



C.R.P.(PD).No.2589 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2589 of 2021

and

C.M.P.No.19199 of 2021

1.T.Marappan

2.Vadivelu

3.A.A.Thangavelu

.. Petitioners

Vs.

Knowledge Institute of Technology Trust

Rep by its,

President R.Kumarasamy, Trustee/ President,

KIOT Campus, Kakapalayam,

Salem – 637 504.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed by the III Additional District Judge, Salem passed in I.A.No.5 of 2019 dated 05.07.2021 in O.S.No.289 of 2019 and to allow the above petition in I.A.No.5 of 2019 dated 05.07.2021 in O.S.No.289 of 2019 and thus reject the plaint in O.S.No.289 of 2019.

For Petitioners : Mr.R.Ganesan



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ORDER

WEB COPY Challenge in this Revision is to the order of the trial Court dismissing the application filed under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure seeking rejection of the plaint in O.S.No.289 of 2019.

2. The suit was filed by the respondent Trust seeking the following injunctive reliefs:

a) restraining the defendants from writing letters to the Banks or by any other means preventing the plaintiff Trust from operating the Bank accounts by R.Kumarasamy the President, the Secretary V.Sureshkumar and Treasurer N.P.Sivaprasath as per the resolution of the Trust dated 19.05.2019 by means of permanent injunction,

b) restraining the defendants from in any manner interfering with the administration of the College namely “Knowledge Institute of Technology” and “Knowledge Business of School” and other entities by the plaintiff Trust by means of permanent injunction and

c) directing the defendants to pay the cost of the suit.



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3. The suit is by the Trust itself and the defendants are some of the Trustees who had been office bearers of the Trust earlier. Claiming that the defendants are acting against the interest of the Trust and are preventing the present office bearers of the plaintiff Trust from carrying out day to day activities of the management, the plaintiff Trust has sought for the injunctive reliefs.

4. It appears that along with the suit an application under Section 92 of the Code of Civil Procedure was filed and leave to file the suit was obtained. Upon service of notice, the defendants filed the instant application in I.A.No.5 of 2019 seeking rejection of plaint on the ground that the suit does not disclose cause of action and the suit is liable to be rejected since the same is barred under Section 92 of the Code of Civil Procedure. The main contention was that the suit under Section 92 of the Code of Civil Procedure can be initiated by not less than two persons and the suit filed by single individual is not maintainable.



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5. The learned Additional District Judge, who heard the application, dismissed the same, on a conclusion that the fact that the suit filed by single individual cannot be a ground for rejection of the plaint, as the same is not bar for the suit. He had also concluded that the plaint discloses sufficient cause of action. The learned District Judge relied upon the judgment of this Court in **CDJ 2011 MHC 423**.

6. I have heard Mr.R.Ganesan, learned counsel appearing for the petitioner.

7. Mr.R.Ganesan, would vehemently contend that the learned District Judge was not right in dismissing the application filed under Order VII Rule 11 of the Code of Civil Procedure. According to him, to maintain a suit under Section 92 of the Code of Civil Procedure, there must be more than one plaintiff, since the very Section requires that the Advocate General, or two or more persons who have interest in the Trust to maintain a suit under Section 92 of the Code of Civil Procedure. Therefore, according to him, the



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suit as framed is not maintainable under Section 92 of the Code of Civil Procedure. Hence, the plaint must be rejected.

8. I have considered the submissions of the counsel. A perusal of the plaint and the reliefs sought for in the suit would show that the suit is not one under Section 92 of the Code of Civil Procedure. Section 92 provides for a suit against the Trust or the Trustees, wherein, certain specific reliefs can be sought for under sub-clause (a) to (h) of the said Section. The injunctive reliefs that are sought for in the present suit, do not come within any of those headings. Moreover, the present suit is one by the Trust itself, represented by its President, against some of the Trustees, who according to him, are acting against the interest of the Trust. Therefore, at no stretch of imagination, the suit can be held to be one under Section 92 of the Code of Civil Procedure.

9. The mere fact that the plaintiff, on a wrong understanding of the scope of Section 92 of the Code of Civil Procedure, sought for the leave to sue under Section 92 and the Court also granted leave, would not convert



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the original suit into one under Section 92 of the Code of Civil Procedure.

If the suit is not one under Section 92, the suit as filed by the plaintiff is perfectly maintainable. Therefore, the contention of the petitioner that the suit filed by a single individual under Section 92 cannot be a ground for rejection of the plaint.

10. The other ground that is raised by the counsel is that the suit does not disclose cause of action. As far as the disclosure of cause of action is concerned, the Hon'ble Supreme Court and this Court have held that the Court shall go only by the plaint and the allegations in the plaint shall be presumed to be correct for the purpose of deciding on the availability of cause of action or otherwise. The plaint accuses the defendants of interfering with the day to day management of the Trust. Therefore, the allegation if taken to be true, there is definitely cause of action in the suit. The second ground is also not available in the case on hand.

11. Though the learned District Judge had dismissed the petition on a different ground, since the conclusion appears to be just, I do not see any



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ground to interfere with the said conclusion, in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The Revision therefore fails and it is accordingly **dismissed**. The trial Court shall proceed to dispose of the suit without being influenced by any of the observations made in this order or in the order impugned in this Revision. No costs. Consequently, the connected miscellaneous petition is closed.

30.11.2021

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Internet :Yes

Index : No

Speaking order

To

The III Additional District Judge, Salem.



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R.SUBRAMANIAN, J.

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