

Order dated 27.10.2021 in
A.Nos.3671 of 2021 and 3676 of 2021 in
C.S.D.Nos.80696 and 80695 of 2021
and O.P.D.Nos.64544 and 64545 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.10.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application No.3671 of 2021 in C.S.D.No.80696 of 2021
and
Application No.3676 of 2021 in C.S.D.No.80695 of 2021
and
C.S.D.No.80696 of 2021 and C.S.D.No.80695 of 2021
and
O.P.D.Nos.64544 and 64545 of 2021

1. Kanchi Charity Trust,
Represented by its Managing Trustee,
Mrs.B.K.K.Pillai,
Wife of Late Dr.R.K.Pillai,
having Registered Office at
No.43, Kannadasan Salai,
T.Nagar, Chennai-17.

2. Ms.K.Aparna, Trustee,
Having Registered Office
at No.43, Kannadasan Salai,
T.Nagar, Chennai-17.

.. Plaintiffs in C.S.D.No.80695 of 2021

Vs.

Mrs.Vailankanni,
Flat No.GE, Gandarva Court,
No.10, Coats Road, T.Nagar,

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Chennai-17.

.. Defendant in C.S.D.No.80695 of 2021

1. Kanchi Charity Trust,
Represented by its Managing Trustee,
Mrs.B.K.K.Pillai,
Wife of Late Dr.R.K.Pillai,
having Registered Office at
No.43, Kannadasan Salai,
T.Nagar, Chennai-17.

2. Ms.K.Aparna, Trustee,
Having Registered Office
at No.43, Kannadasan Salai,
T.Nagar, Chennai-17. .. Plaintiffs in C.S.D.No.80696 of 2021

1. Kanchi Charity Trust,
Represented by its Managing Trustee,
Mrs.B.K.K.Pillai,
Wife of Late D.R.K.Pillai,
having Registered Office
at No.43, Kannadasan Salai,
T.Nagar, Chennai-17.

2. Ms.K.Aparna, Trustee,
having Registered Office at
No.43, Kannadasan Salai,
T.Nagar, Chennai-17.

.. Petitioners in O.P.D.No.64544 of 2021

Vs.

Mrs.Vailankannai,

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Flat No.GE, Gandarva Court,
No.10, Coats Road, T.Nagar,
Chennai-17

.. Respondent in O.P.D.No.64544 of 2021

Kanchi Chetty Trust,
Represented by its Managing Trustee,
Mr.B.K.K.Pillai,
Having office at No.43, Kannadasan Salai,
T.Nagar, Chennai-17. .. Petitioner in O.P.D.No.64545 of 2021

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Plaint is filed under Order IV Rule 1 read with O.S. Rules and Section 92(i)(f) of the Code of Civil Procedure (CPC), and Civil Suit in C.S.D.No.80696 of 2021 filed praying to grant permission for the plaintiffs to sell the Schedule-B property belonging to the Kanchi Charity Trust and remit the sale proceeds in the Kanchi Charity Trust Account.

Schedule A-property

All that piece and parcel of agricultural land situate in S.No.351 in Maduravoyal Mathura, Alapakkam Village, Saidapet Taluk, Chingleput District within the Registration District of South Madras and Sub-Registration District of Virugambakkam, having an ad-measurement of Nil Acres 46.70 Cents and bounded on the:

North by land of Kanchi Trust

East by Land of Kanchi Trust

South by 30 feet wide Pathway and

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West by Land in S.No.355
and having a linear measurement of 276 feet 6 inches on the Northern side:
75 feet on the Eastern Side: 267 feet on the Southern Side and 75 feet on the
Western Side.

Schedule-B

All that piece and parcel of the vacant land bearing Door No.5, 2nd
Main Road, Ashtalakshmi Nagar, Valasarawakkam, Chennai-600 087
situate in Maduravoyal Mathura Alapakkam Village, Saidapet Taluk,
Chenglepet District comprised in S.No.351, approximately measuring 7
grounds or 16800 square feet, out of Schedule-A property as per the plan
attached: bounded on the:

West by: Futura Grand apartment

East by : Property retained by vendor, Kanchi Chetty Trust

North by: Land in S.No.355/1A/1A/1B

South by: Road

South to North on the Western side: 211.10 feet

on the Eastern side : 146 Feet 10 inches

East to West on the Northern side : 93 feet

on the Southern side: 82 feet

situated within the Registration District of South Madras and Sub-
Registration District of Virugambakkam.

Plaint filed under Order IV Rule 1 read with Original Side Rules of this Court and Section 92 (i)(f) of the Code of Civil Procedure, and Civil Suit filed as C.S.D.No.80695 of 2021 praying to declare the sale deed executed by the plaintiffs in favour of defendant in respect of the property mentioned in the schedule hereunder is legal as per the powers conferred to the Managing Trustee and as per the Deed of Trust, dated 09.02.1983 followed by the Deed of Rectification, dated 24.06.1983 and the Resolution passed by the plaintiffs dated 07.10.2010.

Schedule

All that piece and parcel of the vacant land situated at bearing Door No.5, 2nd Main Road, Asthtalakshmi Nagar, Valasarawakkam, Chennai-600 087, comprised in Old S.Nos.351 part, 352/2 part and 355 part, as per Patta (No.4991) New Survey Nos.351/1B part, 352/2A1B part and 355/1A1A1B part of Maduravoyal Mathura Alapakkam Village, Ambattur Taluk, Thiruvallur District, measruing to an extent of 6 cents in Survey No.351/1B part, 4 cents in Survey No.352/2A1B part and 9 cents in Survey No.355/1A1AB Part in all put together totally measuring 19 cents or 8276 marked as Red colour in the separate plan annexed being bounded on the:

North by : Land in S.No.3525/1A1A1C & 352/2A1A7

South by: Land belong to Mrs.Vailankanni and 39 feet Astalakshmi Nagar 2nd Main Road

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East by: Land in S.No.351/1B Part 8

West by Land in S.No.355/1A1AB & 355 / 1A1A1B Part and having
a linear measurement on the :

Northern side: 94 feet 6 inches

Southern side: 70 feet and 1 feet 6 inches

Eastern side: 210 feet - 1-1/2 inches

Western side: 150 feet and 58 feet 9 inches

situate within the Registration District of South Chennai and sub-
registration District of Virugambakkam.

Original Petition in O.P.D.No.64544 of 2021 filed under Section 7 of
the Charitable and Religious Trust Act, 1920 read with Section 151 CPC,
praying to declare that the sale deed bearing Document No.5670/2010,
dated 21.10.2010 executed by the petitioners to the defendant of the
property mentioned in the Schedule hereunder is legal as per the powers
conferred to the Managing Trustee and as per the Deed of Trust, dated
09.02.1983 followed by the Deed of Rectification dated 24.06.1983.

Schedule

All that piece and parcel of the vacant land situated at bearing Door
No.5, 2nd Main Road, Ashtalakshmi Nagar, Valasarawakkam, Chennai-
600 087, comprised in Old S.Nos.351 part, 352/2 part and 355 part, as per

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Patta (No.4991) New Survey Nos.351/1B part, 352/2A1B part and 355/1A1A1B part of Maduravoyal Mathura Alapakkam Village, Ambattur Taluk, Thiruvallur District, measuring an extent of 6 cents in Survey No.351/1B part, 4 cents in Survey No.352/2A1B part and 9 cents in Survey No.355/1A1A1B part, in all put together totally measuring 19 cents or 8276 Sq.Ft. marked as Red Colour in the separate plan annexed being bounded on the:

North by : land in S.No.3525/1A1A1C & 352/2A1A7

South by: land belong to Mrs.Vailankanni and 39 feet Astalakshmi Nagar 2nd Main Road

East by: land in S.No.351/1B Part 8

West by: land in S.No.355/1A1B & 355/1A1A1B part,
and having a linear measurement on the:

Northern side : 94 feet 6 inches

Southern side : 70 feet and 1 feet 6 inches

Eastern Side : 210 feet-1-1/2 inches

Western side: 150 feet and 58 feet 9 inches

situate within the Registration District of South Chennai and Sub-Registration District of Virugambakkam.

Original Petition D.No.64545 of 2021 filed under Section 34 of the Indian Trust Act, 1882, praying to grant permission to sell the Schedule-B

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mentioned property which is morefully described hereunder.

Schedule-A

All that piece and parcel of the land bearing Door No.5, 2nd Main Road, Ashtalakshmi Nagar, Valasarawakkam, Chennai-600 087 situate in Maduravoyal Mathur Alapakkam Village, Saidapet Taluk, Chengleput Distrcit, comprised in S.No.351, measuring an extent of 94.30 cents (about 17.10 grounds or 41077) square feet, bounded on the:

North by: land in S.No.352 and 347

East by : land in S.No.350

South by : balance land in S.No.351 and

West by : land in S.No.355

lying within the Registration District of South Madras and Sub-Registration District of Virugambakkam.

Schedule-B

All that piece and parcel of the vacant land bearing Door No.5, 2nd Main Road, Ashtalakshmi Nagar, Valasarawakkam, Chennai-600 087, situate in Maduravoyal Mathur Alapakkam Village, Saidapet Taluk, Chenglepet District comprised in S.No.351, approximately measuring 7 grounds or 16800 square feet, out of Schedule-A property as per the plan attached along with this agreement, bounded on the:

West by : Future Grand apartment

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East by : Property retained by vendor, Kanchi Charity Trust

North by: Land in S.No.355/1A/1A/1B

South by : Road

South to North on the Western Side: 211.10 feet

on the Eastern side : 146 feet 10 inches

East to West on the Northern Side : 93 feet

on the Southern side : 82 feet

lying within the Registration District of South Madras and Sub-Registration District of Virugambakkam.

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Application No.3671 of 2021 in C.S.D.No.80696 of 2021 and
Application No.3676 of 2021 in C.S.D.No.80695 of 2021 are filed seeking
leave to file the respective suits under Section 92 of the Civil Procedure
Code, 1980 (for short, 'CPC').
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For applicants/plaintiffs in A.No.3671 of 2021 and 3676 of 2021:

Mr.A.Saravanan

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ORDER

Application No.3671 of 2021 in C.S.D.No.80696 of 2021 and Application No.3676 of 2021 in C.S.D.No.80695 of 2021 are filed seeking leave to file the respective suits under Section 92 of the Civil Procedure Code, 1980 (for short, 'CPC').

2. The affidavits filed in support of the applications are sworn by the Managing Trustee and Trustee of the plaintiff-Trust (Kanchi Charity Trust) stating that the Founder of the Trust was desirous of starting a public charitable Trust for the purpose of alleviating human suffering, eradication of illiteracy and poverty and imparting of sound education with opportunities for research, etc. Accordingly, the plaintiff-Trust is formed by executing a Deed of Trust, dated 09.02.1983 consisting of Trustees and the said Trust Deed was registered as Document No.34 of 1983 before the Sub-Registrar, T.Nagar on 09.02.1983.

3. The Trust purchased agricultural land in S.No.351 ad-measuring an

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extent of Acres 46.70 cents, vide sale deed in Document No.703 of 1983, dated 14.03.1983 situated in Maduravoyal, Mathura Alapakkam Village, Saidapet Taluk, Chingleput District, within the Registration District of South Madras and Sub-Registration District of Virugambakkam. In this property, a School, namely Vailankanni Matriculation Higher Secondary School is run by the Trust for the past 35 years and the income derived out of the same is meant for achieving the charitable objects of the Trust. This School is now stated to be at loss due to Pandemic and less number of admission of students.

4. Dr.R.Kumaraswamy Pillai @ Dr.R.K.Pillai, Founder and Author, of the Trust, died on 20.05.2005 and his wife became the Managing Trustee of the plaintiff-Trust by Resolution, dated 07.10.2010 and subsequently, she also passed away. In the event of the Trust property not generating sufficient income, the Court may give permission to the Trustee to sell the property, and hence, the Trust has filed the present suit in C.S.D.No.80696 of 2021.

5. It is further stated that the Trust has been filing its Income Tax

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Returns regularly and income from the said School is only in paltry sum, which has become difficult to achieve the objects of the Trust.

6. It is further stated that from the extract of the Minutes of the meeting of the Board of Trustees of the plaintiff-Trust held on 07.10.2010, it could be seen that the Trustees unanimously voted to appoint Mrs.B.K.K.Pillai as Chairperson and it was also resolved to sell the schedule mentioned property to Mrs.Vailankanni (defendant in C.S.D.No.80695 of 2021) for a consideration of Rs.62,50,000/-. Accordingly, on 21.10.2010, a sale deed was executed conveying Western portion of the land measuring 0.06 cents comprised in Survey No.351/1B Part, 0.04 cents comprised in Survey No.352/2A1B Part and 0.09 cents comprised in Survey No.352/1A1A1B Part, in altogether, Acres 0.19 cents or 8276 Sq.Ft. and the same was registered as Document No.5670 of 2010 before the Sub-Registrar, Virugambakkam. The said sale consideration was paid by way of Cheque No.952518, dated 21.10.2010 drawn on Corporation Bank, T.Nagar Branch, Chennai-600 017.

7. Subsequent to the purchase, the respondent/defendant being the

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absolute owner of the schedule mentioned property, commenced construction of residential apartments. Since the land originally belonged to the Public Trust, the defendant could not sell the flats to the prospective purchasers and the nationalised Bank are reluctant to sanction loans to the prospective purchasers. Even the project could not be completed by the defendant owing to shortage of money. Hence, C.S.D.No.80695 of 2021 is filed to rectify the same as per Clause VIII of the sale deed, dated 21.10.2010. Unless this Court declares the said sale deed is legal as per the powers conferred with the Managing Trustee under the Deed of Trust, followed by Deed of Rectification, the defendant will be put to loss and hardship. Since the Trust is not generating sufficient income to run the School successfully, by selling the same, the objects of the Trust could be achieved. Hence, the Trust intends to sell a portion of the land and hence, permission is now sought for the same.

8. Heard the learned counsel for the plaintiffs and perused the materials available on record.

9. Since the present suits are filed under Section 92(1)(f) CPC, it is

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useful to extract the same:

"Section 92 CPC: 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---

....

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

...."

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10. Further, as per the decision of the Supreme Court reported in 2020

(13) SCC 50 (Ghat Talab Kaulan Wala Vs. Gopal Dass), Section 92 of the

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CPC has no applicability in respect of a suit instituted by a Trust. In this regard, it is useful to extract the relevant paragraph of the above order passed by the Honourable Supreme Court, which reads as follows:

"10. While deciding first substantial question of law, the suit was found to be not maintainable. The learned counsel for the appellant vehemently argued that the High Court erred in law in finding that the suit is not maintainable in view of Section 92 of the Code as such provision is meant for invocation of jurisdiction against the Trust. Section 92 of the Code has no applicability in respect of a suit instituted by a trust. It is pointed out that the appellant has filed suit through the Manager and Trustee as a private trust. However, during the pendency of the proceedings, the Trust has been registered as a Society on 29-6-2016 when Memorandum of Association of Ghat Talab Kaulan Wala Prabhu Lal Wala, Village Mundi Kharar, Tahsil Kharar, District S.A.S.Nagar was registered."

11. Since the plaintiff-Trust has its avowed objects to be achieved, this Court is of the view that the plaintiff is not entitled to file the suits based on the provisions of Section 92(1)(f) of CPC.

12. This Court has its own reservations about the filing of the applications seeking leave of this Court under Section 92 of CPC, for sale of the Trust property(ies) for the intended purpose. The scope and ambit of Section 92 CPC are different, as could be seen from the provisions of Section 92 CPC themselves, as extracted supra.

13. The provisions of Section 92 CPC are invoked only when there is breach of trust and for administration of the Trust, when there is any complaints of mal-administration and mis-management of the Trust. The directions are sought in the present suits, only in such event which is the focal and essence of Section 92 CPC.

14. As far as the sale of property(ies) by the Trust itself, is concerned, the Trust can neither be construed as interested person in terms of Section 92 CPC, nor there is any case of breach of trust, nor any requirement of this Court to administer the Trust on the allegation of breach of trust. Therefore, this Court is of the view that invocation of Section 92 CPC is not proper.

15. This Court also finds that the Registry of this Court has been following this procedure of insisting on the parties to invoke Section 92

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CPC for the purpose of seeking permission of this Court to sell the Trust property(ies) for the benefit of the Trust. Even in this case, when the applicants/plaintiffs/petitioners in the O.P. attempted to invoke Section 34 of the Indian Trust Act, the Registry returned the plaint/O.Ps., stating that Section 92 CPC alone be invoked. This Court, in consideration of various provisions, is of the view that Section 92 CPC cannot be invoked for the above said purpose. On the other hand, this Court is of the considered view that Section 7 of the Charitable and Religious Trusts Act, 1920, provide for issuing directions towards administration of the Trust property(ies). The powers vested in the Court under Section 7 of the said Act, 1920, are wide, and exercise of jurisdiction is relatable to giving opinion and advise and also issue directions. Section 7 of the said Act, 1920 is extracted hereunder:

"Section 7 : Powers of trustee to apply for directions: (1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created for public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction

any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

(2) The Court on a petition under sub-section (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the person interested in the trust, or to be published for information in such manner, as it thinks fit.

(3) On any date fixed under sub-section (2) or any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a

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reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made."

16. The proper course for any charitable and religious Trust is to have re-course to the above Section 7 of the Act, 1920, to be read with Section 34 of the Indian Trust Act, in case, they require to sell the property(ies) for the benefit of the Trust. Section 34 of the Indian Trust Act is extracted hereunder:

Section 34: Right to apply to Court for opinion in management of trust-property:- Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its

opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made."

17. In the above circumstances, invoking Section 92 CPC by the plaintiffs herein, may not be correct, and the procedures have been followed all these years, needs to be re-visited.

18. In any event, the petitioners in O.P., have fulfilled the requirements of Section 92 CPC, which has been hitherto applied in such

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matters. This Court, with a view to accept the long standing practice adopted by the Registry, directs the parties to the O.P.. filed under Section 7 of the Charitable and Religious Trusts Act, 1920, read with Section 34 of the Indian Trusts Act.

19. Prima-facie, this Court is of the view that the intention of the Trust herein is to sell the schedule mentioned properties, the proceeds of which are intended for achieving the charitable activities.

20. On being satisfied with the averments made in the affidavits filed in support of the O.P.D.Nos., the Registry shall number both the said O.P.D.No.64544 and 64545 of 2021, after rectifying the same, treating the same as one filed under Section 7 of the Charitable and Religious Trusts Act, 1920 read with Section 34 of the Indian Trusts Act.

21. Since the O.Ps. are now entertained as the issue involved in the complaints in C.S.D.,Nos.80696 and 80695 of 2021 filed under Section 92 CPC, and the O.P.s, the same, the said C.S.D.Nos. shall be returned by the Registry to the plaintiff(s), as the same are not maintainable. Consequently, the leave applications filed in the suits, shall stand closed. This Court is of the view that the O.P.D.Nos. are maintainable, by converting the same into

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one under Section 7 of the Act. 1920 read with Section 34 of the Indian Trusts Act.

22. For recording of evidence and marking of documents, list the O.P.D.Nos.64544 and 64545 of 2021 after numbering the same, if they are otherwise in order. Thereafter, list the O.Ps. before the Master of this Court for recording evidence on 12.11.2021.

23. No costs.

27.10.2021

Index: Yes/no
Speaking Order: Yes
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Registry is directed to circulate a copy of this order to the original side of this Court for future reference to number O.Ps. which seek permission to sell the properties belonging to public, religious and charitable Trust to be filed under Section 7 of the Charitable and Religious Trusts Act, 1920 read with Section 34 of the Indian Trusts Act and the hitherto practice of filing applications/suits under Section 92 CPC to be discontinued forthwith, as the said Section 92 CPC has no application in such matters.

Office to issue order copy by 08.11.2021 itself

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