

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :14.06.2019

DELIVERED ON :10.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE N.KIRUBAKARAN  
AND

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

O.S.A. No.218 of 2018

1.Thatha Sampath Kumar

2.A.Balasubramaniam

... Appellants/ respondents1 to 3/ Defendants1 to 3

Versus

1.Sri Vupputur Alwar Chetty's Charities,  
Represented by it's Hereditary Trustee,  
Mr.Vupputur Ramesh

2.Vupputur Sethuram

3.Vupputur Ramesh

4.Vupputur Swaroop

.. Respondents 1 to 4/ Appellants/Plaintiffs

5.C.Vivekananda

..5<sup>th</sup> Respondent/2nd Respondent/2<sup>nd</sup> Defendant

PRAYER: Original side Appeal filed under Order XXXVI Rule 9 of Original Side Rules, 1956 Read with Clause 15 of the Amended Letters Patent, 1865 to set aside the Order and decree dated 25.04.2018 passed in Application No.6533 of 2017 in C.S.D.36131 of 2017 passed by this Court by allowing the Original Side Appeal with costs.

For Appellants ... Mr.V.Lakshmi Narayanan

For Respondents 1 to 4 ... Mr.R.Singgaravelan,  
Senior Counsel  
for Ms.S.Lalitha

For Respondent 5 ... Mr.B.R.Sankaralingam

## J U D G E M E N T

Judgement delivered by ABDUL QUDDHOSE,J.

This Intra Court appeal has been filed under Clause XIV of the Letters Patent, aggrieved by the order dated 25.04.2018 passed by the learned Single Judge in Application No.6533 of 2017 in C.S.D.36131 of 2017.

Brief facts leading to the filing of the instant appeal:

2. The Appellants are the first and third defendants in the proposed suit filed by the respondents 1 to 4 against the appellants as well as the fifth respondent in this appeal under Section 92 CPC seeking for removal of the first appellant/first defendant as life trustee in the first respondent/first plaintiff trust as well as for permanent injunction restraining the defendants in the proposed suit not to interfere with the respondents 2 to 4 in the management of the first respondent/first plaintiff trust. Application No.6533 of 2017 was filed by the respondents 1 to 4/plaintiffs in the proposed suit seeking for grant of leave to file the suit against the defendants under Section 92 CPC. Leave was sought on the ground that the first appellant / first defendant has committed breach of first respondent/first plaintiff trust and that, he is not competent to be appointed as life trustee or as any other trustee in the first respondent/first plaintiff trust.

3. The respondents 2 to 4 have also stated in their affidavit filed in support of Application No.6533 of 2017 that they are interested persons in the first respondent/first plaintiff trust as they belong to Vupputur family who were given majority control in the first respondent/first plaintiff trust by the founder of the trust, Vupputur Alwar Chetty, under the Trust Deed dated 28.08.1922.

4. A counter affidavit was also filed by the Appellants who are the defendants 1 and 3 in Application No.6533 of 2017 stating that the respondents 2 to 4 are not interested persons in the first respondent/first plaintiff trust and only to ventilate their personal grievances against the appellants, the suit under Section 92 CPC has been filed by them. It is also their case that the respondents 2 to 4 are no longer trustees of the first respondent/first plaintiff Trust. It is also averred in the counter affidavit that for the same cause of action, earlier suits have been filed by the respective respondents to ventilate their personal grievances which are still

pending and hence, the proposed suit filed under Section 92 CPC by the respondents 1 to 4 is not maintainable as respondents 2 to 4 do not satisfy the requirements of Section 92 CPC as they are not interested persons. By order dated 25.04.2018, the learned Single Judge of this Court, allowed Application No.6533 of 2017 filed by the respondents 1 to 4/plaintiffs granting leave to file the suit under Section 92 CPC. Aggrieved by the order dated 25.04.2018 passed by the learned Single Judge of this Court in Application No.6533 of 2017, the instant appeal has been filed.

Submissions of the learned Counsels:

5. Heard Mr.V.Lakshmi Narayanan, learned counsel for the petitioner, Mr.R.Singgaravelan learned Senior Counsel for the respondents 1 to 4 and Mr.B.R.Sankaralingam, learned counsel for the fifth respondent.

6. The learned counsel for the Appellants would submit that the respondents 1 to 4/plaintiffs have not approached the court with clean hands and lack bonafides to file the suit under Section 92 CPC.

7. It is the contention of the learned counsel for the Appellants that prior to filing the leave Application under Section 92 CPC, the family members of the respondents 1 to 4/plaintiffs as well as the respondents/plaintiffs have filed suits seeking similar reliefs as sought for in C.S.(D) 36131 of 2017 filed under Section 92 of CPC.

8. The learned counsel for the Appellants drew the attention of this Court to the suit filed by V.Sairam who is the brother of the third respondent, Vuppattur Ramesh. He drew the attention of this Court to the plaint filed in C.S.No.602 of 2011 filed by V.Sairam, the third respondent's brother. In particular, he referred to the reliefs sought for in the said plaint and submitted that the reliefs are identical to the reliefs sought in the present plaint viz., the plaint filed in C.S.D.36131 of 2017, in which Application No.6533 of 2017 was filed by the respondents 1 to 4 seeking leave of the Court to file a suit under Section 92 of CPC against the Trust.

9. The learned counsel for the Appellants then drew the attention of this Court to the Judgment and Decree dated 06.03.2014 passed in C.S.No.602 of 2011 wherein the suit C.S.No.602 of 2011 was dismissed as withdrawn.

10. The learned counsel for the Appellants also drew the attention of this Court to another suit viz., C.S.No.520 of 2015 filed by Vupputur Ramesh against the

trust and other defendants seeking for declaration to declare the election conducted on 13.05.2015 in the trust as illegal and void ab initio and permanent injunction was also sought for in the said suit. He also drew the attention of this Court to the order dated 03.10.2016 passed by the learned Single Judge of this Court in Application No.4204 of 2015 in C.S.No.520 of 2015 wherein the Application was ordered to be closed.

11. The learned counsel for the Appellants also drew the attention of this Court to the order dated 14.09.2017 passed by the learned Single Judge of this Court in O.A.No.663 of 2015 and Application No.4204 of 2015 in C.S.No.520 of 2015 wherein Application No.4204 of 2015 seeking permission to file a suit for the relief of declaration to declare the election conducted on 13.03.2015 in the first respondent/first plaintiff trust by the Appellants as well as the fifth defendant herein and the consequential passing of the resolution on 13.03.2015 that the third respondent/third plaintiff was not elected as trustee for further period in the first respondent/first plaintiff trust is illegal, void ab initio and as such, same is not binding on Vupputur Ramesh was granted, even though by an earlier order dated 03.10.2016 the same Application was closed by the same learned Single Judge.

12. The learned counsel for the Appellants also drew the attention of this Court to the common order dated 21.11.2017 passed in O.S.A.Nos.315 & 316 of 2017 as against the order dated 14.09.2017 allowing Application No.4204 of 2015 wherein the Division Bench set aside the order dated 14.09.2017 passed in Application No.4204 of 2015 and directed the learned Single Judge of this Court to once again re-hear the said Application and pass final order after taking into account the earlier order of the learned Single Judge dated 03.10.2016 passed in the same Application.

13. According to the learned counsel, the impugned order dated 25.04.2018 has been passed granting leave to the respondents 1 to 4 to file a suit under Section 92 of CPC, even before deciding Application No.4204 of 2015 which was directed to be disposed of by the Division Bench of this Court in O.S.A.Nos.315 & 316 of 2017. According to the learned counsel, even though a categorical stand was taken by the Appellants that the proposed suit under Section 92 of CPC amounts to res judicata as cause of action in the earlier suit C.S.No.520 of 2015 and the present proposed suit is one and the same. According to the learned counsel, the learned Single Judge in the impugned order has

completely ignored the said defence raised by the Appellants in Application No.6533 of 2017.

14. To summarize the arguments of the learned counsel for the Appellants, the impugned order has been challenged on the following grounds:

(a) the Application filed by the respondents No.1 & 2 seeking leave to institute the suit under Section 92 of CPC is barred by res judicata.

(b) the learned Single Judge has ignored the directions given by the learned Division Bench of this Court by its common order dated 21.11.2017 passed in O.S.A.Nos.315 & 316 of 2017 directing the learned Single Judge to hear and decide Application No.4204 of 2015 afresh.

(c) the proposed suit under Section 92 of CPC is a harassment suit as for the same cause of action earlier suits have been instituted.

(d) the learned Single Judge of this Court has erroneously observed that the second, third and fourth plaintiffs are life trustees and they are certainly persons interested in the trust whereas the said issue as to whether the said plaintiffs are life trustees or tenure trustees is pending adjudication before the learned Single Judge of this Court in C.S.No.520 of 2015. According to him, the learned Single Judge of this Court without any basis has observed that the second, third and fourth respondents in this appeal are life trustees.

15. The learned counsel for the Appellants cited the following authorities in support of his submissions:

(a) 2001-1-L.W.133 in the case of L.M.Menezes and others vs. Rt.Rev.Dr.Lawrence Pius and others. Relying upon the said Division Bench Judgement of this Court, he would contend that when there is no allegation of mis-management in the plaint and a suit under Section 92 of CPC cannot be filed to settle a private dispute.

(b) (1975) 1 SCC 298 in the case of Charan Singh And Another vs. Darshan Singh And Others. Relying upon the said Judgement of the Hon'ble Supreme Court, the learned counsel for the Appellant would submit that it is well settled law that the maintainability of the suit under Section 92 of CPC depends upon the allegations in the plaint. According to him, in the instant case, there is no allegation of mis-management of the trust by the respondents and hence, according to him, the suit under Section 92 of CPC is not maintainable.

(c) (2007) 1 MLJ 683 in the case of V.Rajasekaran and Another vs. M.Rajendran, Trustee, MGR Memorial Charitable Trust, Chennai.

Relying upon the said Division Bench Judgement of this Court, the learned counsel for the Appellants would contend that the Court is required to find out the bonafides of the applicant before granting leave under Section 92 of CPC. According to him, in the instant case, only to settle private disputes, the respondents have filed the suit under Section 92 of CPC and hence, there is no bonafides on their part.

(d) 1970 AIR (SC) 987 in the case of Vallabh Das vs. Dr.Madanlal and others.

Relying upon the said Judgement of the Hon'ble Supreme Court, the learned counsel for the Appellants would contend that the bundle of facts of the earlier suit and the instant suit are identical and hence, barred by law as the respondents have not obtained liberty to file a fresh suit in support of the same subject matter under Order XXIII Rule 1 of CPC.

(e) 1974 AIR (SC) 2141 in the case of Swami Parmatmanand Saraswati and another vs. Ramji Tripathi and another.

Relying upon the said Judgement of the Hon'ble Supreme Court, the learned counsel for the respondents would contend that suits under Section 92 of CPC cannot be filed to vindicate individual or personal rights and submitted that it is immaterial where the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants.

16. Per contra, Mr.R.Singaravelan, learned Senior Counsel for the respondents referred to the contents of the plaint filed under Section 92 of CPC and submitted that the founder of the trust wanted to keep the management of the trust only within the family members of the Vupputur family. According to him, the Appellants who are the defendants 1 and 3 in the suit are the close relatives of the Vupputur family have conspired to remove the members of the Vupputur family.

17. Referring to the contents of the plaint, the learned Senior Counsel for the respondents would point out that apart from the Vupputur Charities trust which is the subject matter of this dispute, the first Appellant/first defendant is also running their family trust namely T.V.R. Subbi Chetty Family Charities which is registered under the Hindu Religious & Charitable Endowments, Government of Tamil Nadu, has faced various charges of misappropriation of properties and funds of the said T.V.R. Subbi Chetty Family Charities.

18. Further the learned Senior Counsel for the respondents 1 to 4 referred to the pleadings in the plaint wherein the plaintiffs/respondents 1 to 4 have averred that the first Appellant/first defendant in collusion with other defendants had acted in derogation of express and constructive provisions of the trust deed and therefore, he was suspended on 25.05.1997 from T.V.R. Subbi Chetty Family Charities and the order was communicated on the same day.

19. According to the learned Senior Counsel, the averments in the plaint discloses that the plaintiffs/respondents 1 to 4 namely the respondents 2 to 4 herein are the persons interested in the trust and hence, entitled to file the suit under Section 92 of CPC. He then referred to the suit filed by Vupputur Ramesh against the defendants in the suit in C.S.No.520 of 2014 and the suit filed by V.Sairam in C.S.No.602 of 2011. Referring to the said suits, the learned Senior Counsel for the respondents would submit that the reliefs sought therein are different from the relief sought in the suit C.S.(D).36131 of 2017 which is filed under Section 92 of CPC. According to him, the previous suits were filed by the individuals for individual rights, whereas the instant suit which is the subject matter of appeal has been filed under Section 92 of CPC to redress public rights.

20. Referring to the impugned order, the learned Senior Counsel would submit that the learned Single Judge of this Court has rightly granted leave to the plaintiffs/respondents 1 to 4 to institute the suit against the defendants under Section 92 of CPC and has also observed that the averments in the plaint will have to be decided only at the time of trial and the plaintiffs will have to establish the grounds on which they seek removal of the first defendants as life trustees.

21. The learned Senior counsel for the respondents 1 to 4 cited the following authorities:

(a) Sugra Bibi vs. Hazi Kummua Mia reported in 1969 AIR 884

Relying upon the said Judgement of the Hon'ble Supreme Court, the learned Senior counsel would contend that the substantial test required to bring the suit under Section 92 of CPC is to see whether the Trust has been created for public purpose substantially and it is immaterial whether some of the objects of the Trust further the interest of the family members.

(b) R.M.Narayana Chettiar and another vs. N.Lakshmanan Chettiar and Others reported in 1991 AIR SC 221.

(c) Lachhman Dass Udasi And Ors. vs. Ranjit Singh And Ors. reported in AIR 1987 Punjab and Haryana 108

Relying upon the above referred Judgements, the learned Senior Counsel for the respondents 1 to 4 would contend that notice to the defendants before granting leave is not mandatory.

Discussion:

22. The respondents 2 to 4 claim that they are the life trustees in the first respondent/first plaintiff trust, whereas the Appellants claim that the respondents 2 to 4 are not life trustees as they have been removed as life trustee by a valid Board resolution of the first respondent/first plaintiff trust and their tenure as ordinary trustees has also come to an end. In the proposed suit filed by the respondents 1 to 4 under Section 92 of CPC, apart from stating that the first appellant/first defendant, during his tenure as a president of T.V.R. Subbi Chetty Family Charities committed irregularities and misappropriated the properties and funds of the said trust, has also committed breach of the first respondent/first plaintiff trust.

23. The respondents 1 to 4 have also pleaded in Paragraph 8 of the plaint that the first Appellant/first defendant appears to have fraudulently taken control of the first respondent/first plaintiff trust with an intention to misappropriate the properties and funds of the first respondent/first plaintiff trust. The respondents 1 to 4 have also disclosed the filing of the previous suit by the third respondent/third plaintiff in the suit C.S.No.520 of 2015 before this Court and has also pleaded that the subject matter of the said suit in C.S.No.520 of 2015 and the present proposed suit under Section 92 of CPC are not one and the same and the cause of action for both the suits are different. The dismissal of the suit C.S.No.520 of 2015 as infructuous and withdrawal of the suit O.S.No.6040 of 2015 filed by the fourth respondent/fourth plaintiff viz., Vupputur Swaroop has also been disclosed in the plaint.

24. It is the contention of the Appellants that for the same cause of action, previous suits were instituted by the respective respondents and the proposed suit under Section 92 of CPC in C.S.D.36131 of 2017 has been instituted, only to harass the trust and its trustees. It is also the contention of the appellants that the learned Single Judge, even before deciding whether the respondents 2 to 4 are life trustees or not, as directed by the Division Bench of this Court in O.S.A.Nos.315 & 316 of 2017, without any basis, has assumed that the respondents 2 to 4 are life trustees and are interested persons satisfying the requirements of Section 92 of CPC.

25. This Court has perused the Trust Deed dated

28.08.1922. As seen from the Trust Deed, Vupputur Alwar Chetty is the founder of the trust and at the time of execution of the Trust Deed, majority control of the Trust was vested with the Vupputur family as three out of six trustees belong to the same family and were made as life trustees and the remaining three trustees were outsiders. The Trust Deed has also disclosed that if any vacancies occur either by death or resignation or otherwise amongst the life trustees, the said vacancy shall be filled up by appointing a male person from among the male descendants of the person whose place falls vacant. Preference shall be given to the eldest in the line and if there are no descendants in the male line, descendants in the female line will be eligible. It is also made clear in the Trust Deed that the trustees other than life trustees and their descendants shall be elected once in three years and hold office during the said period and be eligible for re-election and ordinary trustees will have to be elected whenever there is any vacancy by ballot by the remaining trustees holding majority.

26. As seen from the contents of the Trust Deed, the descendants of the Vupputur family will continue to hold majority in the first respondent/first plaintiff Trust. However, the Appellants/defendants 1 and 3 now claim that the respondents 2 to 4 are no longer trustees in the first respondent/first plaintiff trust.

27. This Court has also perused and examined the impugned order dated 25.04.2018 passed by the learned Single Judge in Application No. 6533 of 2017. Even though the learned Single Judge has erroneously observed that the second, third and fourth respondents are life trustees, even before deciding Application No.4204 of 2015 which was remanded by the Division Bench of this Court by order dated 21.11.2017 in O.S.A.Nos.315 & 316 of 2017 for fresh consideration, the said erroneous observation made by the learned Single Judge will not bar this Court to decide whether the respondents 2 to 4 are interested persons in the first respondent/first plaintiff Trust to satisfy the requirements of Section 92 of CPC.

28. Admittedly, as seen from the pleadings both in the plaint filed under Section 92 of CPC in C.S.D.36131 of 2017 as well as in the affidavit filed in support of A.No.6533 of 2017, the respondents 1 to 4 have pleaded that the appellants have committed breach of trust with the fraudulent intention to misappropriate the funds and properties of the first respondent/first plaintiff trust. They have also disclosed that in another trust viz., T.V.R. Subbi Chetty Family Charities, while being the

president/hereditary trustee of the said trust, the first Appellant/first defendant had misappropriated the properties and funds of the said trust and the Commissioner, Hindu Religious & Charitable Endowments by its order dated 29.04.2009 had suspended the first Appellant/first defendant from acting as president/hereditary trustee of the said T.V.R. Subbi Chetty Family Charities.

29. It is also brought to the notice of this Court by the learned counsel for the Appellants that apart from the suits mentioned above, another suit C.S.No.39 of 2019 has also been filed under Section 92 of CPC by the brother and sisters of Thatha Sampath Kumar, the first Appellant/first defendant, wherein leave under Section 92 of CPC has been granted without notice to the Appellants and an interim injunction has also been granted restraining the first Appellant/first defendant from interfering with the management of the first respondent/first plaintiff trust.

30. All these litigations lead to the conclusion that there are serious differences amongst the trustees in the management of the first respondent/first plaintiff trust. These differences will certainly affect the smooth functioning of the first respondent/first plaintiff trust. Further, prima facie as seen from the trust deed, the Vupputur family were having majority control in the management of the first respondent/first plaintiff Trust, but it is now the contention of the Appellants that the respondents 2 to 4 who also belong to Vupputur family are not life trustees. Whether or not the respondents 2 to 4 are life trustees will have to be adjudicated by the learned Single Judge in Application No.4204 of 2015 as directed by the Division Bench of this Court by its Order dated 21.11.2017 in O.S.A.Nos.315 & 316 of 2017.

31. Since the scope of this appeal is only to decide as to (a) whether the respondents 2 to 4 are interested persons for the purpose of instituting the suit under Section 92 of CPC and (b) whether for the same cause of action for the previously instituted suits, the respondents 2 to 4 have filed the instant suit also under Section 92 of CPC, there is no necessity for this Court to decide as to whether the respondents 2 to 4 are trustees of the first respondent/first plaintiff trust, but it is for the learned Single Judge of this Court is to decide the said issue in the main suit C.S.No.289 of 2018 which has been numbered subsequent to the allowing of Application No.6533 of 2017. Section 92 of CPC reads as follows:

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 the whole or any part of the subject-matter of the trust is situate to obtain a decree?

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquires;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

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

[(3) The Court may alter the original purposes of an express or constructive trust created for public 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 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;

(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 and 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 spirit 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

(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.

The object of Section 92(1) of CPC is to give protection to public trust from being subjected to harassment by suits being filed against them.

32. In the instant case, as observed earlier, there are serious differences amongst the trustees, for which, suits have been filed. Section 92 of CPC is a complete code by itself in respect of the suits based upon an alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature. In order to attract the application of the Section, the following four conditions are necessary, viz.,

(a) there must be a trust, express or constructive, for public purposes of a charitable or religious nature;

(b) the plaint must allege a breach of trust or necessity for direction as to administration of that trust;

(c) the suit must be in the interests of the public, i.e., it must be brought in a representative capacity for the benefit of the public and not to enforce individual rights; and

(d) the relief claimed should be one of the reliefs set out in the section.

33. It is settled law as held in the decision of the Hon'ble Supreme Court cited by the learned Senior Counsel for the respondents 1 to 4 reported in AIR 1991 SC 221 that notice to the defendants before grant of leave to institute the suit under Section 92 of CPC is not mandatory, but only desirable. The Court will have to decide the leave application only based on the plaint averments.

34. It is also settled law as held in the decision of the Hon'ble Supreme Court cited by the learned counsel for the Appellants reported in 1975 1 SCC 298 that the maintainability of the suit under Section 92 of CPC depends upon the averments made in the plaint. In the case on hand, the respondents 1 to 4 in the plaint have categorically stated that the first Appellant/first defendant appears to have fraudulently with an intention to take control of the first respondent/first plaintiff trust has misappropriated the properties and funds of the said trust. They have also pleaded in the plaint that the first Appellant/first defendant has misappropriated the properties and funds of another trust viz., T.V.R. Subbi Chetty Family Charities and he has been restrained from continuing to act as a president of that trust by an order of the Commissioner, Hindu Religious & Charitable Endowments.

35. This Court has also noticed various suits between the parties which will clearly indicate that there is mismanagement of the first respondent/first plaintiff trust which will certainly lead to the conclusion that the noble objects of the first respondent/first plaintiff trust have not been fulfilled by the present Trust.

36. The Hon'ble Supreme Court in the decision reported in 1994 (1) SCC 475 in the case of Committee of Management of Pachaiyappa's Trust v. Official Trustee of Madras extracted in the said Judgment the role of a Trustee as explained by Cardozo, J which is reproduced hereunder:

" A Trustee is held to something stricter than the morals of the market place. Not honesty alone but the punctilio of an honour the most sensitive, is then the standard of behaviour.... only thus has a level of conduct for fiduciaries being kept at a higher level than that trodden by the crowd."

37. The Division Bench of this Court in which one of us was a member in the case of P.Elumalai and another vs. Pachaiyappa's Trust Board and others reported in (2017) 8

MLJ 529 while passing of the order exercised the "Parens Patriae" jurisdiction over the trust and held that as Parens Patriae, the Courts are empowered to protect the sanctity of public trust in case of breach of trust on account of irregularities committed in trust. In the said Division Bench Judgement, this Court had held that the Court cannot remain a mute spectator when illegality has been committed against a public Trust in front of its own eyes. In the instant case, the plaint averment discloses that there are serious differences amongst the trustees in the management of the trust and it is also an allegation that the first Appellant/first defendant fraudulently decided to take control of the first respondent/first plaintiff trust and excluded the respondents 2 to 4 from the management of the same as life trustees. As Parens Patriae, this court will have to necessarily protect the interest of a public trust when it is found that there is mismanagement and irregularities in the said public trust.

38. The details of the previous suits and the reliefs sought therein are as follows:

| No. of suits       | Name of the Parties                                                                                                                          | Nature of Reliefs                  | Reliefs sought and orders passed                                                                                                                                                                                                                                 |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C.S.No.602 of 2011 | V.Sairam vs.<br>1.Sri Vupputur Alwar Chetty Charities<br>2.Vummidi Sridhar<br>3.Vupputur Sethuram<br>4.Vupputur Swaroop<br>5.T.Sampath Kumar | Suit filed under Section 92 of CPC | Seeking for declaration that the plaintiff is the lifetime trustee and for declaration to declare that the resolution dated 09.08.2011 passed by the first defendant trustee removing the plaintiff from lifetime trusteeship as illegal. Dismissed as withdrawn |

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| No. of suits            | Name of the Parties                                                                                                                                                                                                                                                                  | Nature of Reliefs                                                                   | Reliefs sought and orders passed                                                                                                                                                                                                             |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C.S.D.1088<br>9 of 2012 | V.Sairam<br>K.RamaRao<br>D.Hari Prasad<br>G.Ashok Kumar<br>D.Narashimhan<br>vs.<br>1.Sri<br>Vupputur<br>Alwar Chetty<br>Charities<br>2.Vummidi<br>Sridhar<br>3.Vupputur<br>Sethuram<br>4.Vupputur<br>Swaroop<br>5.Thatha<br>Sampath Kumar<br>6.C.Vivekananda<br>7.Vupputur<br>Ramesh | Suit<br>filed<br>under<br>Section<br>92 of CPC                                      | Seeking to remove<br>Vummidi Sridhar,<br>Vupputur Sethuram,<br>Vupputur Swaroop,<br>Thatha Sampath Kumar,<br>C.Vivekananda, Vupputur<br>Ramesh as trustees of<br>the first defendant's<br>trust and also for<br>other reliefs.               |
| O.S.No.604<br>0 of 2015 | 1.Sri<br>Vupputur<br>Alwar Chetty<br>Charities<br>2.Vupputur<br>Swaroop<br>vs.<br>1.Thatha<br>Sampath Kumar<br>2.C.Vivekananda<br>3.A.Balasubramaniam                                                                                                                                |  | Suit filed for a<br>declaration to declare<br>the notice dated<br>05.10.2015 issued by<br>Thatha Sampath Kumar<br>calling upon the<br>plaintiff and the<br>defendants 2 and 3 to<br>attend the meeting on<br>12.10.2015 as null and<br>void. |

39. The reliefs sought for in the plaint filed in C.S.No.289 of 2018 (C.S.Diary No.36131 of 2017, which is the subject matter of this appeal are as follows:

(a) to order the removal of the first respondent/first defendant (Thatha Sampath Kumar) as life trustee in the first plaintiff.

(b) for grant of permanent injunction to restrain the defendant Nos.1 to 3 in the proposed suit not to interfere with the management of the first plaintiff Trust.

40. As seen from the reliefs sought for in the previously instituted suits, the said reliefs have been sought for by the respective plaintiffs only to ventilate their personal grievances against the co-trustees and those suits have not been filed in public interest and to redress public cause. The only suit i.e., pending is the suit viz., C.S.No.37 of 2019 which was brought to the notice of this Court by the learned counsel for the Appellants, while arguing this appeal has been filed only after the passing of the impugned order which is the subject matter of this appeal. Further the said suit has been filed by the brother and sisters of the first appellant/first respondent and their cause of action is different from the cause of action pleaded in the proposed suit filed by the respondents 1 to 4 in C.S.D.36131 of 2017. Furthermore it is an admitted fact that none of the suits filed under Section 92 of CPC have been finally adjudicated.

41. This being the case, the contention raised by the learned counsel for the Appellants that only to harass the first respondent/first plaintiff trust and its trustees, the suit has been instituted by the respondents 1 to 4 cannot be accepted by this Court, at the stage of granting leave under Section 92 of CPC. Whether the allegation made by the Appellants that the suit has been filed only to harass them and the Trust is true or not can be adjudicated only after trial and not at the stage of granting leave to the respondents 2 to 4 to institute a suit under Section 92 of CPC as interested persons of the subject public trust.

42. This Court while deciding the leave application under Section 92 CPC will have to only look into the plaint averments for grant of leave to interested persons to institute a suit under Section 92 CPC. It is settled law as rightly pointed out by the learned Senior Counsel for the respondent that leave can be granted under Section 92 even without notice to the trust and its trustees. Therefore, it is sufficient if the applicants satisfies based on the plaint averments that they are interested parties in the public trust.

43. As suits under Section 92 CPC are filed against public trust, Courts need not expect undisputed evidence to come to the conclusion that the parties seeking leave are interested persons entitled to file a suit under Section 92 CPC. The relief sought for by the respondents 1 to 4 in the plaint filed under Section 92 CPC are well within the scope of the said section as the cause of action for filing the suit is only due to the alleged breach of the first respondent/first plaintiff trust. The relief for removal of a trustee on account of breach of trust is also permissible as per Section 92 (a) of CPC. Prima facie as

seen from the plaint averments, we cannot come to the conclusion that only to ventilate private disputes, the suit under Section 92 CPC has been filed. Whenever the Advocate General or two or more persons interested in trust alleges breach of public trust on account of any of the irregularities mentioned under Section 92 CPC, either the Advocate General or two or more persons interested in the trust shall be entitled to file a suit under Section 92 CPC.

44. In the instant case, the appellants are disputing that the respondents 2 to 4 are trustees in the first respondent/first plaintiffs trust. This being the case, the appellants cannot blow hot and cold to contend in this appeal that the respondents 2 to 4 being trustees have filed the suit only to vindicate their private rights. Only in cases where a trustee files a suit under Section 92 CPC to redress his private dispute with other co-trustees, a suit under Section 92 CPC is not maintainable. In the case on hand, the averments contained in the plaint clearly indicates that there is breach of trust which will affect the rights of the public at large. Further the suit under Section 92 CPC is an action in rem i.e., against the whole world. The beneficiaries of the public trust should not be kept in dark about the infighting amongst the trustees as any infighting will be detrimental to the interests of the public trust. Prima facie, the suit reliefs sought are only to ventilate the public rights and will not in anyway affect private rights. Hence the learned Single Judge of this Court has rightly allowed the application filed by the respondent Nos.1 to 4 seeking grant of leave under Section 92 CPC.

45. The Judgements relied upon by the learned counsel for the appellants referred to supra will not be applicable for the facts of the instant case as

(a) No strong evidence is established by the appellants to disprove the contention of the respondent Nos.1 to 4 in the proposed plaint that the appellants as well as the 5<sup>th</sup> respondent committed breach of trust. The appellants have disputed that the respondents 2 to 4 continue to be trustees of the first respondent/first plaintiff trust. But it is the case of the respondents 2 to 4 that they are life trustees in the first respondent/first plaintiff trust. The learned counsel for the Appellants relied upon a Judgment of the Hon'ble Supreme Court and contended that trustees cannot institute a suit under Section 92 CPC. The Appellants cannot blow hot and cold as in their pleadings, they have alleged that the respondents 2 to 4 are no more trustees of the first respondent/first plaintiff trust whereas in the course of arguments submitted by the learned counsel for the Appellants, it was argued that as trustees, the suit under Section 92 CPC is

not maintainable. The respondents 1 to 4 have unambiguously pleaded in their plaint that the Appellants have committed breach of the first respondent/first plaintiff trust by making submissions that the first Appellant/first defendant in collusion with other defendants had acted in derogation of express and constructive provisions of the trust deed and they have conspired together to remove the members of the Vupputur family, to which, the respondents 2 to 4 belong, from the management of the first respondent/first plaintiff trust. As seen from the trust deed, the founder of the first respondent/first plaintiff trust, Mr.Vupputur Alwar Chetty had made it clear that the descendants of Vupputur family will continue to hold majority in the first respondent/first plaintiff trust. However, as seen from the plaint averments, the Appellants have committed breach of trust by illegally removing the members of the Vupputur family from the control and management of the trust. Any breach of trust which will certainly affect the rights of the beneficiaries under the trust deed. A trustee in a public trust will have to be above board and must act dutifully only to fulfill the objects of the trust without any personal interest whatsoever. But as seen from the plaint averments, there seems to be serious differences and misunderstandings between the persons in control and management of the trust. Both the appellants as well as the respondents 1 to 4 allege that they claim control and management of the public trust. The suit has been filed under Section 92 CPC to order the removal of the first Appellant/first defendant as life trustee in the first respondent/first plaintiff trust and also for permanent injunction in restraining the defendants in the suit not to interfere with the management and control of the first respondent /first plaintiff trust. Though the relief sought for in the plaint seems to be filed to vindicate the personal rights, but considering the pleadings made in the plaint that the appellants committed breach of trust by conspiring to remove the members of the Vupputur family in the first respondent/first plaintiff trust and considering the fact that the averment made in the plaint that the first appellant/first defendant appears to have fraudulently taken control of the first respondent/first plaintiff trust with an intention to misappropriate the properties and funds of the trust, we are of the considered view that the respondents 2 to 4 are interested persons as they have filed the suit which is in the larger interest of the trust to protect the interest of the beneficiaries as per the trust deed.

(b) the subject matter of previously instituted suits and the cause of action are different from the plaint filed in C.S.No.289 of 2018 which as seen from the plaint averments has been filed on account of breach of trust

committed by the appellants.

(c) the effect of first deciding the application for leave to institute the suit under Section 92 CPC is to sort out any enquiry in the alleged misdeeds of a trustee in a public trust. It is no doubt true that vexatious suit should be avoided. But at the stage of considering the grant of leave, there should be very strong evidence to come to a conclusion that the suit is vexatious in nature. In the case on hand, the plaint averments do not lead to the conclusion that the suit filed is a vexatious suit as admittedly there are disputes and differences amongst the trustees and there are allegations of breach of trust which will be certainly detrimental to the fulfilment of the laudable objects of the public trust. Prima facie, we are of the opinion that the averments contained in the plaint do not lead to the conclusion that a suit has been filed only to vindicate private rights and not public rights under the trust deed. The respondents 2 to 4 prima facie are certainly interested parties for the purpose of filing the suit under Section 92 CPC. Hence, leave granted under Section 92 CPC in their favour cannot be interfered with by us. However, if after trial, based on the oral and documentary evidence, if the learned Single Judge comes to the conclusion that the suit instituted by the respondents 1 to 4 is not a suit to vindicate public rights under the trust deed, but it has been instituted only to vindicate private rights, the relief sought for in the plaint filed under Section 92 CPC can be rejected. But at this stage, we have to decide the leave application only based on the plaint averments which prima facie indicate that the respondents 2 to 4 are interested persons to satisfy the requirements of Section 92 CPC for grant of leave.

46. For the foregoing reasons, we do not find any merit in this appeal and the appeal is dismissed. However, the observations made by the learned Single Judge that the respondents 2 to 4 are life trustees are expunged, since the same will have to be adjudicated by the learned Single Judge either in application No.4204 of 2015 in C.S.No.520 of 2015 or at the time of disposal of the suit C.S.No.520 of 2015 as directed by the Division Bench of this Court by its order dated 21.11.2017 in OSA Nos.315 and 316 of 2017 and CMP Nos.19742 and 19743 of 2017 or at the time of disposal of the suit C.S.No.289 of 2018 which is the present suit filed under Section 92 CPC and the subject matter of this appeal.

Sd/-

Assistant Registrar(insp cell)

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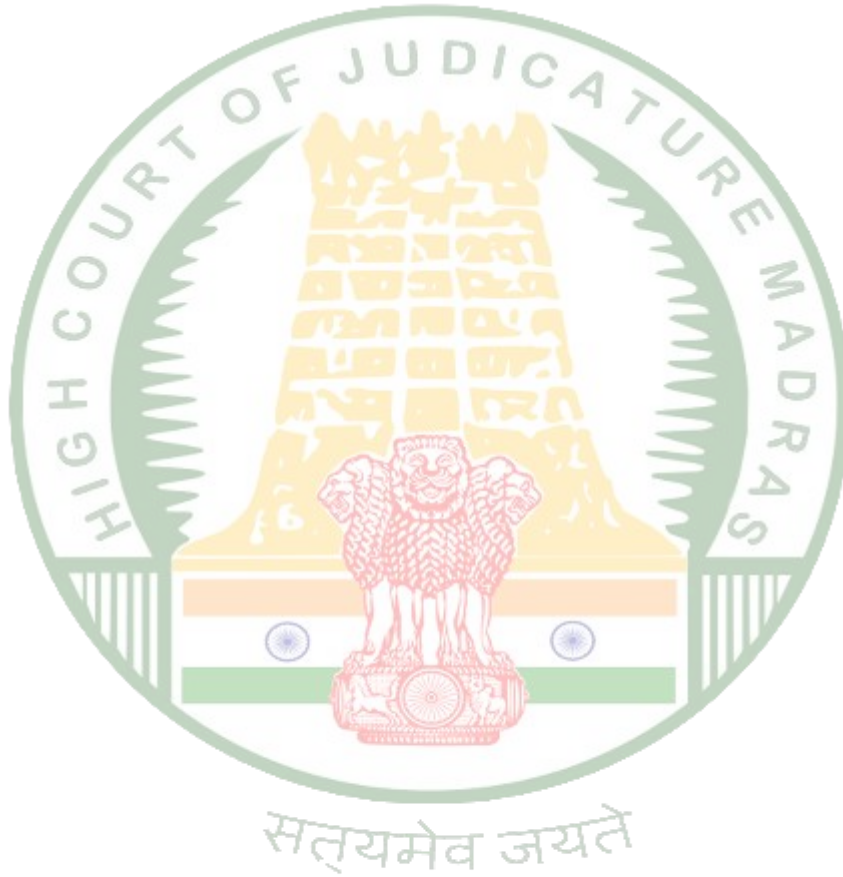
Sub Assistant Registrar

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+1cc to Mr.Mr.B.R.Sankaralingam , Advocate SR.No. 58162  
+1cc to Mr. N.Sreenivasan, Advocate SR.No. 57874  
+1cc to Ms.S.Lalitha , Advocate SR.No. 57749  
+1cc to Ms.S.Lalitha , Advocate SR.No. 57749 (18/07/2019)

O.S.A. No.218 of 2018

A.SK (17/07/2019)



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