

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.11.2020

Pronounced on: 11.11.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.R.P.(NDP).No.2302 of 2018

1. R.Senthilvel,
S/o.Ramasamy,
Residing at Mutthiah Gounder Thottam,
Kalkurichi P.O.,
Belukurichi via-
Namakkal – 637 402.
(for himself and for and on behalf of the beneficiaries
of Kalaimagal Educational Trust, Vadakkur Thottam,
Belakurichi P.O. Namakkal Taluk and District. ... Petitioner

/versus/

1. Kalaimagal Educational Trust,
Rep., by its Managing Trustee, N.Palanivelu,
Having its Office at Vadakku Thottam,
Belakurichi P.O.
Sendamangalam Taluk,
Namakkal District.

2. N.Palanivelu,
3. P.Duraimurugan,
4. M.A.Selvarajan,
5. Shanthi Anbalagan,
6. T.P.Duraisamy,
7. Geetha Baby Malarmani,
8. V.S.Murugesan,
9. D.Punitha Durai Murugan,
10. Suresh.

... Respondents 1 to 9

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C., praying against the to set aside the order passed in I.A.No.348 of 2012 in I.A.No.181 of 2012 in O.S.No.103 of 2012 on the file of Subordinate Court, Namakkal dated 17.11.2017.

For Petitioner : Mr.J.Prithivi

For R1 to R9 : Mr.A.L.Somayaji, Senior Counsel,
for Mr.Senthil

For R10 to R11 : No appearance

ORDER

(The case has been heard through video conference)

Heard the Learned Counsel for the petitioner and the Learned Senior Counsel for the respondent Nos.1 to 9.

2. This revision petition under Section 115 of C.P.C is filed by the 1st plaintiff in the suit filed in their representative capacity being aggrieved by the revocation of leave granted and consequential dismissal of the suit.

3. The revision petitioner herein along with one Suresh and Ravichandran for themselves and on behalf of the beneficiaries of Kalaimagal Educational Trust had filed O.S.No.103 of 2012 on the file of Subordinate Court, Namakkal, to frame a scheme for proper administration and management of the property held by Kalaimagal Educational Trust and other consequential relief. Along with suit, I.A.No.181 of 2012 was filed seeking leave to file the suit under Section 92 of C.P.C.

4. The defendants filed an application to revoke the leave on the ground that suit filed against the wrong entity. As per trust deed, only the Secretary of the defendants Trust is empowered to sue and to be sued. Whereas, the suit is filed against the Managing Trustee of the Trust and others. The suit to formulate scheme under Section 92 of C.P.C was filed on 09.05.2012 along with I.A.No.181 of 2012 the petition for leave to sue was filed. The Courts without affording opportunity to the defendants taken the plaint on file. Numbered the suit and allowed the leave to sue petition contrary to the law laid by the Hon'ble Supreme Court in the case reported in **2008 (3) CTC 868**. Such a leave granted without hearing the adverse parties has to be revoked. The judgment reported in **2009 (1) CTC 416**, the Hon'ble High Court has revoked the leave granted in such

circumstances and given an opportunity to the defendants to place their objections.

5. When the application to revoke the leave was pending, two of the co-plaintiffs namely Suresh and Ravichandran withdrawn their plaint as not pressed. In view of the said fact, the Subordinate Judge, Namakkal, has revoked the leave and also consequential dismissal of the suit.

6. In this revision, it is contended that once leave granted under Section 92 of C.P.C., neither the withdrawal or death of the parties will affect the suit. When the prayer sought for I.A.No.348 of 2012 by the defendants is only to revoke the leave granted *exparte* and to afford an opportunity, the Trial Court not only revoked the leave but also dismissed the suit. In a suit filed in representative capacity under Order 1 Rule 8 of C.P.C., party representing the interest of a larger group cannot withdraw without giving an opportunity to substitute any other competent person to represent the interest of others. The revocation of leave and consequential dismissal of the suit without providing sufficient opportunity to the plaintiff to cure the deficiency has caused miscarriage of justice.

7. The Learned Counsel for the revision petitioner contended that under Order 1 Rule 8 of C.P.C., before allowing request to withdraw the plaint it is mandatory on the part of the Court to issue publication on the plaint expenses, to facilitate any other person interested to contest the suit in the representative capacity.

8. The Learned Senior Counsel appearing for the respondents would submit that, scheme suit was filed under Section 92 of C.P.C, no doubt to be treated as representative suit. However, the Trial Court before taking the suit on file ought to have tested the locus of the plaintiffs to file scheme suit against a registered trust in the representative capacity. In this case, the suit was numbered even before leave to suit was granted which is fundamentally erroneous. The numbering of the suit prior to grant of leave bears an inherent defect, which is not curable. In addition, the suit is bound to be dismissed, since there is only one plaintiff to contest the suit filed under Section 92 of C.P.C., while the statute requires atleast two plaintiffs. Therefore, the revocation of leave and dismissal of the suit is legally sustainable.

9. Heard the rival submissions. Records perused.

10. Alleging mismanagement by the Trustee of Kalaimagal Educational Trust, Namakkal, the suit has been filed by three persons, claiming as the representatives of the beneficiaries of the said trust. Along with the suit, the application under Section 92 of C.P.C has been filed for granting leave to sue.

11. The Trial Court has granted leave on 10.05.2012. Later revoked on 17.11.2017. Section 92 of the Civil Procedure Code, enables two or more persons having an interest in the trust, created for public purposes of a charitable or religious nature, on obtaining the leave to sue may institute a suit.

(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

12. Order 1 Rule 8 of C.P.C., which deals with suit by representative and it is larger in scope and ambit. When numerous persons having same interest in one suit, the Court may permit one or more such person to represent the cause of others sharing same interest. The suit under Section 92 of C.P.C., is confined to suit against trust created for public purpose of a charitable or religious nature. The suit under Section 92 of C.P.C., can be filed by two or more persons against a public trust provided they have interest in the affairs of the trust and on obtaining leave. The statute neither under Section 92 nor Order 1 Rule 8 of C.P.C., mandate prior notice to the other side before grant of leave to sue. Similarly, once leave granted, in case of death, withdrawal or compromise, court should put public notice to all persons so interested before withdraw permitting to the suit.

13. Order 1 Rule 4 & 5 of C.P.C., makes the legal position very clear,
hence extracted below:-

“4. Court may give judgment for or against one or more of joint parties.— Judgment may be given without any amendment —

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

5. Defendant need not be interested in all the relief claimed.—It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.”

14. In ***R.Venugopala Naidu and others Vs. Venkatarayulu Naidu***

Charities reported in ***1998 AIR 444***, the Hon'ble Supreme Court has held that,

“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 charities. 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 bars 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. Mr. G. Ramaswamy, learned counsel appearing for the respondent trust has argued that only the two persons who filed the original suit can be considered as "parties" in terms of clause 14 of the scheme decree and according to him since the appellants were not the plaintiffs they have no locus-standi to file any application under clause 13 and 14 of the scheme-decree. According to the learned counsel Section 92 of the Code brings out a dichotomy in the sense that there are "parties to the suit" and "persons interested in the trust." According to him persons interested in the trust cannot be considered parties to the suit although the judgment/decreed in the suit is binding on them. He has also argued that a suit under Section 92 of Civil Procedure Code is different from a

suit filed under Order 1 Rule 8 of Civil Procedure Code. We do not agree with the learned counsel. A suit whether under Section 92 of Civil Procedure Code or under Order 1 Rule 8 of Civil Procedure Code is by the representatives of large number of persons who have a common interest. The very nature of a representative suit makes all those who have common interest in the suit as parties.”

15. The Trial Court which was *prima facie* satisfied in the claim of the plaintiffs that there is a mismanagement in the respondent Trust and grant leave to sue for the relief to formulate scheme to protect the interest of the beneficiaries, ought not to have dismissed the suit even if they revoked the leave on technical ground that, there is only one plaintiff to peruse the sue and two other persons have withdrawn.

16. The Trial Court before dismissing the suit ought to have offered opportunity to the revision petitioner herein to implead any other beneficiaries as co-plaintiff. Even if he had failed to do so, the Trial Court ought to have directed the sole plaintiff to cause public advertisement to put in notice all persons so interested. Even the respondents in their application I.A.No.348 of 2018 only sought for revocation of leave granted *ex parte* and an opportunity to hear before granting leave, the Court below had erred in dismissing the suit after revoking the

leave without affording opportunity.

17. Hence, this Court is of the view that the impugned order of the Trial Court in I.A.No.348 of 2018 in I.A.No.181 of 2012 in O.S.No.103 of 2012 dated 17.11.2017 is illegal and contrary to law, hence, it has to be set aside. The I.A.No.348 of 2018 in I.A.No.181 of 2012 along with O.S.No.103 of 2012 is restored on file of Subordinate Judge, Namakkal, for fresh adjudication. The parties are permitted to take appropriate steps to sustain their respective claim. The Trial Court after deciding the leave to sue application, shall proceed based on the outcome of the application. Accordingly, the ***Civil Revision Petition is Allowed.***
No costs.

11.11.2020

Index :Yes
Speaking order/Non-speaking order
bsm

To:-

The Subordinate Court, Namakkal.

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Dr.G.Jayachandran,J.

bsm



Pre-delivery order in
C.R.P.(NPD).No.2302 of 2018

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