.Jayaraman was appointed as Managing Trustee and he is administrating the trust properties as per the scheme suit decree and implementing the trust deed in its letter and spirit. While so, some of the properties of the trust were taken away by one Smt. Lakshmi Ammal, in collusion with her husband, who was also a trustee. The husband of Smt.Lakshmi Ammal, Mr.A.R.Ramasamy (Rama Iyer) by misusing his position as trustee executed by alienating the trust properties, which were situated in the prime area of Kumbakonam Town in favour of his wife Smt.Lakshmi Ammal and in lieu, he had given the land situated in the remote area and thereby caused loss to the public trust. However, the other trustees had not questioned the same for several years, in view of the fact the family members were maintaining cordiality, in order to maintain the trust peacefully. However, soon after the present

Managing Trustees A.R.Jayaraman took charge of the trust, he found that the property exchanged in favour of Lakshmi Ammal, is commercial premises and yielding more rent and the trust should not suffer, on account of illegal acts committed by the erstwhile trustees. Under these circumstances, the managing trustee filed I.A.No.59 of 2006, for recovery of possession and the said petition was allowed by the Sub Court, Kumbakonam. The present I.A. for recovery of money is a consequential one and even after passing of decree of the scheme suit, the respondents had not handed over the properties belonging to the public trust.

28.As per the description of properties set out in the scheme suit, it is categorically cited that other properties referred to "documents dated 31.12.1961, No.559/1962 are also included". The properties now in possession of the respondents are included in document No.559/1962 dated 31.12.1961. Thus, the respondents ought to have handed over the possession of those properties of the trust or at least they should have deposited the income of the trust properties in the trust accounts. Contrarily, the respondents are utilizing the money derived from and out of the trust properties for their personal benefits. Such personal utilization by the members of the family is prohibited in unambiguous terms in the trust deed dated 10.09.1887. This being the factum, the present petition deserves to be allowed. The learned counsel appearing on behalf of the respondents states that the Managing Trustee unnecessarily has filed the petition. In fact the said property originally belongs to the trust, was handed over to Smt.Lakshmi Ammal, through an exchange deed in the year 1970. Therefore, the property belongs to the respondents and the same cannot be claimed by the trust. This apart, the respondents and the managing trustee Mr.A.Jayaraman were plaintiffs in the scheme suit in O.S.No.199 of 2002. Whenever, dispute arises between the plaintiffs against other plaintiffs, Interlocutory application cannot be filed by one of the plaintiffs against the other plaintiffs. In other words, it is contended, when there are more than one plaintiff in a suit, at later stage, other plaintiffs cannot file a suit against, any one of the plaintiffs and such an action is impermissible. Further, it is contended that there is an enormous delay in claiming the relief by the revision petitioner and therefore, the same cannot be granted at this stage.

29.This court is of an opinion that it is admitted by all the parties to the present lis that the properties now in possession of the respondents originally belong to the public trust. However, it is not disputed that there is specific clause in the trust deed dated 10.09.1887, that the trust properties cannot be alienated or enjoyed by any of the family members. Therefore, the very exchange deed executed at the instance of one of the trustees Mr. A.R.Ramasamy alias Rama Iyer, in favour of his wife Lakshmi Ammal was an illegal transaction.

30.Thus, the trustees cannot misuse the properties belonging to the public trust. The trustees are the custodians of the properties of the public trust and they are bound by the terms and conditions stipulated by the founder trustee in the trust deed. The Court cannot remain as a mute spectator, in respect of objectionable conducts, if any committed by the trustees, while administrating the trust, more specifically, the properties belonging to the public trust. Thus, if any transaction contrary to the trust deed is executed, the same is to be declared as null and void and the properties should be handed over to the possession of the public trust. At no point of time the properties belonging to the trust can be dealt with in contravention to the deed. Any such act or any other act are to be done only by obtaining proper orders from the competent Court of law. Therefore, the exchange deed as stated by the respondents of the year 1970 has no sanctity in the eye law. The exchange deed cannot be treated as valid deed in the eye of law. Such execution between one of the trustees and his wife with the managing trustee cannot be considered as a valid transaction.

31.After all some great souls had contributed their properties for the benefit of general public, by renouncing their selfishness. Renouncing one's selfishness is of the greatest character of a human being. By renouncing personal desires and usages, human soul intents to contribute their hard earned valuable properties for the purpose of performing certain charitable activities, then the other family members / legal heirs cannot have any other intention other than the one stipulated in the trust deed. In other words, the family members/ the trustees cannot have any right to deal with the properties in violation of the terms and conditions of the trust deed. Thus, the very exchange deed said to have been created is null and void. The learned counsel for the respondents further contended that as per Section 92, such an interlocutory application, cannot be maintained for the purpose of recovery of money and for removal of trustees. The respondents are also the plaintiffs in the scheme suit filed in O.S.No.199 of 2002. Thus, the interlocutory application in I.A.No.33 of 2011 is not maintainable.

32.This Court is of an opinion that Section 92 of CPC is comprehensive. Section 92 provides, wide scope for the purpose of protecting the trust properties. The object and the purpose of the provisions, have to be considered and the constructive interpretation is to be provided by the Courts, while dealing with such applications. Constructive and harmonious interpretation are certainly necessary to render substantial justice. The Courts are not bound to apply law bluntly. The scope and good conscious are the considerations to be shown, while taking decision in such kind of matters. Each factor and the intention of the parties and the manner in which the properties of public trust are dealt with are also to be taken into account by the Courts, while deciding the case. There cannot be any mechanical application of law, in respect of the issues to be decided in such nature of cases. Under these circumstances, this Court is of an opinion that harmonious and constructive interpretation of Section 92 is certainly essential. Section 92 is extracted here under for the purpose of better appreciation.

2. Public charities.- (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 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 inquiries;

(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 responding 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 the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypress in one or more of the following circumstances, namely:—

(a) where the original; purposes of the trust, in whole or in part,—

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust arid other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spire of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since, they were laid down,—

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

STATE AMENDMENT

UTTAR PRADESH.- In Section 92, in sub-section (1), after clause (b) the following shall be added as a new clause (bb):-

"(bb)for delivery of possession of any trust property against a person who has ceased in he trustee or has been removed" - UP. Act 24 of] 954, Section 2 and Schedule. Item 5. Entry 5 (wet. 30.11.1954).

Section 92 (a) deals with the removal of any trustee and 92 (h) states that granting such or other reliefs as the nature of the case may require. Thus, the provision is unambiguous in all means, for the purpose of protecting the properties of the public trust as contemplated. Section 92 (h) empowers the Court to grant of appropriate reliefs considering the facts and circumstances of each case. Therefore, this Court is of an opinion that the relief sought for to recover the monetary loss caused, on account of an illegal act of a trustee is certainly permissible. Removal of a trustee is dealt under Section 92(a), in respect of the said provision there is no ambiguity. Under these circumstances, there is no impediment for the Sub Court for dealing with the interlocutory application filed by the public trust in I.A.No.33 of 2011. The point of maintainability raised by the respondents deserves outright rejection. This Court is of an opinion that the interest of the public trust and its properties are to be protected. It is the paramount duty of the trustees to see that the trust deed and its terms are implemented in its letter and spirit. Any deviation has to be monitored by the Courts, whenever an application is filed in respect of such irregularity or illegality by any of the trustees. This being the principles are to be followed, this Court is of an opinion that there is no irregularity or illegality in respect of entertaining the interlocutory application in the scheme suit by the Sub Court, Kumbakonam.

33.The next question arises whether monetary loss directed to be recovered from the respondents by the petitioner trust by the Sub Court is in order. This Court is of an opinion that the parties to the lis had admitted that the property originally belongs to the public trust. However, it is admitted that the exchange of properties were done by the erstwhile managing trustee in favour of Smt. Lakshmi Ammal, wife of another trustee, during the year 1970. When such transaction was found to be invalid in the eye of law, then certainly, mesne profits calculated by the trustees are to be reimbursed to the trust. Thus, this Court is of an opinion that amount collected by way of rent or otherwise from and out of the properties belonging to the trust must be reimbursed and deposited in the trust account by the trustees.

34.A trust is called as Public Trust when it is constituted wholly or mainly for the benefit of Public at large, in other words beneficiaries in the Public trust constitute a body which is incapable of ascertainment. The Public trusts are essentially charitable or religious trusts and are governed by the general Law. The provisions of Indian Trusts Act, do not apply on Public Trusts. Like the private trusts, public trusts may be created under vivos or by will. The Indian Trusts Act does not apply to public trusts which can be created by general law. There are three certainties required to create a charitable trust are (1) a declaration of trust which is binding on settlor, (2) setting apart definite property and the settlor depriving himself of the ownership thereof, and 3 a statement of the objects for which the property is thereafter to be held, i.e. the beneficiaries.

35.It is essential that the transferor of the property viz the settlor or the author of the trust must be competent to contract. Similarly, the trustees should also be persons who are competent to contract. It is also very essential that the trustees should signify their assent for acting as trustees to make the trust a valid one. When once a valid trust is created and the property is transferred to the trust, it cannot be revoked, If the trust deed contains any provision for revocation of the trust, provisions of sections 60 to 63 of the Income-tax Act will come into play and the income of the trust will be taxed in the hands of the settlor as his personal income. The difference between a public and private trust is essentially in its beneficiaries, A private trust's beneficiaries are a closed group, while a public trust is for the benefit of a larger cross-section having a public purpose.

36.In this context, this Court has to examine the scope of the present revision petition preferred by the parties, more specifically, by the trustees of a public trust. Firstly, the scope of Section 92 was raised. In respect of section 92, undoubtedly it is special provision itself in nature. Part V of CPC deals with the special proceedings. Section 89 deals with the settlement of disputes set out in the Court. Section 90 provides powers to state case for opinion of Court. Section 91 deals with public nuisance and Section 92 deals with public charities. Section 93 deals with Exercise of powers of Advocate-General outside presidency-towns

37.Thus, the entire chapter are the special provisions which all are enumerated in CPC. Thus, distinct appreciation and interpretation with relevance to the purpose and object are to be considered by this Court. In other words, the constructive and pragmatic interpretation has to be adopted instead of conventional interpretation. The Constructive interpretation is to be arrived at with a harmonious consideration of the facts and circumstances and also the objects sought to be achieved through special provisions. Such being the context this Court cannot deal with section 92 of CPC, unlike other provisions available under the Code.

38.The parties to the lis raised a point that Order 1 Rule 1 deals with, whom to be joined as plaintiffs, all persons may join in one suit as plaintiffs where (a) any right to relief in respect or, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and (b) If such persons brought separate suits, any commons question of law or fact would arise.

39. The learned counsel appearing for the respondents has stated that in view of the ingredients in Order 1 Rule 1, the present interlocutory application filed by the trust under section 92 is not maintainable. This apart, it is contended that even as per Order 2 Rule 2, the suit should include the whole claim. The original suit was filed in O.S.No.199 of 2002, when the scheme suit was filed in O.S.No. 199 of 2002, any other consequential claims ought to have been made along with the suit itself. Therefore, there cannot be any separate application in respect of other claims. This apart, the present claim in the interlocutory application, was not made at the time of filing of the scheme suit in the year 2002 itself. Thus,at a later point of time the claims cannot be entertained. Another point also was raised that the application for possession simpliciter was also filed in the year 2006, even at that point of time, there was no claim from the trusts in respect of the recovery of money and removal of the trustee. Thus, all these claims are afterthought and further filed on account of personal vengeance and animosities. At the outset, it is contended that the petition was filed only to harass the respondents and to threaten them, so as

to secure their co-operation in favour of the managing trustee, who is the revision petitioner herein.

40.Further it is contended that the properties exchanged by Smt.Lakshmi Ammal with the trust was already handed over to the Government under the Land Reforms Act by the trustees. Therefore, intentionally they have handed over the property belongs to late Smt.Lakshmi Ammal under the Land Reforms Act and now they are claiming the property, which was given by way of exchange deed in the year 1970. Therefore, Lakshmi Ammal cannot be made to suffer, on account of the act of the trust by handing over the property to the Government under the Land Reforms Act.

41.In support of the contents the respondents cited the judgment of the Hon'ble Supreme Court of India, in the case of ***SREE KALIMATA THAKURANI OF KALIGHAT JIBANDHAN MUKHERJEE & OTHERS,*** reported in ***AIR 1962 SC 132*** and relevant paragraph is extracted here under:

> 5.on the basis of these observations learned counsel contends that the deity's title to the 595 bighas being beyond dispute, at any rate so far as shebaits are concerned, it would be only fit and proper to specify them along with other property. He admits that most of these lands have passed out of the hands of shebaits but he says that the managing committee would be able to recover them easily by instituting suits if they are included in the schedule to the scheme. It seems to us, however, that the provision made by the High Court in the scheme with respect to properties other than those described in Schedules A & B to the plaint is sufficient for that purpose. We may also point out that in another litigation to which the deity as well as some of the shebaits were parties, the subordinate judge had granted a declaration of the deity's title to these very lands but that declaration was set aside by the High Court. The reasons given by the High Court for setting it aside are stated thus :
> "The parties had led evidence bearing upon the question of title to that area. That defect could have been removed even now by allowing the plaint to be amended at this stage. But the plaintiff cannot have the declaration because all persons who would have been affected by the declaration are not before the Court, not being made parties at all. It is the common case of the parties that most part of that area has been sold to outsiders. These transferees are not parties to the suit, and defendants 1 to 13 cannot represent in the suit these outsiders, for according to the plaintiff they were sued on the footing that they were to represent only the shebaits of the deity and none else. It is of fundamental importance that a Court should not make a declaratory decree which would be useless. We accordingly discharge that part of the decree by which he declared the title of the deity Sri Sri Kalimata to the whole of the said

area of 595 bighas and 9 cottahs odd of land."

As we have already stated the bulk of the lands are in the hands of transferees who are not parties to the proceeding under S. 92 of the Code of Civil Procedure and of course are not parties to the appeal either. Their inclusion in the schedules to the scheme as being debuttar property will d not affect the rights of those persons in any way and the fact that they are debuttar properties will have to be established if and when appropriate proceedings are taken for obtaining their possession. We, therefore, decline to interfere with the direction made by the High Court in the scheme respecting the properties.

42.The learned counsel cited the judgment in the case of ***Manikka Narasimhachari vs M.V. Ramasubbier And Ors,*** reported in ***1970 (1) MLJ 337*** and relevant paragraphs are extracted here under:-

3. When there is a wrongful alienation not binding upon the trust and when the alienating trustee still functions as a trustee and has not been removed, it will be open to the worshippers or the beneficiaries to maintain a suit for possession of the trust property after declaring the alienation invalid; when such possession is asked for, the decree for possession will be in favour of the alienating trustee himself; because so long as he is a trustee he is the only person who is entitled to the lawful possession of the property. The law is well settled and it is too late in the day to question such a right of a worshipper or beneficiary to ask for a decree for possession being passed in favour of the alienating trustee; Section 92, Civil Procedure Code, is not applicable to such a suit. Vide Bishwanath v. Radha Ballabji , and the recent decision of Alagiriswami, J., in Amir Jan v. Shaik Sulaiman Sahib (1968) 2 M.L.J. 559, in which there is a detailed discussion of the relevant case law.

4. Mr. Gopalaswami Iyengar, the learned Counsel for the appellant, then contended that the restoration of possession from the alienee to the trustee would amount to the vesting of the property in the trustee within the meaning of Section 92 (3), Civil Procedure Code, and without sanction of the Advocate-General the suit is not maintainable. We see no substance in this contention. The words "vesting any property in a trustee" have a definite connotation and Section 92 (3), Civil Procedure Code, will apply only to cases in which either a trustee is first appointed or an old trustee is removed and a fresh trustee is appointed and the trust property is vested in such a trustee. Restoration of possession of the property to the trustee from the alienee to whom the property has been alienated wrongfully is not vesting of the property in a trustee under Clause 3 of Section 92, Civil Procedure Code. Vide Johnson D Po Min v. U Ogh A.I.R. 1932 Rang. 132 at

136. In Ranchoddas v. Mahalaxmi Vahuji , a Bench of the Bombay High Court took the same view (though, no reference was made to the Rangoon decision) that a suit for possession against an alienee to whom the trust properties had been wrongfully and unauthorisedly alienated would not be hit by Section 92 (3), Civil Procedure Code. Gajendragadkar, J., as he then was, overruled the objection as to want of sanction in these terms at page 157:

It is, therefore, necessary to consider whether the claim for possession made by the plaintiffs falls within Section 92 (1) (c). Mr. Purshottam's argument is that, since the plaintiffs want the properties to be restored to defendant 1, they are virtually asking for an order for vesting the properties in defendant 1. We think that there is no substance in this argument. The plaintiffs do not seek for the removal of defendant 1 from trusteeship; and indeed, they do not seem even to emphasise the wrongful alienations effected by her. They want defendant 1 to continue as trustee and manager of the temple and its properties and according to them the title with regard to these properties which vests in defendant 1 as a trustee has not been validly and effectively divested. There is thus no question of obtaining a decree vesting any property in defendant 1. The relief of possession in the present suit merely amounts to claim for restoring the property to where it still belongs. If that be the true position, there can be no doubt that the suit does not fall under Section 92 and that the absence of sanction would not make it incompetent.

43.In respect of the judgment reported in ***AIR 1962 SC 1328,*** this Court is of an opinion that the facts are distinct and different. This apart, the learned counsel for the respondents made an attempt to analogically create similarity. However, the facts and circumstances are entirely different. So also, in the case reported in ***1970 (1) MLJ 337***, this Court is of an opinion that there is a finding that "when there is a wrongful alienation not binding upon the trust and when the alienating trustee still functions as a trustee and has not been removed, it will be open to the worshippers or the beneficiaries to maintain a suit for possession of the trust property after declaring the alienation invalid."

44.This Court is of an opinion that the present case on hand entire disputes are between the trustees and there is no involvement of 3rd parties and worshipers. Here the alleged transactions with the said Lakshmi Ammal was transacted by the erstwhile managing trustee and the said Lakshmi Ammal is also other than the wife of an another trustee Mr.A.R.Ramasamy alias Rama Iyer. Therefore, those transactions cannot be compared in respect of the involvement of the 3rd parties in public trust. In the present case on hand the entire transactions and the allegations of maladministration and fraudulent transaction of execution of exchange deed are between the trustees and the only point is that the said Lakshmi Ammal was not a trustee, however, she is the wife of one of the trustees. Therefore, the said Lakshmi Ammal cannot be directly treated as a 3rd party. Though, the said Lakshmi Ammal is not strictly connected with the trust, her husband Shri.A.R.Ramasamy alias Rama Iyer was a trustee and the exchange deed was executed with his consent and in his presence. Thus, the transactions cannot be considered as alien as far as the trustees are concerned. Under these circumstances, there cannot be any comparison in respect of the facts and circumstances, which all are not connected with the present case on hand.

45.The learned Counsel appearing on behalf of the revision petitioner trust also cited the judgment in the case of ***Syed Abdul Fatah sahib, N.S. V. S.Saha Syed Sahib and others,*** reported in ***2000-3-L.W.433*** and the relevant paragraph is extracted hereunder

> 16. I do not accept the contention that there is no power vested with the Scheme Court to order removal of trustee. It cannot be stated that if a trustee has to be removed relating to a trust, which is being controlled and administered under a scheme of the Court, that the proceedings should be initiated under Section 92 of the Code. When the scheme Court has power to appoint a trustee, equally, the Court has power to remove the trustee. A trustee who is found unfit can always be removed by the Scheme Court. There is no need or necessity for obtaining sanction of the Advocate General under Section 92 of the Civil Procedure Code. The Supreme Court has also pointed out in the decision reported in AIR 1961 SC 1206 approving the view of the Bombay High Court that a scheme Court can modify the Scheme.

46.The learned counsel referred the judgment in the case of ***Sri Jeyaram Educational Trust & Ors vs A.G.Syed Mohideen & Ors, reported in 2010 (1) CTC 602*** and the relevant paragraph is extracted here under :

> 8. Assuming that there was any need for applying the principles of interpretation, let us next consider whether the word `or' was used in section 92 of the Code in a substitutive sense. It is clear from section 92 of the Code that the legislature did not want to go by the general rule contained in section 15 of the Code that every suit shall be instituted in the court of the lowest grade competent to try it, in regard to suits relating to public Trusts. The intention of the law makers was that such suits should be tried by the District Court. At the same time, the law makers contemplated that if there was heavy work load on the District Court, the State Government should be enabled to empower any other court (within the local limits of whose jurisdiction, the whole or any part of the subject matter is situate), also to entertain such suits. Therefore, the word "or" is used in

the ordinary and normal sense, that is to denote an alternative, giving a choice. The provisions of section 92 do not give room for interpreting the word "or" as a substitutive, so as to lead to an interpretation that when the Government notified any other court, such notified court alone will have jurisdiction and not the District Court. If the intention was to substitute the Court empowered by the State Government in place of the Principal Civil Court of Original jurisdiction, instead of the words `may institute a suit in the Principal Civil Court of original jurisdiction or in any other court empowered in that behalf by the State Government', the following words would have been used in the section :
`may institute a suit in the principal Civil Court of original jurisdiction, or when any other court is empowered in that behalf by the State Government, then in such court empowered by the state government,' OR `may institute a suit in the court notified by the state government.'

47. The learned counsel referred the judgment in the case of ***Surya Vs. Pakkirisa and others***, reported in ***2012 (2) CTC 651*** and the relevant paragraph is extracted here under :

19. The Trial Court next went in to the question as to whether the plaintiffs are having locus standi to file a suit and while deciding the said question, it was held that the trust is a public trust. In such a case, any two members of the public having interest, though not direct interest, could file a suit, for obtaining leave from the Court for removal of trustees on the ground of mismanagement etc. Since the plaintiffs claim to belong to that particular community, they have locus standi to maintain a suit.

20. On the question as to whether prior notice was required to be issued to the defendants for granting leave under Section 92 CPC, the Trial Court relied upon the decision of the Honourable Supreme Court cited by the plaintiffs in Adityan v. Ramachandran Adityan (2004 (4) MLJ 54) and held that leave granted need not be revoked for the reason that the plaint allegations and averments disclose ample facts and cause of action for the suit and based on that only, the plaintiffs filed a suit by getting permission under Section 92 CPC.

25. The question as to whether notice is required to be issued prior to granting leave under Section 92 CPC, though several decisions have been referred to by the learned counsel on either side, it would be suffice to refer to the decision of the Honourable Supreme Court in Vidyodaya Trust v. Mohan Prasad R, 2008 (3) CTC 868 = (2008) 4 SCC 115. The challenge before the Supreme Court was to an order of

the High Court holding that leave has been rightly granted in terms of Section 92 CPC. While deciding the legal question, the Honourable Supreme Court has held thus:

"18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act (104 of 1976) the expression used was #consent in writing of the Advocate General#. This expression has been substituted by the words #leave of the Court#. Sub-section (3) has also been inserted by the Amendment Act. The object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of pubic trusts. Thus, there is need for scrutiny.

19. In the suit against public trusts, if on analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in Swami Paramatmanand case a suit under Section 92 CPC is a suit of special nature, which presupposes the existence of a public trust of religious or charitable character. When the plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has no application.

20. In Swami Paramatmanand case it was held 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 Section 92. 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 fact or reason but is made only with a view to bringing the suit under the section then suit purporting to be brought under Section 92 must be dismissed.

21. In Chettiar case it was held that normally notice should be given before deciding the question as to whether leave is to be granted.

22. If in a given case notice has not been given and leave has been granted, it is open to the Court to deal with an application for revocation and pass necessary orders.

23. One of the factual aspects which needs to be highlighted is that the allegations which have been made against Respondents 2, 3 and 10 are referable to a decision taken by the Board, though may be by majority. The fundamental question that arises is whether allegations against three of them would be sufficient to taint the Board's decision. As was observed by this Court in Swami Paramatmanand case, to gauge whether the suit was for vindicating public rights, the Court has to go beyond the relief and to focus on the purpose for which the suit is filed. To put it differently, it is the object or the purpose for filing the suit and not essentially the relief which is of paramount importance. There cannot be any hard-and-fast rule to find out whether the real purpose of the suit was vindicating public right or the object was vindication of some personal rights. For this purpose the focus has to be on personal grievances.

24. On a close reading of the plaint averments, it is clear that though the colour of legitimacy was sought to be given by projecting as if the suit was for vindicating public rights the emphasis was on certain purely private and personal disputes."

48.Once again, this Court has to consider the very Section 92 of CPC. The section being special in nature, certain conventional and usual procedures need not be followed strictly. The ultimate object of providing such special provision by the legislators are to secure and protect the public interest, more specifically, in respect of the public charities. In respect of the public trusts, the individuals may not have much involvement on some occasions. Only certain good nature people will take sincere efforts to protect the public trust. In normal circumstances, people will have the tendency of utilizing the public properties in a casual manner. Under these circumstances, the trust created by virtue of the deed for the benefit of public at large are also to be protected in all respects. Thus, the special provision is constituted to avoid certain procedural difficulties and to ensure that the properties belong the public trusts are protected in all respects and the utilization as per the spirit of the original trust deed and as per the consequential scheme decree.

49.On a plain reading of Section 92, unambiguously portrays that wide powers are given for removal of trustee appointed in the trust and granting any further or other relief as the nature of the case may require. The said wide powers are provided in order to secure the interest of the public properties belong to the public trust. Thus, the case of public trust cannot be decided merely on technical grounds. The case of all the parties and the trust should be dealt with, based on that particular facts and circumstances of the case. The ultimate object would be to protect the interest of the trust and to carry out the intention of the founders of the trust, which are described in the original trust deed. Any deviation is to be monitored strictly and scrupulously in accordance with the terms. The contentions of the learned counsel for the respondents that the petition under Section 92 should not be entertained by the Sub Court, cannot be accepted. The Sub Court, while entertaining such petition has to look into the facts and circumstances and its technicalities. In the present case, the facts and circumstances are that no doubt that there was an exchange deed in the year 1970. The nature of the exchange deed is also to be looked into by the Court. It was an exchange deed between the managing trustee and the wife of another trustee. Thus, it is to be considered that the trustees amongst themselves conspired and created an exchange deed, which is strictly in violation of the terms and condition of the parent trust deed. Thus, the fraudulent activities are to be ascertained only in respect of the intention, conduct and the nature of the deed of exchange executed. This apart, after execution of the exchange deed by the wife of a trustee and the managing trustee, the property handed over to the trust by the said Lakshmi Ammal was handed over, in favour of the Government by the trust itself under the Land Reforms Act.

50.Such being the nature of the transaction, the factual inference necessarily to be drawn by this Court is that the trustee connived and exchanged the valuable property in favour of Smt. Lakshmi Ammal, who in turn, handed over the property, which is of less value under the Land Reforms Act, to the Government. The intention of the parties are able to be visualized, based on the nature of the transaction and the document executed. Thus, the intention of the parties during the relevant point of time was just to hand over the property, which is of less value to the Government and to protect the valuable property within the family. It is a matter of financial loss to the trust, when the property was in the hands of Smt.Lakshmi Ammal. The husband of Smt.Lakshmi Ammal was also one of the trustees. Thus, during the relevant point of time, the members of the family and the trustees were in cordial relationship and therefore, they thought it fit, to execute such an exchange deed by exchanging the properties for the purpose of handing over certain portions under the Land Reforms Act to the Government.

51.The arrangements made between the managing trustee and one of the trustees continued for several years and there was no objection from any of the trustees or from the family members. By virtue of the arrangements made in the year 1970, the property originally belongs to the trust, which is of more value in nature was under the possession of Smt. Lakshmi Ammal and presently in the hands of the respondents, who all are legal heirs of the said Lakshmi Ammal. When the family was carrying out the charities in accordance with the terms and conditions of the trust deed, as generations crossed, there was dispute within the family itself. We are now losing the strength of the joint family system in our society. When the individual families are more selfish, where from the real dispute arises amongst the families.

52.Under these circumstances, in the year 2006, one Mr.A.R.Jayaraman assumed charge as the managing trustee. Till then there was no quarrel in respect of the exchange deed executed in the year 1970. When the new managing trustee took charge of the trust, he thought it fit, that the original property belongs to the trust should be recovered. Probably the intention may be different. But this Court has to consider, whether the transaction executed in the year 1970 has any sanctity with the legal principles in respect of the public trust.

53. Soon after the assumption of the charge as managing trustee Mr.A.R.Jayaraman filed O.S.No. 199 of 2002, for possession simpliciter. The application was filed on the ground that the scheme suit was decreed in the year 2003 and therefore, he has filed the application for recovery of possession within a period of three months and therefore, the application is in time. However, I.A.No.59 of 2006 filed for possession simpliciter was allowed in the year 2010. The learned Counsel appearing on behalf of the revision petitioners states that the question of claiming mesne profits / recovery of money arises, only after taking possession of the property belongs to the trust. Thus, during the pendency of I.A.No.59 of 2006, they have not filed any application for removal of trustee or for recovery of money. Soon after the order of the possession was passed by the Sub Court, they have consequently, moved the present I.A.No.33 of 2011, for the relief of recovery of money and for removal of trustee. Thus, there is no time delay in respect of filing the application by the trust.

54.This apart, the delay in respect of the trust properties cannot be considered as adverse against the trust itself. It is the contention raised on behalf of the trust that public trust is for charitable purposes and the beneficiaries are the public at large. Therefore, the point of delay cannot be raised against the trustee or as a matter of fact against any person, who is approaching the Court of law for the purpose of protecting the properties. This Court is of an opinion that in respect of the public trust, it is needless to state that the trustees or all concerned are responsible for it’s protection, because some great souls are offering and relinquishing their valuable property rights for the purpose providing certain charities for the public at large. Therefore, the intention of those great souls are also to be respected before taking decision in this kind of matter.

55. In respect of a public trust concerned, who all are having

concern over the public trust are to be treated as necessary parties and if the matter is examined in that perspective, then the public in general are the relevant parties for the purpose of protection of the trust properties. Such being the interpretation to be provided in respect of public trust, this Court is of an opinion that the point of delay cannot have much relevance in respect of recovery of possession or recovery of money due to the public trust properties. If such technical grounds of limitation and the point of maintainability, are raised, then this Court is of an apprehension that the persons may connive with each other and commit misappropriations and other illegalities. The intention of the Legislators are unambiguous that in all respects, the properties of the public trust are to be protected without any compromise.

56. Thus, this Court is of a clear opinion that whoever files a petition in respect of public trusts and its properties are to be treated as informers and the Court shall deal with the matter in order to protect and secure the properties or otherwise in respect of public trust.

57. In this view of the matter, the technical grounds of maintainability raised by the respondents under Order 1 Rule 1 and Order 2 rule 2, the petitions filed by the trust need not be entertained. Whether the petition was filed by the managing trustee of the trust or by the public or by the third party, then the same is to be dealt in accordance with the facts and circumstances and the ultimate object and the endeavour of the Court is to see that the original covenants in the public trust deed is protected in all respects, and also with reference to the scheme decree.

58. Under these circumstance, this Court of is an opinion that the finding of the learned Subordinate Judge, Kumbakonam that the respondents are liable to deposit the mesne profits in the trust accounts is just and appropriate. However, in respect of calculation of the monetary loss deserves to be modified in respect of the property in possession of the respondents. When this Court raised a question that the learned Counsel or the respondents that what would be the prevailing market rental value of the property in possession of the respondents, the learned Counsel for the respondents states that he has to enquire with the respondents. Fortunately, the respondent, who was present in the Court Hall and this Court in order to avoid any further delay, directly questioned the respondent in respect of the market rental value, the respondent who is present before this Court, Mr.A.R.Reguraman, answered by stating that the rent is Rs. 150/- per day per shop. Therefore, this Court is of an opinion that the rent admitted before this Court by the Trustee Mr.A.R.Reguraman, can be taken as fair market rental value for the purpose of calculating the monetary loss occurred to the trust, on account of the possession of the properties at the hands of the respondents. Accordingly, the monetary loss is calculated as Rs.46,500/- per month for 10 shops and the total monetary loss is calculated as Rs.39,60,000/-. Accordingly, the order of the learned

Subordinate Judge, Kumbakonam is modified to the extent of reducing the claim of the revision petitioner trust to Rs.39,60,000/- and in all other respects, the order passed in I.A.No.33 of 2011 in O.S.No.199 of 2002 are confirmed.

59. In respect of the removal of the trustee, this Court is of an opinion that except the fact that the respondents are in possession of the trust property by virtue of exchange deed, there is no contention raised in the petition. The present trustees, who all are the respondents are totally unconnected with the exchange deed of the year 1970. The exchange deed executed during the relevant point of time was by the erstwhile managing trustee and Smt.Lakshmi Ammal who was the wife of the trustee Mr.A.R.Ramasamy. Therefore, the respondents herein cannot be held as they have committed any irregularity and they continued in possession only based on the exchange deed executed in favour of Smt.Lakshmi Ammal. Therefore, the present trustees must be allowed to continue as trustees. However, it is made clear that the trustees should act together for the purpose of executing the terms and conditions stipulated in the trust deed. If any trustee commits any irregularity or illegality, it is left open to the other trustees or any other beneficiary to file petition before the appropriate Court for appropriate action and for appropriate orders. Under these circumstances, the removal of trustee does not arise at all. The revision petitioner trust has not made out any ground for the purpose of removal of the trustees/respondents. Therefore, in respect of the relief sought for, to remove the trustee deserves to be rejected. Accordingly, the order of the learned Sub Judge, Kumbakonam is modified in respect of the claim of recovery of money to the extent of Rs.39,60,000/- and in respect of the removal of the trustee stands rejected.

60.In the light of the aforementioned adjudication, the following orders are passed:-

(i) Accordingly the order passed in I.A.59 of 2006, dated 30.09.2010 in O.S.No.199 of 2002 on the file of the the Principal Sub Court, Kumbakonam is confirmed and the CRP(MD)No.324 of 2011 stands dismissed.

(ii) The order passed by the learned Principal Subordinate Judge, Kumbakonam in I.A.No.33 of 2011 in O.S.No.199 of 2002 is modified to the extent of reducing the claim of the revision petitioner trust to Rs.39,60,000/- and in all other respects, the order passed in I.A.No.33 of 2011 in O.S.No.199 of 2002 are confirmed and both CRP(MD)Nos.1677 and 2151 of 2014 (NPD) stand partly allowed.

(iii)Consequently, the respondents in CRP(MD)No.1677 of 2014, are directed to deposit the modified amount of Rs.39,60,000/-, in the revision petitioner public trust's account, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The relief sought for, in respect of the removal of the trustees of the public trust, stands rejected.

(v) However, No orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Kumbakonam.

+ 4 CC TO Mr.T.R.SUBRAMANIAN, ADVOCATE IN SR No. 55827 & 55828
+ 2 CC TO Mr.V.BALAJI, ADVOCATE IN SR No. 55865 & 55864
+ 2 CC TO Mr.M.S.BALASUBRAMANIA IYAR, ADVOCATE IN SR No. 55875

DSK
TE/KKR/SAR-3 : 17/04/2018 : 28P/10C

C.R.P.(MD).Nos.324 of 2011,
1677 and 2151 of 2014 (NPD)
15.03.2018