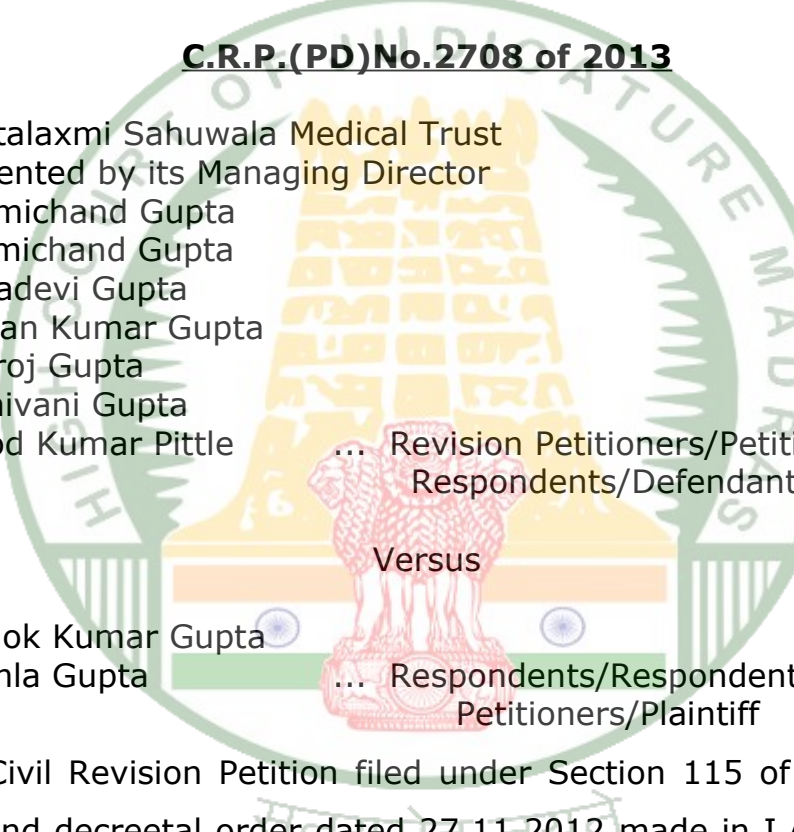


IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
05~04~2019	30~04~2019

CORAM :THE HONOURABLE **MR. JUSTICE N.SATHISH KUMAR****C.R.P.(PD)No.2708 of 2013**

- 
- 1.M/s. Sitalaxmi Sahuwala Medical Trust
Represented by its Managing Director
Mr.Laxmichand Gupta
2.Mr.Laxmichand Gupta
3.Mrs.Sitadevi Gupta
4.Mr.Pawan Kumar Gupta
5.Mrs.Saroj Gupta
6.Miss.Shivani Gupta
7.Mr.Vinod Kumar Pittle ... Revision Petitioners/Petitioners/
Respondents/Defendant
- Versus
- 1.Dr. Ashok Kumar Gupta
2.Mrs.Bimla Gupta ... Respondents/Respondents/
Petitioners/Plaintiff

Civil Revision Petition filed under Section 115 of CPC against the fair and decretal order dated 27.11.2012 made in I.A.No.1435 of 2012 in IA No.1416 of 2012 in O.S.No.566 of 2012 on the file of the Principal District Judge, Coimbatore.

For Revision Petitioner .. Mr. N. Sridhar for
M/s.R. Bharath Kumar

For Respondent .. Mr.M.S.Krishnan
Senior Counsel for
M/s.Sarvabhauman Associates[for R1]
M/s P.R.Ramakrishnan [for R2]

ORDER

Aggrieved over the fair order in I.A.No.1435 of 2012 in I.A.No.1416 of 2012 in O.S.No.566 of 2012 dismissing the application filed to revoke the leave granted under Section 92 of C.P.C. the present Revision is filed.

2. The brief facts leading to file the revision is as follows:

2.(a) The Plaintiffs are husband and wife filed suit for framing a scheme for proper administration of the Trust, known as Sitalaxmi Sahuwala Medical Trust and for other reliefs. The main relief sought under the plaint is as follows:

A. *The amendments brought about by the defendant in the form of Supplemental Trust Deed dated 18.06.2012 and registered as Doc.No.3841 of 2012 pertaining to the 1st Defendant Trust is void, illegal and contrary to the basic structure of the Trust Deed dated 09.04.1980 and supplemental deed dated 23.04.1997 and for permanent injunction to restrain the defendants from implementing the terms of the supplement deed dated 18.06.2012.*

B. For a declaration that the amendments brought about under supplemental deed of Trust dated 10.08.2012 and registered as Doc.No.511 of 2012 pertaining to the 1st Defendant Trust is void, illegal and contrary to the basic structure of the Trust Deed 09.04.1980 and supplemental deed dated 23.04.1997 and for permanent injunction to restrain the defendants from implementing the terms of the supplement deed dated 10.08.2012.

c. To declare that the appointment of defendants 6,7 and 8 as Trustees to the 1st Defendant Trust is void, illegal and contrary to the basic structure of the Trust and the doctrine of representation provided in the Trust Deed dated 09.04.1980 and supplemental deed dated 23.04.1997 and for a consequential permanent injunction to restrain defendants 6,7 and 8 from functioning as Trustees of the 1st Defendant Trust.

D. To declare that the removal of plaintiffs 1 and 2 from the Trust Board of the 1st Defendant is void, illegal and unenforceable.

E. To declare the right of the plaintiffs to have Permanent representation in the Trust Board equal to the representation of the 4th Defendant.

3. In the plaint the following reasons have stated for framing the scheme:

1. *The administration of the Trust should be in proper hands and the hospital should be administered by competent qualified doctors.*
2. *No charity is performed by the 1st Defendant Trust and records are created and fabricated for the said purpose for the past 5 years. No free medical aid is provided and allowed to be provided only the 1st Plaintiff gives free consultation to the patients.*
3. *No regular meeting of the Trust are conducted and no procedures are followed for proper conduct of meetings. No resolutions are passed and minutes are not recorded.*
4. *The real income derived by the Trust is not accounted and this is siphoned off for the personal use by Defendants 2 to 5. Cash collected is not deposited immediately on the following day but used the 4th Defendant.*
5. *Trustees are appointed and removed according to the Whims of defendants 2 and 4 no democratic system is followed.*
6. *Complaints are frequently emerging from Doctors and Patients that the 4th defendant is demanding and*

receiving kick back of various amounts involved and the 1st plaintiff has been informed to watch out the activities of the 4th defendant and to direct him to mend his ways, to preserve the reputation of hospital.

7. The defendants do not come and supervise the hospital on a day to day basis. The 1st Defendant is prevented from taking part in the administration and management of the hospital. Proper accounts are maintained.

8. The defendants are thus guilty of mismanagement, misappropriation and they are guilty of committing breach of trust and they are not fit to hold office. The 8th defendant is the Banker for the 1st defendant Trust and the 1st Defendant is operating it accounts with the 8th defendant. The 8th Defendant thus a proper party as the operation of account and withdrawals can be.

4. The First Plaintiff is the son of the Second Defendant who is the founder trustee. Third Defendant is the mother of the First Plaintiff. 4th Defendant is his brother. 5th Defendant is wife of 4th Defendant. 6th Defendant is the 3rd Defendant's daughter and 7th defendant is newly added Trustee.

5. The case of the plaintiffs is that the second defendant

originally decided to construct the hospital so as to enable the 1st Plaintiff to carry on his profession. However, hospital was envisaged as charitable hospital. The second defendant as author of the Trust established 1st Defendant Trust, M/s.Sitalaxmi Ashuwala Medical Trust. The above trust was established with aim and object of providing medical aid to the needy citizens. First plaintiff who became qualified Medical Practitioner would look after the institution and administer the hospital, where part of hospital can be run for charity and first Plaintiff can have his consultation and in patients admitted to serve the people in society. The Plaintiff was looking after the administration of the hospital till the year 2003 and 2004. Subsequently the 4th defendant and 5th defendant also inducted as a trustees. After 4th defendant became a trustee slowly started to use of powers and become Joint Managing Trustee. Now the defendants have completely sidelining the plaintiff and also sent a communication dated 23.07.2012. Hence the plaintiff filed the suit for the reliefs as stated above.

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6. At the time of filing suit District Court granted leave, however, liberty is reserved for the respondent to revoke the said leave. Thereafter, the Revision Petitioner took up an application to

revoke the leave primarily on the ground that the suit has not filed for any public interest and filed only to vindicate the private rights of the parties. The suit has been filed immediately after the notice issued for the board meeting. The entire allegation of the plaint will prove that the suit allegations are relate to vindicate the personal rights of the plaintiffs. The above application was opposed by the respondents. The trial court has dismissed the application filed by the revision petitioner, as against which the revision is filed.

7. The learned counsel appearing for the Revision Petitioner submitted that the entire suit allegations clearly indicate that the suit itself filed to vindicate the private rights of the plaintiffs. The respondent was removed from the Trust which triggered the present suit. The entire allegation of the plaint shows that the first plaintiff is vindicating his private rights. Substance of the plaint is perused, public cause is only ostensible and colour of legitimacy was sought to be given by projecting as if the suit is for vindicating the public rights. The first plaintiff was Joint Managing Trustee. The main allegation that he was removed and equality class in the Trust Deed was deleted. Immediately after the show cause notice issued to the first plaintiff, suit has been filed. He has also filed a second suit, which is a

comprehensive suit. All his private rights can be decided in the above suit. Second suit is sought to removal of all trustees and in their place, he ought to be appointed. All these facts clearly indicate that suit is not vindicating the public rights. Whereas, the hospital is run properly and there is no evidence to show mismanagement. Hence, suit for framing scheme is not maintainable.

8. In support of his contention he placed reliance of the following judgements:

1. *Vidyodaya Trust v. Mohan Prasad.R and others* **[AIR 2008 Supreme Court 1633]**
2. *Swami Prammatmanand Saraswati and another v. Ramji Tripathi* **[AIR 1974 Supreme Court 2141]**
3. *Sugra Bibi v.Hazi Kummua Mia* **[AIR 1969 Supreme Court 884]**
4. *Chairman Madappa v. M.N.Mahanthadevaru and others* **[AIR 1966 Supreme Court 878]**
5. *Bishwanath and another v. Sri Thakur Radha Ballabhli and others* **[AIR 1967 Supreme Court 1044]**
6. *Appanna Poricha v. Narasinga Poricha and others*

[AIR 1921 MADRAS 17 (FB)]

7. *B.D.V.Rangarathinam and Others. v. Sri Bakthositha Perumal Temple and others.* **[2004 (4) CTC 641]**

8. *T.J.John and another v. The Church of South India and another* **[Division Bench of Kerala High Court in FAO.No.188 of 2013 dated 26.06.2015]**

9. *Surya v. Pakkirisai and others* **[Madras High Court CRP PD No.1235, 1236 and 1579 of 2006 dated 02.03.2012]**

9. The learned senior counsel appearing for the Respondent submitted that the averments in the plaint to be read directly the object of the Trust is to render a medical service. The manner in which urgency shown to bring 4th defendant and removing the 1st Plaintiff is not against the interest of the public trust. Narrating events in the plaint is only to show how the trustees who are running the hospital were removed from the same by misfeasance or malfeasance on the part of the defendants. 4th Defendant is interested in taking control of the entire Trust property. Therefore, narrating above facts in the plaint, it cannot be construed that it is only for vindicating the

private right. It is the further contention of the senior counsel that the allegations can be gone only at the time of trial not at the stage of the applications. When the object of the Trust is diluted and likely to be defeated the plaintiff merely because he is one of the Trustees, it cannot be construed that he has personal interest to vindicate the same. At this stage a roving enquiry is not permissible. Only the averments and object of the Trust has to be seen.

10. It is the further contention of the learned senior counsel that the Courts will guard the interest of the Trust and should exercise vigilant care over the functioning of the Trust. The object of the Trust has to be seen. Further, it is the contention of the learned senior counsel that third parties also now filed reply after publication in the trial Court. Public outcry is against the present administration. Therefore, merely because narration of events made in the plaint, it cannot be construed as only for vindicating the private right. Suit under 92 of the Code is a representative suit, it binds not only the parties named in the suit-title but all those who are interested in the trust.

11. In support of his submissions he placed reliance of the

following judgments:

1. *R.Venugoopal Naidu and others v. Venkatarayulu Naidu Charities and others* [**AIR 1990 SUPREME COURT 444**]

2. *R. Kannan Adityan & 4 others v. B.S.Adityan* [**1996-2-L.W.362**]

3. *Rajagopal v. Balachandran and others* [**2002 (2) CTC 527**]

4. *CH Mahesh Kumar Reddy v. Sathyanarayana Charitable Trust and others.* [**2018 (2) CTC 762**]

5. *B. Ramachandra Adityan also known as B.R.Adityan and another v. B.Sivanthi Adityan (deceased) also known as B.S. Adityan other others.* [**2013 (4) CTC 614**]

12. Admittedly, the trust was created on 15.03.1985. Second Defendant, father of the First Plaintiff is founder trustee. He established the Trust viz., Sitalaxmi Sahuwala amedical Trust. Originally the Plaintiffs and Defendants 2 and 3 were appointed as Trustees for life. Second Defendant is Managing Trustee and First Plaintiff was appointed as Joint Managing Trustee. These facts are

admitted facts. Similarly the Trust Deed was amended by deed dated 23.3.1981 further object of providing free education, conducting orphanage, etc., Similarly another deed dated 15.3.1985 further objects were introduced in the deed of Trust. It was also an amendment to the trust deed by a registered deed dated 24.11.1986. It is also admitted fact that on 08.04.1985 the hospital was constructed and established in the year 1987-88. These facts are not in dispute. It is the case of the plaintiff that First Plaintiff was looking after the administration of the hospital till the year 2003-04. After induction of the 4th defendant into the Trust he started use of the powers and he became a Joint Managing Trustee. 4th Defendant was looking after day to day affairs of the Sitalaxmi Sahuwala Hospital and he did not account for the actual income. Similarly, the defendants were completely sidelining the plaintiff. First Plaintiff started questioning the misdeeds. Defendants also issued notice for the proposed meeting to be held on 9.8.2012. The 4th Defendant wants to remove the plaintiffs from the office in their absence. Accordingly, it is the contention of the plaintiff that the defendants are siphoning the funds of the trust and sought the relief.

13. In the judgment cited by both sides when carefully seen in

Vidhyodaya Trust case (supra) in para 18 it is held as follows:

"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 public trusts. Thus, there is need for scrutiny. 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 Parmatmanand's case (supra) a suit under Section 92 CPC is a suit of special nature, which pre-supposes 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. "

14. In **Swami Parmatmanand Saraswati's case** (supra) it is held as follows:

10. A suit under s. 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail, and, even if all the other ingredients of a suit under s. 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of S. 92 see *Shamukhan v. Govinda* (1) *Tirumalai Devasthanams v. Krishnayya*(2). *Sugra Bibi v. Hazi Kummu Mia*(3) and *Mulla* : Civil Procedure Code (13th ed.), Voll. 1, p. 4001. A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the

reliefs are brought by individuals as representatives of the public for vindication of public rights; and in deciding whether a suit falls within s. 92, the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It (1) A.I.R. 1938 Madras 92. (2) A.I.R. 1943 Madras 466. (3) [1969] 3 S.C.R. 23. is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside s. 92."

15. In **Sugra Bibi's case** (supra) the Honourable Supreme Court has held as follows:

9. This principle was accepted as sound by a Full Bench of the Madras High Court in Appanna v. Narasigna(1),. In that case, a suit was instituted by a trustee of a public, religious trust against a co-trustee for accounts and the Full Bench decided that it did not come within s. 92 of the Civil Procedure Code, the claim being to enforce a purely personal right of the plaintiff as a trustee against his co- trustees. The same view was taken by the Madras High Court in *The Tirumalai-Tirupati Devasthanams Committee v. Udiayar Krishnayya*

Shanbhagal(2);. In this case the general trustees of a public temple filed a suit against the trustees for the recovery of moneys which the latter had collected on behalf of the former praying for a decree directing accounts and inquiries. It was held that the right to collect moneys was entirely independent of s. 92 of the Civil Procedure Code and no sanction of the Advocate- General was necessary for the institution of the suit. Leach C. J. who delivered the judgment of the Court observed as follows :

"After hearing the arguments of learned Counsel in the present case we can see no reason for disagreeing with anything said in *Shanmukham Chetty v. Govinda Chetty* (I.L.R. 1938 Mad. 39). On the other hand we find ourselves in full agreement with the opinion of Varadachariar, J. that, in deciding whether a suit falls within section 92, the Court must go beyond the reliefs -and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit is brought. the judgment of the Privy Council in *Abdur Rahim v. Mahomed Barkat Ali* [(1927) I.L.R. 55 Cal. 519 (P.C.)] lends no support for the opinion expressed by the Full Bench in *ranki Bai v. Thiruchitrambala Vinayakar* [(1935) I.L.R. 58 Mad. 988 (F.B.)]" "

16. In **Appanna Poricha's case** (supra) this Court has observed that Section 92 governs suits for vindication of the rights of

the public in public charitable trusts and has no application to suits for vindication of the rights of management by hereditary trustees or to disputes between such trustees *inter se* as to their turns of management.

17. In **B.D.V.Rangarathinam's case** (supra) also this Court has held as follows:

"10.
 ... The Apex Court in the decision in *Charan Singh v. Darshan Singh*, , decided the scope of Section 92 of the Code and further held that maintainability of the suit depends upon the allegations in the plaint. Similar view also has been taken by the Apex Court in *Parmatmanand Saraswati v. R. Tripathi*, , and found 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 of the Code."

18. In Surya's case (supra) this Court observed as follows:

23.
 ... 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."

26. From the above judgment, it is clear that normally notice should be given before deciding the question as to whether leave is to be granted or not. In my view, considering the facts and circumstances of the case, it would have been more desirable for the Trial Court to have issued notice to the defendants before granting leave. If that procedure had been adopted, it would result in expeditious resolution of the dispute and saved substantial judicial time. In any event, the defendants having filed applications for revocation of leave, no serious consideration need be given on this point in these revision petitions."

18. In **Rajagopal's case** (supra) this court has held as follows:

"Court cannot refuse to take cognizance of allegations in such proceedings merely because they have not been proved. Courts will guard interest of trust. Court should exercise vigilant care over functioning of trust as

public interest is also involved. complaint of trustee was that chairman trustee was acting autocratically and even if individual charges have not been proved total effect of tyranny of majority could not be overlooked by scheme court. Mere presence of quorum and passing of resolution by trustees by rule of majority would not be sufficient to decide adjudicate issues in proceeding of such nature and trust should not function autocratically without hearing all trustees."

19. In **R. Kannan Adityan's case** (supra), this court has held as follows:

19.F.(i) The main purpose of s. 92(1) is, to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General, or two or more persons having an interest in-the trust with the consent in writing of the Advocate General. The object clearly is that before the Advocate General files a suit or gives his consent for filing a suit under s. 92, he would satisfy himself that there is a prima facie case' either of breach of trust or of the necessity for obtaining directions of the court on the basis of the allegations made in the plaint and the documents played before it along with the plaint. Vide: Pitchayya v.

Venkata Krishnamacharlu (AIR 1930 Madras 129) and Madappa v. Mahanthadevaru (AIR 1966 SC.878)"

39. It is equally well settled that if a suit is maintainable for part of the reliefs claimed, the suit cannot be thrown out in limine as not maintainable (see: *Ishbar Singh v. National Fertilizers (AIR 1991 SC 1546)*). Hence, the contention of learned counsel for the respondents that addition of new allegations based on new facts will not help the plaintiffs to maintain the suit is not tenable. On the other hand, there is considerable force in the contention of learned counsel for the appellants that even with regard to the old allegations which are repeated now, it is a case of continuing cause of action and the suit is maintainable."

20. In **CH. Mahesh Kumar Reddy's case** (supra) this Court has observed as follows:

"16. In the plaint the plaintiffs are alleged certain facts which according to them would constitute breach of Trust. Whether they are able to prove those facts and the actual breach of Trust is not a question that is to be considered at the threshold. The same will have to depend on the evidence that is to be let in. Even in *Aurobindo Ashram Trust's case*, referred supra the Hon'ble Supreme Court has only reiterated the principles

laid down in the Swami Paramatmanand Saraswati's case and as well as the Vidyodaya Trust case, referred to supra, wherein it has been stated that the suit under Section 92 of the Code of Civil Procedure, is the suit of the special nature and unless it is shown that there was a breach of trust or the relief sought for is within frame work under Section 92 of the Code of Civil Procedure, such a suit could not be entertained. The fact that the Plaintiffs are the grand children and the daughter-in-law of the Founder of the trust is not in dispute. The fact that the Plaintiffs are the grand children and the daughter-in-law of the Founder of the trust is not in dispute. The fact that they have made certain allegations regarding breach of trust is also not in dispute. The only contention of the learned counsel for the Respondents is that the prior conduct of the plaintiffs would show that what they are seeking as a relief is an espousal of their own cause and not the cause of the Public. I am afraid such an inference cannot be drawn at this juncture in the absence of any evidence being let in the suit itself."

21. In R.Venugopala Naidu's case AIR 1990 SC 444 the Honourable Apex Court has observed as follows:

"9. The legal position which emerges is that a suit under Section 92 of the Code is a suit of a special nature

for the protection of Public rights in the Public Trusts and chari- ties. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 of the Code and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are on the suit-title are the only parties to the suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust all such interested persons would be considered in the eyes of law to be parties to the suit. A suit under Section 92 of the Code is thus a representative suit and as such binds only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that explanation VI to Section II of the Code constructively bar by res judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier suit under Section 92 of the Code. "

22. From the above judgments, it is well settled that the main purpose of provision under Section 92 of CPC is to give a protection to public trust or charitable or religious nature, from being subjected to harassment by suits being filed against them and the Courts also to see that there is a *prima facie* case either breach of trust or of

necessity of obtaining direction from the Court on the basis of allegation made in the plaint. If the allegation of breach of trust is not substantiated and the very foundation of the suit is based on the private rights, leave cannot be granted under Section 92 CPC. Similarly, Court can also go beyond the relief and have regard to the capacity in which the plaintiff has sued on the purpose which the suit was brought. Mere colour of legitimacy was sought to be given by projecting as if the suit was vindicating the public rights, leave cannot be granted. From the judgments of the Apex Court only the allegation in the plaint that should be looked into at the first instance whether the suit fall within the ambit of Section 92.

23. In the light of the above settled position now it has to be seen whether the suit has been filed to vindicate the public right or private right. No doubt the Trust is charitable trust. Only the allegations in the plaint to be looked into findout as to whether the suit is for vindicating the private rights or public right. On entire perusal of the plaint para 5 of the plaint, it is the contention of the plaintiff that the 2nd defendant has decided to construct a hospital so as to enable the 1st plaintiff to carry on his profession. However, the hospital was envisaged as a Charitable hospital. In para 7 of the plaint it is the

contention of the plaintiff that the 1st Plaintiff can have his consultations and in patients admitted to serve the people in society. The plaintiff was looking after the administration of the hospital till the year 2003 and 2004. In para 11 and 12 it is pleaded how the 4th defendant was inducted into the Trust and in para 13 it is pleaded as if 4th defendant slowly started to usurp powers and become a Joint Managing Trustee, though the plaintiff was looking after the administration of the hospital till the year 2003-2004. It is further alleged in para 13 that the 4th defendant has not allowed the defendant 2 and 3 to take independent decision. In para 14 it is stated that the 4th defendant is receiving part of the rent by cash and using it for his expenses. In para 15 of the plaint it is the contention of the plaintiff that 4th defendant has been looking after the affairs of the hospital which was intended for medical practice of the first plaintiff. In fact, this allegation is contrary to earlier pleadings that he was managing the hospital in 2003-2004. The entire pleadings clearly indicate that the defendants have inducted the 3rd defendant's daughter and wife and there was also an agenda circulated by communication dated 23.07.2012 for the meeting proposed to be held on 09.08.2012.

24. The grievance appears to be the meeting removing the

first plaintiff from the affairs of the hospital. Paras 5, 7, 11,13, 14, 15, 16, 17, 18, 19 and 20 of the plaint for primarily vindicating the private rights. Except some pleading as if siphoning funds colour of legitimacy was sought to be given as if the entire suit itself for vindicating the public interest. In the relief the prayer A, B, C, D totally relate to personal rights and E and F shows as if the amount siphoned by the other trustees. The very allegation in the plaint itself clearly indicate till the notice for proposed meeting to be held on 9.8.2012 it is the contention of the First Plaintiff that he was in charge of the hospital till 2003-2004. That being the position, other trustees have joined together to take over the trust as alleged in the plaint does not arise at all. On careful perusal of the entire plaint, I am of the view that the suit is only to vindicate the private rights not the public rights.

25. It is also brought to the notice of this court that the comprehensive suit i.e., 2nd suit is also filed where first plaintiff sought to be appointed as trustee with the same allegations made in this plaint. In view of the above, since there is no public rights involved, the leave ought not to have been granted on the face of the entire plaint pleadings. It is clearly to vindicate the private rights. Suit has been triggered as a result of show cause notice issued on 23.7.2012. The

suit has been filed on 30.7.2012, on the apprehension that they would be removed from the trustees. Therefore they sought to project the suit espousing the public right. Whereas the allegations entirety seen it is nothing but to espouse the private rights. It is also contended by the learned senior counsel that after institution of the suit third parties also appeared. Merely because of some third parties are appeared, since suit itself filed as against removable of one of the trustees, and suit is filed to establish the right of the trustee to continue in the trust. I am of the view that merely because some third parties entered appearance that cannot be a ground to hold that the leave granted to be maintained.

26. No doubt protection of the interest of the public charities are foremost consideration since the courts is the custodian of the public trust. It is the main allegation of the plaintiff itself clearly indicate that he was incharge of the Trust. He was managing the hospital till 2003-2004. Merely by giving some colour of legitimacy by projecting as if the suit is for vindicating public right, leave under section 92 cannot be granted. Whereas entire pleading of the plaint clearly relate to certain private and personal disputes among the trustees. The suit has been filed immediately after show cause notice

was served. As long as the plaintiffs espousing their own interest rather than the public interest, mere making certain allegations as if the funds of the trust siphoned they cannot bring the suit under Section 92 CPC. The entire allegations in the plaint makes it very clear that same is for vindication of their right to be in management of the trust. Primary object of the suit for vindication of individual or personal rights. Therefore, the suit under Section 92 C.P.C. being a special nature, which presupposes the existence of a public of a religious or charitable trust character. When the plaintiff filed such suit only to vindicate their personal right, suit is certainly outside the scope of Section 92 of CPC. Accordingly, order of the trial Court is set aside and leave granted is hereby revoked.

27. Accordingly, Civil Revision Petition is allowed. No costs.

सत्यमेव जयते

30.04.2019

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Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

ggs.

Note: Issue order copy on 06.05.2019

To
The Principal District Judge, Coimbatore.



N. SATHISH KUMAR, J.

ggs.

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order in:
C.R.P.(PD).No.2708 of 2013