



C.R.P.(PD).No.2786 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

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and

C.M.P.No.20220 of 2021

1.Yugpradhan Sri.Jindatsuri Jain Dadavadi
Rep. by its President, Sri Jain Swethamber Moorthy
Poojak Sangh,
Balaclava, Coonoor, The Nilgiris.

2.Sri Jain Swetamber Moorthy Poojak Sangh,
Rep. by its Secretary,
Coonoor, The Nilgiris.

3.President of Sri Jain Swetamber Moorthy
Poojak Sangh,
Coonoor, The Nilgiris.

.. Petitioners

Vs.

1.A.Ajith Kumar Jhabakh

2.G.Prasanchand Jhabakh

3.Vimalchand Jhabakh

.. Respondents



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PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the order dated 17.08.2021 passed in I.A.No.64 of 2016 in O.S.C.F.R.No.640 of 2016 on the file of the District Judge of the Nilgiris, Udhagamandalam.

For Petitioners : Mr.M.Arvind Kumar

ORDER

Challenge in this Revision is to the order of the trial Court/ Principal District Judge, Nilgiris, Udhagamandalam made in I.A.No.64 of 2016 in O.S.C.F.R.No.640 of 2016 granting leave to the respondents to initiate a suit under Section 92 of the Code of Civil Procedure seeking framing of Scheme for the administration of the constructive Trust, which was created by the donor under the settlement deed dated 20.10.1976.

2. According to the plaintiffs, the father of the 1st plaintiff Mr.Anopchand Jhabhak had executed a settlement deed on 20.10.1976



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settling the properties in favour of the deity and giving further directions as to the management of the properties. The 1st defendant which is a temple is managed by Sri Jain Swetamber Moorthy Poojak Sangh, which is the 2nd defendant. The plaintiffs, who are the close relatives of the original settlor, had came up with the suit, making various allegations of mis-management and non-compliance with the wishes of the original settlor, sought for leave to institute the suit under Section 92 of the Code of Civil Procedure.

3. Application for leave was resisted by the defendants contending that the suit is not in a representative capacity for the benefit of the Jain community, it is one espousing personal cause of the plaintiffs. It is also contended that the suit should have been filed in representative capacity. The learned District Judge rejected the defence and allowed the application.

4. Mr.M.Arvind Kumar, learned counsel appearing for the petitioners would vehemently contend that the requirements of Section 92 of the Code of Civil Procedure has not been satisfied, in as much as, there is no Trust created. He would also contend that the suit is one espousing the individual



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grievance of the plaintiffs, therefore, the suit under Section 92 of the Code of Civil Procedure will not lie. In order to maintain a suit under Section 92 of the Code of Civil Procedure, it is for them to show that there is a constructive Trust.

5. The very fact that the properties were settled on an idol with a direction to the 2nd defendant in the suit to manage the properties and do certain acts itself would show that a constructive Trust stood created and the same was being managed. The plaintiffs have come up with certain allegations and they seek framing of Scheme for management of the properties. The defendants would contend that the plaintiffs are not espousing the public cause.

6. I am unable to accede to the said submission of the counsel for the reason that the prayer in the suit is one for framing of Scheme for better management and administration of the properties. The plaintiffs are not seeking any personal relief for themselves. A suit under Section 92 of the Code of Civil Procedure need not be one in representative capacity, since



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Section 92 of the Code of Civil Procedure enables two or more persons interested in the Trust and having obtained a leave of the Court also institute a suit for various reliefs which come within clause (a) to (h) of sub-Section 1 of Section 92 of the Code of Civil Procedure. Framing of Scheme is one such relief which comes under Clause (g) of sub-Section 1 of Section 92 of the Code of Civil Procedure.

7. The scope of the application for leave under Section 92 of the Code of Civil Procedure has been explained by the Hon'ble Supreme Court in *R.M.Narayana Chettiar and another Vs. L.Lakshmanan Chettiar and others* reported in *1991 (1) SCC 48*, where the Hon'ble Supreme Court held that while examining application for leave, the Court cannot seek for proof. If the Court comes to a *prima facie* conclusion that a further determination or further examination is necessary, the Court can grant leave. The Hon'ble Supreme Court has even gone to the extent of saying that the leave should not be ordinarily refused in a suit under Section 92 of the Code of Civil Procedure. Of course, the counsel for the petitioners would invite me to merits of the matter to contend that there is no mis-management or mal-



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administration, in order to enable the Court to intervene and frame a Scheme.

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R.SUBRAMANIAN, J.

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8. Going into the merits of the case would affect the case of the parties and the progress of the suit before the trial Court. Hence, I do not propose to go into the merits of the case and I do not think the trial Court could be faulted for having granted leave. Therefore, the Revision fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

20.12.2021

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Index : No

Speaking order

To

The District Judge, Nilgiris,
Udhagamandalam.



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