IN THE HIGH COURT OF JUDICATURE AT MADRAS
Judgment Reserved on : 28.11.2019
Judgment Delivered on : 13.02.2020
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

O.S.A. Nos.115 and 250 of 2019
and
C.M.P.No.21463 of 2019

1. Mrs.Regeena
2. Murali.S. .. Appellants in O.S.A.No.115 of 2019

1. Nestore
2. Mrs.Hilda Pappy Nestore
3. Ms.Maria Bernadette Tamilarasi.. Appellants in O.S.A.No.250 of 2019

Versus

1. Ms.Jeppiaar Sheela
2. A.Karol Udaya Baskar
3. Nisha Mol Bronson

4. Jeppiar Educational Trust,
Rep. by Managing Trustee,
Old No.12, New No.29,
Ganapathi Street,
Royapettah, Chennai-600 014.

5. Sathyabama Educational Trust,
Rep. by Managing Trustee,
Sathyabama University Campus,
Jeepiar Nagar, Rajiv Gandhi Salai,
Chemmancherry, Chennai-600 119.

6. Mrs.Remibai Jeppiaar
7. Mrs.Vijaya Rajeswari
8. Dr.Chinnadurai
9. Dr.Babu Manoharan
10. Dr.Mariazeena Johnson
11. Marie Johnson
12. Ms.Jessie Priya .. Respondents in O.S.A.No.115 of 2019
1. Mrs.Regeena
2. Murali.S
3. Ms.Jeppiar Sheela

4. A.Karol Udayabaskar
5. Nisha Mot Bronson

6. Jeppiar Educational Trust,
   Represented by Managing Trustee,
   Old No.12, New No.29,
   Ganapathi Street,
   Royapettah, Chennai-600 014.

7. Sathyabama Educational Trust,
   Represented by Managing Trustee,
   Sathyabama University Campus,
   Jeppiaar Nagar, Rajiv Gandhi Salai,
   Chemmancherry, Chennai-600 119.

8. Mrs.Remibai Jeppiar
9. Mrs.Vijayarajeswari
10. Dr.Chinnadurai
11. Dr.Babu Manoharan
12. Dr.Mariazeema Johnson
13. Marie Johnson
14. Ms.Jessie Priya .. Respondents in O.S.A.No.250 of 2019

Original Side Appeal No.250 of 2019 filed under Order 36 Rule 9 of the Original Side Rules of this Court, read with Clause 15 of the Letters Patent, against the fair and decretal order dated 03.08.2018 in A.No.60 of 2018 in C.S.No.908 of 2017 on the file of this Court.

A.No.60 of 2018:This application has been filed under order XIV Rule 8 of OS Rules r/w.92 and 151 of Code of Civil Procedure to revers the leave granted on 23.10.2017 in A.No.6404/17 in C.S.No.908/17.

Original Side Appeal No.115 of 2019 filed under Order 36 Rule 2 of the Original Side Rules of this Court, read with Clause 15 of the Letters Patent, against the fair and decretal order dated 03.08.2018 in A.No.60 of 2018 in A.No.6404 of 2017 in C.S.No.908 of 2017 on the file of this Court.

A.No.60 of 2018:This application has been filed under order XIV Rule 8 of OS Rules r/w.92 and 151 of Code of Civil Procedure to revers the leave granted on 23.10.2017 in A.No.6404/17 in C.S.No.908/17.

For appellants in O.S.A.No.115 of 2019
: Mr. P.R. Raman, Senior Counsel for Mr.C.Seethapathy

For appellants in O.S.A.No.250 of 2019 : Mr. T.V. Ramanujun, Senior Counsel for Mr.N.C.Ashok Kumar

For respondents in O.S.A.No.115 of 2019 : Mr.V.Ayyadurai, Senior Counsel for Mr.V.B.Perumal Raj for RR-1 to 3

Mr.B.Ramkumar for RR-4 & 6
Mr.T.R.Rajagopalan, Senior Counsel for Mr.A.Arun Babu for RR-5, 10 & 11

Mr.M.S.Soundararajan for RR-7 & 8
Mr.S.Rajasekar for RR-9 & 12

For respondents in O.S.A.No.250 of 2019 : Mr.P.R.Raman, Senior Counsel for Mr.C.Seethapathy for RR-1 & 2

Mr.V.Ayyadurai, Senior Counsel for Mr.V.B.Perumal Raj for RR-3,4 & 5

Mr.B.Ramkumar for RR-6 & 8

Mr.T.R.Rajagopalan, Senior Counsel for Mr.A.Arun Babu for RR-7, 12 & 13

Mr.M.S.Soundararajan for RR-9 & 10

Mr.S.Rajasekar for RR-11 & 14

COMMON JUDGMENT

R.SUBBIAH, J

Both these Original Side Appeals are filed against the order dated 23.10.2017 passed in Application No. 6404 of 2017, whereby the learned single Judge granted leave to sue the defendants under Section 92 of the Code of Civil Procedure (in short 'Code') for formulating a Scheme in respect of the Trusts and also for other reliefs. On notice, the defendants 7 and 10 have filed A.No.60 of 2018 to revoke the leave granted to the plaintiffs. The learned single Judge dismissed the application seeking leave to sue. Aggrieved by the same, the defendants 7 and 10 in the suit have filed O.S.A.No.115 of 2019. O.S.A.No.250 of 2019 has been filed by the third parties, who are the Trustees of the second defendant-Trust, after obtaining leave from this Court.

2. For the purpose of convenience, the parties will be referred as per their ranking in the suit, as plaintiffs and defendants.

3. Since the issue involved in both these appeals is one and the same, they are disposed of by this common judgment.

4. To deal with the contentions raised by the respective parties in the application to revoke the leave granted to sue, at the outset, it would be appropriate to refer the relevant averments made in the plaint, as follows:

(a) The first plaintiff-Jeppiaar Sheela is one of the Trustees of the first defendant-Trust, namely Jeppiaar Educational Trust, and she was inducted, vide Trust Deed, dated 04.05.1987 into the Trust. She continued to be a Trustee and took part in the daily management of the Trust and ancillary activities. Hence, she is an interested person in relation to the Trust. The second and third plaintiffs, namely A.Karol Udaya Baskar and Nisha Mol Bronson have undergone their education in the institutions of the Trusts, namely Jeppiaar Educational Trust and Sathyabama Educational Trust and had graduated from there in the year 2008 and 2012 respectively. The plaintiffs 2 and 3, even after graduating, had returned to the Trust(s) in order to help the philanthropic activities performed by the Managing Trustee. Being graduates of the institutions run by the first defendant-Trust, the plaintiffs 2 and 3 are keenly interested in the manner in which the Trusts are administered. Hence, according to them, they are persons interested in the management of the Trusts.

(b) Dr.Jeppiaar, who was an educationalist and philanthropist, founded the first defendant-Trust, namely Jeppiaar Educational Trust. The first defendant-Trust is a public charitable educational Trust constituted under a Deed of Trust, dated 04.05.1987 by its Founder Dr.Jeppiaar and the same was registered. Under a Deed of Trust, dated 16.04.2001, the Trustees of the first defendant-Trust decided to declare Sathyabama Engineering College to be upgraded as a Deemed University. Therefore, in terms of the UGC Act and with the approval of the Board of Trustees of the first defendant-Trust, the said College was constituted as a separate Trust under the name "Sathyabama Institute of Science and Technology". Thereafter, a Supplemental Trust Deed, dated 07.03.2008 was executed, wherein it was stated that in terms of the UGC Act, guidelines and with the approval of the Board of Trustees of the first defendant-Trust, Sathyabama Engineering College/ Institution had been constituted as a separate Trust. The name of the Trust was changed from Sathyabama Institute of Science and Technology to that of Sathyabama Educational Trust, which is the second defendant in the suit. By a further Supplemental Trust Deed, dated 22.03.2010, the Board of Trustees for the second defendant-Trust were announced namely (a) Mr.Jeppiaar (Founder-Trustee), (b) Mrs.Remi Bai Jeppiaar (third defendant) (wife of Dr.Jeppiaar), (c) Mr.P.Chinnadurai (fifth defendant) (son-in-law of Dr.Jeppiaar), (d) Mr.Babu Manoharan (sixth defendant) (another son-in-law of Dr.Jeppiaar), (e) Mrs.Vijaya Rajeswari (fourth defendant) (daughter of Dr.Jeppiaar) and (f) Mrs.Jeppiaar Sheela (first plaintiff) (daughter of Dr.Jeppiaar).

(c) Dr.Jeppiaar was the Managing Trustee and it was open to any one of the Trustees to retire from the Office of the Trust by giving one month notice to the Board of Trustees of such intention. The strength of the Board, at any point of time, was not to be less than two and more than six. Under Clause 15, it was expressly declared that the Trust is a Public Charitable Trust and it is irrevocable in nature. Thereafter, by a further Supplemental Trust Deed dated 25.01.2016, the seventh defendant-Mrs.Regeena (daughter of Dr.Jeppiaar) was inducted as a Trustee in the first defendant-Trust. She was to hold office for life or until she resigns. Similarly, by the Supplemental Trust Deed, dated 09.03.2016, the eighth defendant (Dr.Mariazeena Johnson) and the ninth defendant (Mr.Marie Johnson), i.e. daughter and son-in-law of Dr.Jeppiar, respectively, were also inducted as Trustees in the second defendant-Trust. They were also to hold office for life or until they resign.

(d) While so, Dr.Jeppiaar passed away on 18.06.2016, leaving behind his wife and four daughters, namely wife--Mrs.Remi Bai Jeppiaar and daughters-- Mrs.Vijaya Rajeswari, Mrs.Jeppiaar Sheela, Mrs.Regeena and Mrs.Mariazeena. To that effect, a Legal Heirship Certificate was issued by the Office of the Tahsildar, Mylapore Taluk on 15.07.2016. The Legal Heirship Certificate is stated to have been issued for the purpose of transfer of property, Trusts, institutions, industries, Bank, etc. On the date of demise of Dr.Jeppiaar, the members of the family, who were Trustees, met at 10 p.m. in the premises of Sathyabama University and unanimously resolved that the Managing Trustee (Dr.Jeppiaar) should be buried within the premises of Sathyabama University in the land belonging to the first defendant-Trust, measuring 1.00 acres, comprised in Survey No.375/1B and it was further resolved that for remembrance of the Managing Trustee, "Dr.Jeppiaar Mani Mandapam" shall be built in the said land.

(e) After the demise of Dr.Jeppiaar, a series of acts had taken place, which are not only shocking, but clearly brings forth the intentions of the defendants 6 to 10 to usurp the properties and the institutions and thereby derive profit from the same. A Supplemental Trust Deed, dated 28.06.2016 seems to have been executed by Mariazeena Johnson, the eighth defendant, calling herself as the Managing Trustee of the second defendant-Trust. In the said document, it is stated that in the meeting of the Board of Trustees, dated 27.06.2016, the third defendant-Remi Bai Jeppiaar was elected to chair the meeting. It further reads that the defendants 4 to 6 and the first plaintiff resigned from the post of Trustee from the second defendant-Trust for personal reasons and that the eighth defendant had been unanimously elected as the Managing Trustee. The Trust was to comprise of the eighth defendant-Dr.Mariazeena Johnson as the Managing Trustee and the third and ninth defendants as Trustees. The eighth and ninth defendants are husband and wife and they have virtually taken over the aforesaid Trust with all the institutions attached thereto. Dr.Jeppiaar passed away only on 18.06.2016 and there was no need for everyone to resign within 5 days thereof and appoint the eighth defendant as the Managing Trustee, as the Trust was functioning well and there was no urgency to do so. Neither there was an anticipated crisis, nor was there any need for resignation. Even if a person intends to resign, as per Clause 10 of the Supplemental Trust Deed, dated 07.03.2008, one month notice has to given to the Board of Trustees. The eighth and ninth defendants were inducted as Trustees only on 09.03.2016 in the second defendant-Trust and therefore, this indicates the first act of usurping the Trusteeship and removing the persons from the Trust without following the procedures contemplated under the Trust Deed. The alleged date of resignation is 23.06.2016, but the meeting of the Board was stated to have been held on 27.06.2016 and the Supplemental Deed was registered on 28.06.2016.

(f) Having nominated herself as the Managing Trustee by a Deed of Lease, dated 20.07.2016, which is less than a month of her nomination, the eighth defendant prevailed upon the third defendant--Remibai Jeppiaar to execute a Deed of Lease, which is registered as Document No.5589 of 2016 in the Office of the Sub-Registrar, Neelankarai, to lease an extent of 109.95 acres of land situated at Chemencherry Village, Sholinganalur Taluk, together with Plot bearing No.17, measuring 1,800 Sq.Ft. and Plot Nos.19, 24, 44, 76, 132, 133, 136 to 138, measuring 21,600 Sq.Ft. for a period of 98 years and 11 months on an annual lease rent of Rs.1,000/- per acre. The said Deed states the tentative lease amount for the entire period contemplated, works out to Rs.1,08,90,000/-. The third defendant had parted away or encumbered the land belonging to a Public Charitable Trust, measuring totally about 110 acres for a period of 98 years and 11 months, without obtaining the directions from this Court under the Charitable and Religious Trust Act. As per Clauses 9 and 10 of the said Lease Deed, the lessee has the power to hypothecate or create a charge or other encumbrances and/or mortgage the leasehold rights in favour of any lender, which includes private financial institutions or any lender in India and abroad. The aforesaid Clauses run contrary to Clause 33 of the first defendant-Trust. That apart, under Clause 13(j), the lessor is to renew the lease for a further period of 98 years and 11 months. This would virtually tantamount to sale, as the first defendant-Trust would be deprived of its property for 200 years. Further, on the same day, a Deed of Settlement was also executed by the third defendant in favour of the eighth defendant settling an extent of 6.96 acres in Chemencherry Village. By a Supplemental Deed of Trust, dated 20.01.2017, the eighth and ninth defendants have been inducted as Trustees of the first defendant-Trust. The said Supplemental Trust Deed reads that the induction was in terms of the Resolution dated 18.06.2016. The Resolution on 18.06.2016 only resolved to bury the former Managing Trustee in the campus and construct a "Mani Mandapam" for him. The Resolution did not decide the induction of the eighth and ninth defendants on the said date. Dr.Jeppiaar passed away on the said date and the question of nominating any new Trustees on the date of death of the Founder Trustee did not arise.

(g) The eighth and ninth defendants were inducted as Trustees of the second defendant-Trust as seen from the Supplemental Trust Deed, dated 09.03.2016. The said Deed itself seems to be concocted/created by the eighth and ninth defendants. Under the Supplemental Trust Deed, dated 28.06.2016, which is executed by the eighth defendant, calling herself as the Managing Trustee, it is recorded that the eighth defendant has been unanimously elected as the Managing Trustee in the meeting dated 27.06.2016. Similarly, the sixth and seventh defendants in the Supplemental Trust Deed, dated 04.06.2016, elected the third defendant as the Managing Trustee of the first defendant-Trust pursuant to a meeting dated 24.06.2016. In the said Deed, it is averred that the fourth and fifth defendants and the first plaintiff resigned on 22.06.2016, which is within four days from the date of demise of Dr.Jeppiaar.

(h) The defendants 8 and 9 not stopping with their illegal act of obtaining loan of huge amount and utilising the same for the personal benefit, successfully persuaded the third defendant, who is yet to come out of her grief, to part away with huge properties. The property being vacant site measuring 131.11 acres and 40.72 cents comprised in various survey numbers in Chemmencherry Village belonging to the first defendant-Trust, were mortgaged for the loan obtained by the second defendant-Trust, which itself is against the interest of the Trust. While so, on 20.07.2016, the defendants 8 and 9 managed to obtain a transfer of 6.96 acres from the third defendant in favour of the eighth defendant, vide a Settlement Deed, dated 20.07.2016, registered as Document No.5519 of 2016 and also Lease Deed for not less than 50 years and more than 100 years in respect of the remaining extent, was also obtained on the same day. The act of the third defendant and the defendants 8 and 9 in executing and obtaining the Settlement Deed and Lease Deed, both dated 20.07.2016 in the individual capacity of the third defendant in respect of the Trust properties in favour of the eighth defendant in her individual capacity, is totally illegal and against the terms of the Trust and also against the interest of the Trust properties and amounts to serious act of breach of trust rendering the Trustees responsible for such acts and they are liable to be disqualified from continuing as Trustees. The defendants 8 and 9 soon realised the implication of obtaining such documents and made the third defendant to subsequently execute the cancellation of Settlement Deed and rectification of the Lease Deed on 05.10.2016 and 15.03.2017 respectively.

(i) The defendants 6 and 8 to 11 have totally neglected to discharge the duties and responsibilities entrusted to them as Trustees. Every act done by them from the date of the death of the Founder, is tainted with mala-fide intention to take over the management of the entire properties belonging to the Trust and with ulterior motive to defraud the other Trustees and beneficiaries of the Trust.

(j) Hence, the plaintiffs have come forward with the present suit for the following reliefs:

(a) To formulate a Scheme whereby the institutions and properties of the first and second defendant-Trusts are maintained and carried on in accordance with the objects and the clauses of the Deed of Trust and the Supplemental Trust Deeds executed by the Founder-Trustee.

(b) To direct the removal of the eighth, ninth and tenth defendants as Trustees of the first and second defendant-Trusts on the ground of breach of trust and fraud committed by them in conducting the affairs of the Trust.

(c) Consequentially, to declare that the Resolution dated 24.06.2016 and the corresponding Supplemental Trust Deed dated 04.06.2016 bearing Document No.79 of 2016 as null and void.

(d) Consequentially, to declare that the Resolution dated 24.06.2016 and the corresponding

Supplemental Trust Deed dated 28.06.2016 bearing Document No.96 of 2016 as null and void.

(e) Consequentially, to declare that the Resolution dated 28.09.2016 of the first defendant Trust inducting the 10th and 11th defendants as Trustees of the first defendant-Trust as illegal and null and void.

(f) Consequentially, to declare that the Resolution dated 18.06.2016 and the corresponding Supplemental Trust Deed dated 20.01.2017 bearing Document No.9 of 2017 inducting the eighth and ninth defendants as Trustees of the first defendant-Trust as null and void.

(g) To grant a decree of permanent injunction restraining the defendants 2 to 11 or their men, staff, agent or any person or persons claiming through or under them from dealing with or alienating or transferring or encumbering the properties and institutions belonging to the first and second defendant-Trusts in any manner whatsoever.

5. The suit was filed in C.S.No.908 of 2017 after obtaining leave from this Court in A.No.6404 of 2017 on 23.10.2017. On appearance, the defendants 7 and 10 have filed A.No.60 of 2018 to revoke the leave granted, mainly contending that the suit filed by the plaintiffs is certainly not in public interest as could be gathered from a plain reading of the plaint and the first plaintiff has chosen the suit as a platform to claim herself as a Trustee in the first defendant-Trust. Her private and personal interests are the only driving factor for filing the suit and she has, in the most barefaced manner, set out her interests and the alleged wrongs caused to her, line after line in the plaint. Hence, the defendants 7 and 10 prayed to revoke the leave granted.

6. Counter affidavit was filed by the first plaintiff in the revocation application denying the averments made by the defendants 7 and 10.

7. The learned Single Judge dismissed the said application in A.No.60 of 2018 seeking revocation of the leave granted to institute the suit, against which, the present appeals are filed.

8. Mr.P.R.Raman, learned Senior Counsel appearing for the appellants in O.S.A.No.115 of 2019 further submitted that if aggrieved by her dissociation from the Trusts, the first

respondent ought to have initiated action in an individual capacity on the strength of a pleading that her resignation was forcefully or fraudulently obtained and not seek shelter under Section 92 CPC. He further submitted that the first defendant-Jeppiaar Educational Trust and the second defendant-Sathyabama Educational Trust are independent entities and the management of the two Trusts is also different. Therefore, framing of two Schemes in a single suit is unheard of. He further contended that with regard to the issue raised in the plaint as to the breach of trust, by leasing of the property by the first defendant-Trust in favour of the second defendant-Trust, the lease is in vogue ever-since creation of the second defendant-Trust to meet certain UGC norms and had been recognised by all the Trustees including the first plaintiff and late Dr.Jeppiaar. The act complained of currently is a mere extension of/renewal of such lease and no new act, much less an offending one, was carried out and there being no breach of trust, the present suit under Section 92 CPC is not maintainable.

9. Mr. P.R. Raman, learned Senior Counsel appearing for the appellants in O.S.A.No.115 of 2019 (defendants 7 and 10) submitted that Section 92 of the Code states that two or more persons having interest in the Trust, may institute a suit against a Trust, subject to obtaining leave from the Court. In the instant case, the first plaintiff has filed the suit along with the plaintiffs 2 and 3, who are only the erstwhile students of the educational institutions run by the Trust. The plaintiffs 2 and 3 could not espouse any interest in the Trusts and therefore, the first plaintiff ought not to have filed the suit along with the plaintiffs 2 and 3. Their miserable failure to express and establish interest in the Trusts, disqualifies them from maintaining the suit. Under such circumstances, the learned Single Judge ought not to have granted leave to institute the suit, as the very purpose of restricting institution of action against the Trusts, subject to leave of Court, is to restrict irresponsible and frivolous litigation against the Trusts. He further submitted that from a mere reading of the averments made in the plaint, it could be seen that it does not disclose any public interest but only the personal interest of the first plaintiff is projected. The learned Senior Counsel further submitted that the suit under Section 92 of the Code is only for better administration of a Trust and it ought not to be used as a conduit to seek personal reliefs or to address personal grievances. After the demise of Dr.Jeppiaar on 18.06.2016, the first plaintiff had submitted her resignation from the Trust(s). In the plaint, the first respondent-Jeppiaar Sheela (first plaintiff) has not taken an unequivocal position with regard to her resignation, while faintly alleging that there was no need

for her to resign from the Trust. Moreover, she had included the reliefs in the prayer (c) and (f) of the plaint, challenging the resolution relating to her resignation from the two Trusts. In the event of such relief being granted, that would put the first plaintiff back as a Trustee in the two Trusts. Therefore, it is clear that the present suit has been filed only for personal gain with reference to personal properties, assets and business entities of late Dr.Jeppiaar, which would make it abundantly clear that the first plaintiff has, in essence, sought partition of assets of Dr. Jeppiaar, while making it appear as though she is genuinely interested in the two Trusts, which are the subject matter of the suit.

10. The learned Senior Counsel appearing for the appellants in O.S.A.No.115 of 2019 reiterated that on an entire reading of the plaint, it would show that it is only personal interest of the first plaintiff that is espoused in the plaint and it is only a motivated action. Under such circumstances, the learned Single Judge ought not to have granted leave to sue. In support of his submissions, the learned Senior Counsel appearing for the appellants in O.S.A.No.115 of 2019 relied on a decision of the Supreme Court reported in 1974 (2) SCC 695 (Swami Paramatmananda Saraswati Vs. Ramji Tripathi), wherein it has been held that in deciding whether a suit falls within Section 92 CPC, 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. It is the object or the purpose of the suit and not the reliefs that should decide whether it is one for vindicating the right of the public or the individual right of the plaintiffs or third persons.

11. The learned Senior Counsel appearing for the appellants in O.S.A.No.115 of 2019 also relied on a decision of the Supreme Court reported in 2008 (4) SCC 115 (Vidyodaya Trust Vs. Mohan Prasad and others), wherein it was held that the object of Section 92 of the Code 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 in nature are run for the benefit of the public. No individual should take the 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. To find out whether the suit was for vindicating public rights, there is necessity to go beyond the relief and to focus on the purpose for which the suit was filed. It is the object and purpose, and not the relief which is material and a co-trustee is not remediless if the leave is not granted under

Section 92 CPC. It was further held that it is not every suit claiming reliefs specified in Section 92 of the Code 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. As a decisive factor, the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought. The Courts have to be careful to eliminate the possibility of a suit being laid against public trusts under Section 92 CPC by persons whose activities were not for protection of the interests of the public trusts.

12. The learned Senior Counsel appearing for the appellants in O.S.A.No.115 of 2019 also relied on a judgment of the Supreme Court reported in 2016 (6) SCC 126 (Aurobindo Ashram Trust Vs. Ramanathan), in which the above rulings made in Swami Paramatmanand Saraswathi case (cited surpa) and Vidyodaya Trust (cited supra) were reiterated. Thus, the learned Senior Counsel appearing for the appellants in O.S.A.No.115 of 2019 submitted that in the instant case, only personal interest and grievance alone have been expressed in the suit and leave to sue ought not to have been granted.

13. Mr. T.V. Ramanujun, learned Senior Counsel appearing for the appellants/third parties in O.S.A.No.250 of 2019 submitted that since the plaintiffs have raised the question of maintainability of this appeal filed by the plaintiffs 2 and 3 as third parties, at the outset, he made submissions with regard to the maintainability of the appeal. According to the learned Senior counsel, the appellants in O.S.A.No.250 of 2019 are the Trustees of the second defendant-Trust, namely Sathyabama Educational Trust. They were inducted by means of registered Supplemental Trust Deed and they are just and necessary parties to the suit seeking relief to frame the Scheme. The suit under Section 92 of the Code is a representative suit. Any order passed in the suit will affect their right as Trustees. The order refusing to revoke the leave passed in A.No.60 of 2018 is the order-in-rem and the appellants cannot question the same in any other proceedings except by filing the present appeal, or otherwise, they will be bound by the order. In this regard, he placed reliance on a decision of the Supreme Court reported in 1970 (3) SCC 573 (Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd.), wherein it has been held that it is well settled that a person who is not a party to the suit, may prefer an appeal with the leave of the appellate Court and such leave should be granted if he would be prejudicially affected by the judgment. For the same proposition, he also relied on a judgment of this

Court reported in AIR 1953 Madras 485 (Sm.K.Ponnalagu Ammal Vs. The State of Madras, represented by the Secretary to the Revenue Department, Madras and others). He also relied on a decision of the Apex Court reported in 2003 (11) SCC 377 (Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh) for the proposition that a suit under Section 92 CPC is a representative suit and as such, it binds not only the parties named in the suit-title, but all those who share common interest and are interested in the Trust.

14. The learned Senior Counsel appearing for the appellants in O.S.A.No.250 of 2019 further contended with regard to the merits of the appeal that the suit is not maintainable for framing Schemes in respect of two public trusts, namely the defendants 1 and 2, by invoking Section 92 of the Code, and the plaint is liable to be rejected on this sole ground. He further submitted that in a single suit, Court cannot frame two Scheme Decrees in respect of two public Trusts. Such a position is unknown to law. In this regard, he invited the attention of this Court to Section 92 of the Code and submitted that from the provisions of Section 92, it is clear that two or more persons may institute a suit in case of alleged breach of trust where direction of the Court is necessary for administration of such Trust. The words 'Trust' and 'suit' are used in singular in Section 92 CPC. Therefore, there cannot be one suit for framing Scheme in respect of two Trusts. Though it is the case of the plaintiffs that the defendants 1 and 2 / Trusts are in two names, for all practical purposes, it should be considered as a single Trust and as such, a single suit is maintainable. Even in the suit, it is the main allegation of the plaintiffs that the first defendant-Trust executed a lease in favour of the second defendant-Trust. This allegation would clearly show that the Trusts are two different and separate entities. Before granting leave, it has to be seen that the Court has to first decide as to whether the purpose of the suit is for ventilating any personal grievances or agitating any public right. It if is seen that the purpose of the suit is only to ventilate the personal grievances of the first plaintiff, simply because the relief sought for in the plaint comes under Section 92 of the Code, by clever drafting, it will not be in the interest of justice to grant leave. While deciding the application for grant of leave, the Court must look beyond the prayers sought for in the suit. The plaintiffs must prima-facie satisfy the Court that there is a need to frame a Scheme or for removal of Trustees. By simply repeating the Sections of law and by using the expression "framing a Scheme", the plaintiffs in the instant case, want to question the first plaintiff's resignation. If the first plaintiff wants to come back to the Trust, her remedy is

elsewhere and she cannot ask for framing a Scheme in the suit.

15. The learned Senior Counsel appearing for the appellants/third parties in O.S.A.No.250 of 2019 further submitted that the first plaintiff is one of the daughters of the Founder-Trustee Dr.Jeppiaar who died on 18.06.2016 and immediately after his demise, she resigned from the Trusteeship on 24.06.2016 and now she wants to question the re-constitution of the Trust after her resignation. Thus, the present suit is nothing but an attempt to ventilate her personal grievances. The entire allegations made in the plaint are about the personal grievances of the first plaintiff and by merely including the prayer for framing a Scheme and for removal of Trustees, the plaintiffs have filed the present suit under Section 92 of the Code inter alia claiming that they are the champions of public interest. To fortify his submissions, the learned Senior Counsel relied on judgments of the Supreme Court reported in 1974 (2) SCC 695 (Swami Paramatmanand Saraswathi Vs. Ramji Tripathi), 2008 (4) SCC 115 (Vidyodaya Trust Vs. Mohan Prasad.R) and 2016 (6) SCC 126 (Aurobindo Ashram Trust Vs. R.Ramanathan), and also a judgment of this Court reported in AIR 1943 Madras 446 (FB) (The Tirumalai Tirupati Devasthanams Committee by its Commissioner Vs. Udiavar Krishnayya Shanbhaga and others) and submitted that the Courts must see beyond the relief sought for in the plaint while granting or refusing to grant leave to sue.

16. As next fold of his submission, the learned Senior Counsel appearing for the appellants in O.S.A.No.250 of 2019 submitted that the plaintiffs 2 and 3 are only former students of the institutions run by the defendants 1 and 2/Trusts. But on the side of the plaintiffs, no tangible evidence is produced to show that they are the former students and they will be having substantial interest in the Trust. In the plaint, they are only name lenders and are not having any substantial interest in the affairs of the Trusts. In paragraph 3 of the plaint, it is stated that the plaintiffs 2 and 3 are associating with the Managing Trustee in philanthropic activity of the Trust. Firstly, the Trusts do not have any philanthropic objects at all and secondly, absolutely, no prima-facie material had been produced to show their association with the Managing Trustee. They are only assisting the first plaintiff to ventilate her personal cause. The second defendant-Trust is a private University and about 18,000 students are studying and every year around 2000 students are completing graduation. The plaintiffs 2 and 3 do not say as to what was the philanthropic activity they are carrying on and who is the Managing Trustee. The plaintiffs 2 and 3 must prima-facie satisfy as to how they called

themselves as persons interested in the Trusts. If such bald and vague allegations are allowed, it will be very dangerous, because, the Trust will be burdened with litigations at the instance of persons who are not having any substantial interest. In this regard, he relied on a decision of this Court reported in AIR 1919 Madras 384 (T.R.Ramachandra Iyer and another Vs. Ponniath Akathuthu Parameswaran Munpu and others). He also relied on a decision of this Court reported in AIR 1984 Madras 328 (P.Sivagurunatha Pillai and another Vs. P.Mani Pillai (died) and others), wherein it was held that the interest contemplated under Section 92 the Code must be a real, substantive and existing interest in the particular Trust and it should not be a remote, fictitious or a contingent one. He also relied on a decision of the Supreme Court reported in AIR 1967 SC 1415 (Mahant Harnam Singh Vs. Gurdial Singh and another), wherein it was held that the object of the Legislature was to prevent people from invoking Section 92 of the Code in the administration of charitable Trusts without any real interests of their own and such litigation has to be curbed in the best interest of administration of the Trust.

17. It is the further submission of the learned Senior Counsel appearing for the appellants in O.S.A.No.250 of 2019 that the main allegation in the plaint is breach of trust and the property of the first defendant-Trust had been leased out for 99 years for a paltry rent and Rs.150 Crores of loan obtained by using the Trust properties leased out to the second defendant-Trust and the funds were siphoned off by the Trustees. For leasing out the property, resolutions were passed in the Trust Board Meetings without following the clauses in the Trust Deed. A non-Christian is appointed as a Trustee. As far as 99 year-lease is concerned, the plaintiffs themselves say that for all practical purposes, the defendants 1 and 2-Trusts are one unit. This submission was made by them when an objection was raised that leave cannot be sought for against two Trusts in one suit. When both the Trusts are treated as one unit, then the lease cannot be called as an act of breach of trust. There is no evidence required and prima-facie it is clear that the lease deed is only to satisfy the UGC norms for the second defendant-Trust to retain the status of private Deemed University. Even during the lifetime of Dr.Jeppiaar, the lands were bifurcated and allotted to the second defendant-Trust as early as in 2001. The second defendant-Sathyabama Educational Trust had been in possession of the lands even prior to 2001. Now, a formal lease deed has been executed to satisfy the UGC norms. As both the Trusts are one unit, it does not require any investigation by the Court and there is no necessity for framing Schemes. That is the reason why there is no prayer to set aside the lease deed.

18. With regard to the allegation of the plaintiffs as far as Rs.150 crores loan is concerned, it is submitted by the learned Senior Counsel appearing for the appellants in O.S.A.No.250 of 2019 that the financial facility was enjoyed even during the lifetime of Dr.Jeppiaar and the Trust properties had been given as security, apart from the private property of the third defendant/Remi Bai Jeppiaar. This financial facility was obtained for the purpose of development of the private University and it was availed from the year 2004. On this admitted position, it cannot be called as an act of alleged breach of trust for granting leave under Section 92 CPC.

19. The learned Senior Counsel appearing for the appellants in O.S.A.No.250 of 2019 further submitted that on going through the averments made in the plaint, it could be seen that the plaintiffs are only ventilating the personal grievances and nothing more. The plaint document No.3 dated 16.04.2001 only indicate that the execution of the lease deed is to accomplish the objectives of the first defendant-Trust and Jeppiaar Educational Trust has established several institutions within its campus consisting of around 300 acres of land. In the year 2001, Deemed University status was obtained to one of its institutions, namely Sathyabama Engineering College, after constituting a separate Trust, namely Sathyabama Educational Trust. For the purpose of availing Deemed University status, the land situated in Sathyabama Educational institution had been earmarked and apportioned. A formal Deed of Lease had been executed in favour of the second defendant-Sathyabama Educational Trust only for the purpose of maintaining the Deemed University Status. The Lease Deed was executed by the first defendant-Jeppiaar Educational Trust in favour of the second defendant-Sathyabama Educational Trust and there is no mis-management in executing the Lease Deed in fulfilling one of the objects of the Trust.

20. The learned Senior Counsel appearing for the appellants in O.S.A.No.250 of 2019 also submitted that credit facilities were availed by the second defendant-Sathyabama Educational Trust as early as in 2004 and the same had been extended/renewed periodically. The first plaintiff was one of the signatories to the constitution of the second defendant-Sathyabama Educational Trust, after apportioning the land belonging to the first defendant-Jeppiaar Educational Trust. The first plaintiff was also one of the signatories for availing Rs.150 crores of credit facilities in favour of the second defendant-Sathyabama Educational Trust.

21. The learned Senior Counsel appearing for the appellants in O.S.A.No.250 of 2019 also submitted that it is alleged that 10th defendant's induction as a Trustee is bad, as he is a non-Christian. The Trust Deed says that only the family members of Dr.Jeppiaar can be the Trustees of the Trust and that all the family members are professing Christianity. The tenth defendant had married the seventh defendant, one of the daughters of Dr.Jeppiaar and became a family member. As per the terms of the Trust Deed, if, in any case, other than the family member is inducted as a Trustee, he/she should be only a Christian. The tenth defendant is not an outsider and he is one of the family members being the son-in-law of the Founder. Thus, the entire reading of the plaint shows that the plaint does not disclose any cause of action for framing Schemes for the defendants 1 and 2/Trusts and the execution of Lease Deed is only for the benefit of the second defendant-Trust and the lease had been executed to retain its Deemed University status. The plaintiffs cannot maintain any suit against the second defendant-Trust, as absolutely, there is no cause of action to file the suit as against the second defendant-Trust. Thus, the the learned Senior Counsel appearing for the appellants in O.S.A.No.250 of 2019 prayed for setting aside the impugned order passed by the learned Single Judge.

22. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the second defendant-Trust, namely Sathyabama Educational Trust submitted that the tenth defendant is the son-in-law of one of the daughters of Dr.Jeppiaar. According to the learned Senior counsel, in a single suit, the Court cannot frame two Schemes in respect of two Trusts by invoking Section 92 CPC and the suit is liable to be dismissed on this sole ground. In this regard, the learned Senior Counsel also made detailed submissions by inviting attention of this Court to Section 92 of the Code. He further submitted that a plain reading of the plaint does not disclose any cause of action for framing two Schemes in respect of the defendants 1 and 2/Trusts. Even if the allegations made in the plaint are taken as it is, they will not create any cause of action for framing a Scheme, so far as Sathyabama Educational Trust (second defendant) is concerned. In any event, execution of the Lease Deed is beneficial to the second defendant-Trust, because, the Lease Deed had been executed to retain its Deemed University status. The learned Senior Counsel further contended that the the plaintiffs are abusing the process of law by filing the suit purportedly under Section 92 of the Code. Since the first plaintiff is only ventilating her personal grievances in the suit, the same is not maintainable under Section 92 of the Code. If at all the plaintiffs have any grievance, they can work out their remedy

only in the manner known to law as against the defendants 1 and 2/Trusts. In fact, the plaint prayers in (c), (d), (e) and (f) will not come within the purview of Section 92 of the Code. Further, with regard to plaintiffs 2 and 3, they are only former students of the institutions run by the defendants 1 and 2/Trusts. The very purpose of Section 92 of the Code is only to protect the Public Trust from irresponsible litigation. The Public Trust should not be burdened with the litigation at the instance of persons who are not having any direct and substantial interest in the affairs of the Trusts. In this case, the Plaintiffs 2 and 3 are not having any interest in the affairs of the Trust and they only want to ventilate their personal grievances. To fortify his submission that mere interest in the Trust is not enough to file the suit and there should be a direct interest in the Trusts, the learned Senior Counsel relied on the following decisions:

(i) AIR 1919 Madras 384 (T.R.Ramachandra Iyer and another Vs. Ponniath Akathuthu Parameswaran Munpu and others);

(ii) AIR 1984 Madras 328 (P.Sivagurunatha Pillai and another Vs. P.Mani Pillai (died) and others); and

(iii) AIR 1967 SC 1415 (Mahant Harnam Singh Vs. Gurdial Sinigh and another).

23. The learned Senior Counsel appearing for the second defendant-Trust, namely Sathyabama Educational Trust further submitted that the plaintiffs have filed the suit containing various averments, which would reveal that they are only ventilating their personal grievances of the first plaintiff. The first defendant-Trust has established several institutions within its campus consisting of around 300 acres of land. In the year 2001, Deemed University status was obtained to one of its institutions, namely Sathyabama Engineering College, after constituting a separate Trust, namely Sathyabama Educational Trust (second defendant). For the purpose of availing Deemed University status, the land in which Sathyabama Educational institution is situated, had been earmarked and apportioned. A Deed of Lease was executed in favour of Sathyabama Educational Trust only for the purpose of maintaining the Deemed University status. The Lease Deed was executed by the first defendant-Jeppiaar Educational Trust in favour of the second defendant-Sathyabama Educational Trust and there is no mis-management in executing the Lease Deed in fulfilling one of the objects of the Trust. The objects of the first defendant-Jeppiaar Educational Trust is to establish various institutions including the private Universities, which is evident from plaint Document No.1 being the copy of the Trust Deed executed by the first defendant-Jeppiaar Educational Trust on 04.05.1987. Further, it is apparent on the face of the documents filed along with the

plaint that overdraft facility had been availed during the lifetime of Dr.Jeppiaar and during that period, the first plaintiff was continuing as a Trustee of the second defendant-Trust. After giving properties of both the defendants 1 and 2/Trusts and other personal properties of the third defendant-Remibai Jeppiaar as security, the second defendant has secured the overdraft facility to the tune of Rs.150 crores and the same had been renewed in 2017. By producing the plaint document Nos.16 and 17, the plaintiffs have alleged that the Trustees of the second defendant-Trust have received Rs.150 crores loan from the Indian Bank. It is seen from Document No.17 that overdraft facility was only renewed. In fact, the entire amount to the Indian Bank had been discharged by the Trust in the financial year 2019-2020. In support of his submissions, the learned Senior Counsel appearing for the second defendant-Trust relied on the following decisions and prayed for allowing the appeals:

(i) 1970 (3) SCC 573 (Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd);

(ii) AIR 1953 Madras 485 (Smt.K.Ponnalagu Ammal Vs. The State of Madras represented by the Secretary to the Revenue Department, Madras and others);

(iii) 2003 (11) SCC 377 (Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh C. (Dead), M.N.Singh and others);

(iv) AIR 1962 A.P. 140 (FB) (Dimmiti Pullayya and others Vs. Abdebolu Nagabhushnam and others);

(v) 1974 (2) SCC 695 (Swami Paramatmananad Saraswathi and another Vs. Ramji Tripathi and another);

(vi) 2008 (4) SCC 115 (Vidyodaya Trust Vs. Mohan Prasad R and others);

(vii) 2016 (6) SCC 126 (Aurobindo Ashram Trust and others Vs. R.Ramanathan and others);

(viii) AIR 1943 Madras 466 (FB) (The Tirumala Tirupati Devasthanams Committee by its Commissioner Vs. Udiavar Krishnaya Shanbhaga and others) and

(ix) 2004 (1) CTC 321 (Madras High Court) (Menezes.L.M. Vs. Rt.Rev.Dr.Lawrence Pius).

24. Countering the above submissions, Mr.V.Ayyadurai, learned Senior Counsel appearing for the plaintiffs submitted that O.S.A.No.250 of 2019 is filed by the newly inducted Trustees of the second defendant-Trust. In fact, these newly inducted Trustees have filed A.No.5934 of 2019 seeking to implead themselves as party in the scheme suit, which is still pending. While so, O.S.A.No.250 of 2019 had been filed by obtaining leave from this Court. By the impugned order, the application for revocation of leave to sue by the plaintiffs, was dismissed on 03.08.2018. The application seeking leave to

file appeal, was not filed within the statutory period and it was filed on 23.09.2019. Even without filing an application to condone the delay in seeking leave to appeal, O.S.A.No.250 of 2019 has been filed by the newly inducted Trustees, which is not maintainable in terms of Clause 12(g)(vii) of the Sathyabama Educational Trust Deed, as per which, the Managing Trustee alone is the Executive Officer of the Board of Trustees, who alone is competent to defend any litigation and not the other Trustees. Therefore, the appellants in O.S.A. No. 250 of 2019, who have been inducted as Trustees, have no semblance of right to file the appeal, when the Trusts are parties. He invited the attention of this Court to the averments made in the plaint and made his submissions that the plaint discloses acts of breach of trust. The ulterior motive of the sixth defendant-Babu Manoharan, one of the sons-in-law of Dr.Jeppiaar, is to take over all control of the institutions run by both the Trusts. The defendants 6 to 10 have indulged in concocting documents for change in the constitution of Trust Board of both the Trusts. The defendants 8 and 9 prevailed upon the third defendant in getting lease of large extent of vacant land measuring about 110 acres in Chemmencheri Village and offered the said property as security for obtaining Bank loan of Rs.150 crores without requisite Resolution and without seeking direction from the Court as postulated in Clauses 33, 55 read with 60 of the Trust Deed, dated 04.05.1987. Similarly, the inducted tenth defendant is a non-Christian, which is contrary to the desire of the Founder-Trustee/deceased Jeppiaar and detrimental to the purpose and object of the subject Trusts. The contentions of the appellants that the plaint does not disclose cause of action, and it establishes no breach of trust or mis-management, but reflects the personal vendetta of the first plaintiff, etc., cannot be countenanced, in view of reading of the plaint in full in a meaningful manner. The learned Senior Counsel further submitted that a bare reading of Section 92 of the Code, particularly, Section 92(1) indicates that the word "alleged breach" employed therein would make it clear that it is sufficient to show prima-facie case and that no concrete evidence is required to invoke the parens-patriae jurisdiction as adumbrated in Section 92 of the Code. Above all, it is settled principle of law that the prima-facie case is the parameter to invoke Section 92 CPC. In this regard, he relied upon a decision of the Supreme Court reported in AIR 1972 SC 246 (Harendra Nath Vs. Kaliram Das).

25. With regard to the submission made by the learned Senior Counsel appearing for the appellants that the plaintiffs 2 and 3 are only old students of the institutions run by the Trusts and they are only name-lenders, the learned Senior Counsel appearing

for the plaintiffs relied on a decision of this Court reported in AIR 1978 Madras 205 = Vol.91 L.W. 205 (Kumudavalli Ammal alias Kuppammal Vs. P.N.Purushothaman), wherein it has been held that the old student of a school run by the Trust is an interested person. The learned Senior Counsel appearing for the plaintiffs also relied upon number of judgments to show that the personal interest of plaintiffs cannot be drawn at the stage of revocation of leave, in the absence of any evidence being let in in the suit itself.

26. The learned Senior Counsel appearing for the plaintiffs also stated that Order 1 Rule 10 CPC is not applicable to the special suit filed under Section 92 of the Code. In the instant case, surprisingly, few of the newly inducted Trustees attempted to file an independent appeal on their own in contravention of the express provision contained in the Trust Deed, in the guise of their right being prejudiced, when the said Trust represented by its Managing Trustee, as also the person who claimed to be the Managing Trustee, was also arrayed as a party to every proceeding, all through much more in the absence of either the Trust or the Managing Trustee having preferred the independent appeal. Therefore, the learned Senior Counsel appearing for the plaintiffs stated that the order challenged in these appeals as made in A.No.60 of 2018, dated 03.08.2018, dismissing the application of revocation of leave, had been validly made and does not require any interference.

27. It is also submitted by the learned Senior Counsel appearing for the plaintiffs that for all practical purposes, both the Trusts are same and therefore, the present suit is maintainable. With regard to the locus-standi of the second and third plaintiffs to maintain the suit, it is submitted by the learned Senior Counsel appearing for the plaintiffs that they are the old students of the colleges run by the Trust(s) and they are only interested persons. Whether they are having any substantial interest or not in filing the suit, has to be gone into only at the time of trial and the same cannot be decided in the revocation of leave application. Similarly, whether the plaintiffs are ventilating only their personal interest of the first plaintiff or not, is also a matter for trial. The Court has to see as to whether the allegations made in the plaint make out a case of breach of trust within the purview of Section 92 Code.

28. The learned Senior Counsel appearing for the plaintiffs further invited the attention of this Court to the supplemental Trust Deed, dated 25.01.2016 and submitted that the stamp papers for execution of the same were purchased much later to the date of execution, i.e. on 09.03.2016 and hence, this document is

fraudulently executed. Hence, for all these reasons, the learned Senior Counsel appearing for the plaintiffs prayed for dismissal of the appeals.

29. By way of reply, the learned Senior Counsels appearing for the appellants in both the appeals, in unison, submitted that the Trust Deed, dated 25.01.2016, which was registered as Document No.37 of 2016, was registered only on 09.03.2016 by late Dr.Jeppiaar during his lifetime and the plaintiffs have not questioned the said document and no prayer was sought for to set aside the same. At the time of obtaining leave, the argument was entirely new and allegations were made to the effect that the Trust Deed dated 25.01.2016 had been fraudulently executed. On the other hand, in paragraph 8 of the plaint, the plaintiffs have accepted the fact that under the Document, dated 09.03.2016, the defendants 8 and 9 were inducted as Trustees. Further, it is alleged in the plaint that the defendants, after demise of Dr.Jeppiar on 18.06.2016, have committed acts of breach of trust, which necessitates the framing of Schemes and removal of Trustees. Therefore, it is incorrect to state that the said document is a fraudulent document. Hence, the learned Senior Counsel appearing for the appellants prayed for allowing the appeals.

30. With regard to the submission of the learned Senior Counsel appearing for the plaintiffs that the Managing Trustee alone can question the impugned order passed by the learned Single Judge, it is the reply of the learned Senior Counsel appearing for the defendants that the suit under Section 92 of the Code is a representative suit and any order passed in the suit will affect the rights of the Trustees. The order refusing to revoke the leave passed in A.No.60 of 2018 is the order-in-rem and the appellants cannot question the same in any other proceedings except by filing the present appeals, otherwise, they will be bound by the order. Further, the plaintiffs 2 and 3 have no locus-standi to maintain the suit.

31. Heard all the respective counsel appearing for the parties and perused the material records placed. As we have discussed the factual aspects of the matter in detail, we refrain from reiterating the same any further in these appeals, but only the facts, which are germane for consideration, alone are discussed hereunder.

32. The sum and substance of the submissions made by the learned Senior Counsel appearing for the defendants is that:

(i) The suit for framing a Scheme for two Trusts, is not maintainable.

(ii) The plaintiffs 2 and 3 are only former students of the college(s) run by the first defendant-Trust and they are only name lenders. The plaintiffs 2 and 3 have not produced any document to show that they are having substantial interest over the affairs of the defendants 1 and 2/Trusts.

(iii) The plaintiffs are ventilating only their personal interest of the first plaintiff and no prima-facie case is made out to maintain the suit under Section 92 CPC.

(iv) The allegation of breach of trust on the face of it, is not tenable and the suit is vexatious, as absolutely there is no breach of trust by the defendants.

(v) Execution of the lease deed by the first defendant-Trust in favour of the second defendant-Trust, is only to accomplish the object of the defendants-Trusts.

(vi) The credit facilities availed of by the second defendant-Trust to an extent of Rs.150 crores, were obtained during the lifetime of Dr.Jeppiaar itself, which was already discharged to the Bank. Absolutely, there is no mis-management or mala-fide intention to use the Trust funds for their own, warranting grant of leave by the learned single Judge.

(vii) As per the Trust Deed, only family members of the Trustees alone can be the nominated as Trustees of the defendants-Trust and therefore, it is incorrect to state that the induction of the tenth defendant as a Trustee is bad as he is a non-Christian. The tenth defendant who is one of the Trustees, married the seventh defendant, who is one of the daughters of the Founder of the Trusts and thus, he became a family member of the Trustees. He is not an outsider and he is the son-in-law of the Founder of the Trust. Therefore, the allegation that contrary to the terms of the Trust Deed, a non-Christian was inducted as a Trustee, is not correct.

(viii) There is no allegation against the second defendant-Trust, namely Sathyabama Educational Trust.

33. These averments were repudiated by the plaintiffs by contending that there are in fact breach of the covenants contained in the Trust Deed and that the plaintiffs will be in a position to prove those breach during the course of trial. It is also contended that the learned single Judge, on observing that a prima facie case has been made out for grant of leave as contemplated under Section 92 of the Code of Civil Procedure, has rightly granted leave to sue. The defendants, instead of defending the suit and to disprove the various averments made in the plaint, have come forward to question the grant of leave.

Such an attempt on the part of the defendants was rightly rejected by the learned single Judge and refused to revoke the leave granted by this Court. The plaintiffs therefore prayed this Court to dismiss the Original Side Appeals leaving it open to the defendants to defend the suit.

34. On perusal of the materials made available, we noticed that a Trust Deed dated 4th May 1987 was executed by Mr. Jeppiar, founder of the Trust with an avowed object of establishing irrevocable public educational trust for running educational institutions to impart education with national and international standard for the benefit of the society. The objects with which the Trust was established, have been elucidated in Clause 4 of the Trust deed. For the purpose of administering the properties attached to the Trust, Trustees were declared and appointed by the Founder Trustee. The duties and responsibilities of the Trustees, their term as also their disqualification is clearly elucidated in the Trust Deed.

35. According to the plaintiffs, after the death of the founder Trustee, series of developments have taken place which are not in the beneficial interest of the first defendant Trust. It is the contention of the plaintiffs that a supplemental trust deed dated 28.06.2016 is said to have been executed by the 8th defendant and thereby she calls herself as the Managing Trustee of the second defendant Trust. According to the plaintiffs, the founder Trustee passed away only on 18.06.2016 and therefore, there was no necessity to convene a Meeting to inform the resignation of some of the trustee and the consequential taking over of the eighth defendant as the Managing Trustee. Further, the resolution passed in the meeting dated 28.06.2016 with respect to resignation of the first plaintiff and the defendants 4 to 6, is not only illegal, but it is against Clause 10 of the Supplemental Trust deed which require one month notice to be given in advance. In the plaint, similar reference was made to violation of various clauses of the Trust Deed as well as the various Supplemental Deeds. The Plaintiffs, in para Nos. 11 and 12 of the plaint made reference to various mismanagement committed by the defendants to gain unlawfully. In para No.13, reference was made to the loan availed in terms of the Deed of lease executed by the first defendant Trust in favour of the second defendant unauthorisedly. Thus, the plaintiffs would contend that the induction of trustees, resignation of the trustees, availing of loan with the banks and other financial institutions, alienation of some of the properties of the Trust, are in violation and/or breach of the Trust Deed and it is not in the beneficial interest of the Trust. Therefore, in order to put the records straight and to streamline the activities of the

Trust, the plaintiffs have filed the suit for framing of a scheme and for other allied reliefs. Along with the suit, the plaintiffs have filed the application seeking leave to sue the defendants purportedly on the ground that the properties of the Trust are alienated by the defendants for their personal gain and therefore, there is an imminent necessity to frame a scheme to protect the properties from being usurped by the defendants.

36. The learned single Judge granted leave to sue the defendants by arriving at a prima facie case that some documents have been created by the defendants to secure unlawful gain. The learned single Judge also made reference to a complaint given on 25.07.2017 alleging mismanagement of the properties of the Trust and the registration of the First Information Report thereof on 02.09.2017. Therefore, having come to a prima facie conclusion that the covenants of the Trust Deed are not adhered to in letter and spirit, the learned single Judge had granted leave.

37. The defendants, upon notice, have filed an application seeking to revoke the leave granted by the learned single Judge on 24.10.2017 in Application No. 6404 of 2017 in C.S. No. 908 of 2017 by contending that the plaintiffs have no real interest in the activities of the Trust. The present action is broughtforth only to wreak personal vengeance against the defendants, which is explicit in the averments of the plaint. The plaintiffs 2 and 3 have no right to maintain the suit as they have no direct interest in the affairs of the Trust. The interest, if any, in the affairs of the Trust must be substantive and an existing trust, in the absence of which, the plaintiffs 2 and 3 cannot maintain the present suit. The suit has been filed to abuse the process of law and to frustrate the beneficial work carried on by the Defendants to fulfil the objectives of the founder Trustee. There was no mismanagement of the funds or properties of the Trust warranting framing of a scheme decree. It is further submitted that the first plaintiff was a Trustee of the first defendant Trust, but subsequently, she resigned from the first defendant Trust soon after the death of the Founder Trustee and therefore, she also has no locus standi to maintain the present suit for framing of a scheme decree.

38. Section 92 of the Code of Civil Procedure governs the filing of a suit purportedly to safeguard the affairs and interest of a Public Charitable Trust. Therefore, it is essential to look into Section 92 of the Code, which reads as under:-

"92. 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 bee removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquires;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

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

(g) settling a scheme; or

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

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

(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 cy press 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."

39. A reading of Section 92 of the Code would only indicate that the plaintiff, who seeks for grant of leave to sue, must show that there was an alleged breach of any express or constructive trust created for public purpose of a charitable or religious in nature or for breach of any directions of the Court issued thereof. The word 'alleged' indicates that the averments made thereof by the plaintiff can be prima facie considered without requiring the plaintiff, at that stage, to establish the proof and relevancy of the allegations. It is needless to mention that the plaintiff may fall or rise on his own pleadings. However, the test for determining the correctness or otherwise of the allegations made in the plaint cannot be gone into at the time of granting leave, but only during the course of trial. In other words, while granting leave, the Court is only required to prima facie satisfy itself that there exist some breach of the terms and conditions, either express or constructive, in relation to affairs and management of a public

trust. At this stage, the Court need not go into the validity or correctness of the averments or the documentary evidence filed in support thereof by conducting a roving enquiry. It is suffice to arrive at a prima facie conclusion that there exist a dispute with respect to the management and affairs of the Trust and those averments are necessarily to be tried by conducting a trial. It is settled law that the plea of the defence cannot be looked into at the stage of granting of leave to file a Scheme suit and it has to be best left open to be decided after conclusion of trial. It is needless to mention that such allegations are to be proved by the plaintiffs so as to succeed in the suit. The degree of standing for interested person is limited to bring to the notice of the Scheme Court, which is vested with parens-patriae jurisdiction. Thus, prima-facie, it appears that all the plaintiffs are only interested persons to maintain and institute the suit under Section 92 CPC. Therefore, we are of the view that the learned single Judge has rightly refused to revoke the leave granted to sue the defendants and it does not call for any interference.

40. It is alleged that personal grievances of the first plaintiff are mentioned in the plaint. On a plain reading of the plaint, we could notice that the entire averments made therein cannot be said to be one made to wreak personal vendatta. Those averments are made in relation to the affairs of the functions of the Trust and the alleged mismanagement of the properties of the Trust. It is in that context certain averments were made against certain individual members of the Trusts. Therefore, on this ground, the plaintiffs cannot be prevented from instituting the suit. Even otherwise, the personal vendetta as alleged by the defendants, is a matter for trial. What is required for examination while granting leave is that whether a prima-facie case has been made out by the plaintiffs bringing out the breach of trust on the part of the defendants. Merely because the first plaintiff happens to be one of the daughters of the Founder-Trustee/Dr.Jeppiaar, it cannot be held that the entire suit is filed only to vindicate her personal rights. All the allegations in the plaint have to be decided only during trial, including the issue of misjoinder of parties, as to whether the plaintiffs 2 and 3 are really having locus-standi or cause of action for filing the suit. Even the plaint prayer with regard to the ancillary reliefs, is a matter for trial.

41. In order to grant leave, the plaint has to be read in its entirety and not in isolation. On reading of the plaint, we find that it discloses acts of breach of trust, mis-management, fraud by the Trustees, mal-administration, fabrication of

documents, etc. More particularly, the plaintiffs have stated about leasing out of 109.95 acres of land in favour of Sathyabama Educational Trust in contravention of the covenants contained in the Trust deed. It is alleged that the defendants have obtained credit facilities to an extent of Rs.150 crores after apportioning the land belonging to Jeppiaar Educational Trust and the same was used for personal benefits.

42. Further, the submissions and counter submissions are only to prove or disprove the case of the other. The genuineness or veracity of the defence raised, cannot be gone into in the present appeals. Any finding rendered in these appeals will have a bearing in the suit pending before the Original Side of this Court. A reading of the full plaint and its documents discloses a prima-facie case for breach of trust by defendants in paragraphs 10 to 14 and 19, and mis-management in paragraphs 16 to 18, fabrication of documents in paragraphs 14, 16 and 17, forgery in paragraphs 13, 14 and 16, collusion of defendant 6 to 10 in paragraphs 10 to 14, and also the mala-fide intention of the sixth defendant to take control over the subject Trusts and the institutions, illegal entry into the Trust Board and expulsion of Trustees without following the prescribed procedures, etc. Having regard to the same, the grant of leave to sue, in our opinion, is justifiable.

43. Further, in the case on hand, the provisions and terms of both the Trusts are almost the same and both the Trusts are founded by Dr.Jeppiaar for the same purpose. Jeppiaar Educational Trust is a parent Trust and Sathyabama Educational Trust contains savings clause, as per which the provisions of the Jeppiaar Educational Trust were applied to Sathyabama Educational Trust with regard to the procedures, alienation of Trust properties, Court permission, etc., and hence, a single suit is framed as provided under Order 2 Rule 3 CPC. We do not see any reason to hold that the plaint as filed, in respect of the affairs and management of the defendants 1 and 2 trust is not maintainable. The suit is maintainable as such and we see no reason to reject the submissions made to this effect. In this context, it is useful to refer the decision of this Court reported in 1996 (2) LW 364 (Kannan Adityan and 4 others Vs. Adityan and 6 others), wherein it was held that suit must be representative in character and not merely one for vindication of individual or personal rights of the plaintiff. The Court's duty is only to look into the allegations in the plaint and documents produced by the plaintiff only. Applying the above decision to this case, we are of the view that all the submissions made by the learned Senior Counsel/counsel for the defendants are only in the form of defence and prima-facie, the

plaint discloses breach of trust by the defendants. We do not find any infirmity in the leave granted by the learned Single Judge, which was confirmed by the learned Single Judge in the leave revocation application. Merely because ancillary reliefs such as declaration of Resolutions as null and void, are asked for, it would not render the Scheme suit for main reliefs of framing schemes, removal of illegally inducted Trustees, etc., as not maintainable.

44. In the above view taken by this Court, it is not necessary to delve into all the decisions relied on by the learned counsel appearing for the parties, as the same are distinguishable on facts of the present case.

45. Thus, for the reasons stated supra, we do not find any infirmity in the impugned order passed by the learned Single Judge in dismissing the revocation of leave application. Hence, the O.S.As. are dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

cs

To
The Sub-Assistant Registrar,
Original Side,
High Court,
Madras.

+1 cc to M/s.N.C.Ashok kumar Advocate sr12093
+1 cc to M/s.C.Seethapathy Advocate sr12092
+1 cc to M/s.S.Rajasekar Advocate sr12843
+2 cc to Mr.V.B.Perumal Raj Advocate sr12064,12065
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O.S.A.Nos.115 and 250 of 2019

kj(co)
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