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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 21st DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

A.No.3655 and 3656 of 2017

in

C.S.Diary Nos.10685 of 2007

1. Miss.Roseann Rajan,
D/o P.N.Nagarajan
No.241/5, Rohini Flats,
7th Avenue, Anna Nagar West,
Chennai 600 101.

2. P.N.Nagarajan
S/o P.A.Neelakantan
No.241/5, Rohini Flats,
7th Avenue, Anna Nagar West,
Chennai 600 101.

...Applicants/Plaintiffs

.Vs.

1. The Church of South India,
Represented by its Secretary,
No.5, Whites Road,
Royapettah, Chennai-600 014.

2. The Church of South India Trust Association,
Represented by its Secretary,
No.5, Whites Road, Royapettah,
Chennai-600 014.

3. Rev.Dr.D.Rathnakara Sadananda,
Secretary, The Church of South India,
No.5, Whites Road, Royapettah,
Chennai-600 014.



4. Rt.Rev.Thomas K.Oomman,
Moderator, The Church of South India,
No.5, Whites Road, Royapettah,
Chennai-600 014.
5. Rev.Dr.Vadapalli Prasad Rao,
Deputy Moderator and Trustee,
The Church of South India,
Epiphany Cathedral Compound,
Dornakal, Warrangal,
Telungana State-506 381.
6. Mr.C.Robert Bruce, Trustee,
Treasurer, The Church of South India,
No.5, Whites Road, Royapettah,
Chennai-600 014.
7. Rt.Rev.G.Dyvasirvadam,
Bishop, representing The Church of South India,
St.Andrews Cathedral Compound,
Contonment Main Road,
Machilipattinam-531 002.
8. Rev.K.C.Richard Durai,
Vice-President,
L-30, Periyar Nagar,
Erode, Tamilnadu-638 001.
9. Dr.Bennet Abraham,
Trustee, Representing the Church of South India,
Dr.Somervell Memorial,
C.S.I. Medical College,
Karakonam, Thiruvanandapuram-695 504.
10. Prof.Dr.B.Vimal Sukumar,
Trustee, The Church of South India,
Plot No.127, Road No.3,
Dhanalakshmi Colony,
Mahedra Hills, Maredpalli,
Secunderabad-500 026.



11. Mr. Athur Sadhanandam,
Trustee, Representing The Church of South India,
No.30, 5th Bharadhidasan Street,
Madhi Nagar Extension,
Vellore-632 006.

12. Mr. Udayaraj Kaunds,
Trustee, Representing The Church of South India,
No.1101, Serenity Apartments,
Opp. Bijai Church Hall,
Mangalore-575 004, Karnataka.

13. Mr. G. Samuel Sudhir,
Trustee, Representing The Church of South India,
Bass Complex, Gopalreddy Road,
Governerpt, Vijayawada,
Andhra Pradesh - 520 002.

... Respondents/Defendants

A.No.3655 of 2021

Application praying that this Hon'ble Court be pleased to grant permission to Under Section 92 C.P.C. to institute the suit before this Hon'ble Court.

A.No.3656 of 2021

Application praying that this Hon'ble Court be pleased to grant me leave to sue under Clause-12 of Letter Patent Act, the defendants 5,7, and 8 to 13 who are outside the Jurisdiction of this Hon'ble Court, as defendants before this Hon'ble Court.



These Applications having been heard on 21.09.2021 in the presence of Mr.V.Kannan, advocate for the applicants in both applications and M/s.Adrian D Rozario, Advocate for the respondents 1 to 6, 7, 9 to 13 in both applications and upon reading the judges summons and the affidavit of P.N.Nagarajan filed in both applications and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto, and this Court observing that the leave to be sought under Section 92 CPC is a serious matter questioning the management and administration of the public charitable Trust, merely because the plaintiffs happened to be CSI Christian, they cannot be considered as 'interested persons' in terms of Section 92 CPC, from the pleadings and the materials, this Court does see that the plaintiffs are vindicating public interest, nor this Court finds any palpable breach of trust of the Trust properties, and noth the present applications suffer from various legal infirmities and also on merits, it appears that no case has been made out for consideration of the above two applications in favour of the applicants/plaintiffs and even otherwise, the suit has lost its relevance with reference to the prayer being sought in the plaint as on date and it would be a travesty of adjudication if the suit is to be entertained any further and to deal with the same,



it is ordered as follows:-

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That the A.Nos.3655 and 3656 of 2017 be and are hereby dismissed.

2. That the Suit in C.S.Diary.No.10685 of 2017 shall stand rejected.

3. That there shall be no costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
21st DAY OF OCTOBER 2021.

Sd./-

ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies
of the Orders/Judgments/Decrees in this format.



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15.11.2021

A.No.3655 and 3656 of 2017
in
C.S.Diary Nos.10685 of 2007

ORDER :-

DATED: 21.10.2021

THE HON'BLE MR. JUSTICE
V.PARTHIBAN

FOR APPROVAL: 15.11.2021

APPROVED ON: 15.11.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 21.09.2021

Orders Pronounced on : 21.10.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application Nos.3655 and 3656 of 2017

in

C.S.Diary No.10685 of 2017

1. Miss.Roseann Rajan,
D/o P.N.Nagarajan

2. P.N.Nagarajan
S/o P.A.Neelakantan

.. Plaintiffs in C.S.Diary No.10685 of 2017 &
Applicants in A.Nos.3655 and 3656 of 2017

Vs.

1. The Church of South India,
Represented by its Secretary,
No.5, Whites Road,
Royapettah, Chennai-600 014.

2. The Church of South India Trust Association,
Represented by its Secretary,
No.5, Whites Road, Royapettah,
Chennai-600 014.

3. Rev.Dr.D.Rathnakara Sadananda,
Secretary, The Church of South India,
No.5, Whites Road, Royapettah,
Chennai-600 014.

4. Rt.Rev.Thomas K.Oomman,
Moderator, The Church of South India,



No.5, Whites Road, Royapettah,
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No.30, 5th Bharadhidasan Street,



Madhi Nagar Extension,
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12. Mr.Udayaraj Kaunds,
Trustee, Representing The Church of South India,
No.1101, Serenity Apartments,
Opp. Bijai Church Hall,
Mangalore-575 004, Karnataka.

13. Mr.G.Samuel Sudhir,
Trustee, Representing The Church of South India,
Bass Complex, Gopalreddy Road,
Governerpt, Vijayawada,
Andhra Pradesh - 520 002.

.. Defendants in C.S.Diary No.10685 of 2017 and
respondents in A.Nos.3655 and 3656 of
2017

Plaint filed under Order IV Rule 1 of the Madras High Court Original
Side Rules, read with Order VII Rule 1 of the Civil Procedure Code (CPC)
and Section 92 CPC, and numbered as Civil Suit Diary No.10685 of 2017,
filed, and praying for judgment and decree as follows:

(a) to remove the defendants 3 to 13 all the present Trustees from
defendants Nos.1 and 2;

(b) to appoint a Board of Trustees for defendant Nos.1 and 2

(c) for Permanent injunction restraining the defendants 3 to 13 present
Trustees in any manner, interfering with administration of the defendant
Nos.1 and 2 institutions; and

(d) to direct the defendants 3 to 13 Trustees to produce true accounts
relating to trust properties of defendant Nos.1 and 2 institutions;

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Judge's summons issued under Order XIV Rule 8 of the Original Side
Rules of this Court, read with Section 92 CPC and Application No.3655 of
2017 in C.S.Diary No.10685 of 2017, filed praying to grant permission
under Section 92 CPC to institute the suit before this Court.

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<https://hcservices.ecourts.gov.in/hcservices/>

Judge's summons issued under Order XIV Rule 8 of the Original Side
Rules of this Court, read with Clause 12 of the Letters Patent and
Application No.3656 of 2017 in C.S.Diary No.10685 of 2017, filed praying



to grant leave to sue under Clause 12 of the Letters Patent, the defendants 5, 7 and 8 to 13, who are outside the Jurisdiction of this Court, as defendants before this Court.

For applicants : Mr.V.Kannan in both the applications

For respondents:M/s.Adrian D Rozario for respondents 1 to 6, 7 & 9 to 13

in both the applications

Mr.S.Bharathi Rajan for R-8 in both the applications

COMMON ORDER

The suit in C.S.Diary No.10685 of 2017 filed for the following reliefs:

(a) to remove the defendants 3 to 13, all the present Trustees, from
defendants Nos.1 and 2;

(b) to appoint a Board of Trustees for defendant Nos.1 and 2;

(c) for permanent injunction restraining the defendants 3 to 13, present Trustees, in any manner, interfering with administration of the defendant Nos.1 and 2 institutions; and

(d) to direct the defendants 3 to 13 / Trustees to produce true accounts relating to Trust properties of defendant Nos.1 and 2 institutions.



filed by the plaintiffs to grant permission under Section 92 of the Code of Civil Procedure (for short, 'CPC') to institute the suit before this Court, and in the affidavit filed in support of the said application, which is sworn to by the second plaintiff on behalf of himself and also on behalf of the first plaintiff, it is stated as follows:

The main suit is filed against the Church of South India (for short, CSI), which is a Public Charitable Religious Trust. The second plaintiff is a member of the C.S.I. Emmanuel Church at Anna Nagar. The second plaintiff is the person interested in proper administration of the said Trust, as per the constitution of the C.S.I. He has a substantial interest in the C.S.I. Trust. The main object of filing the present suit is for public good. The Church and its immovable properties are put to use by the Trustees not for the object intended to be caused on endangering the very existence of the Church itself. The suit is filed in a representative capacity to facilitate the decision of questions in which large number of persons are interested and have common grievance. The present leave is sought to file the scheme suit against the second respondent-Trust and the Trustees to put an end to the acts of devastation and to install faith in the beneficiaries. Mis-management by the Trustees is well known to the public and misappropriation of the Trust monies had gone to intolerable limits. Hence, the present Application



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3. Application No.3656 of 2017 in C.S.Diary No.10685 of 2017 is filed to grant leave to sue the defendants 5, 7, and 8 to 13 who are outside the Jurisdiction of this Court, as defendants before this Court and in the affidavit filed in support of the said application, is sworn to by the second plaintiff, stating as follows:

The suit is filed against the Church of South India, which is a Public Charitable Religious Trust. Since the defendants 5, 7 and 8 to 13 are outside the Jurisdiction of this Court and as the Head Office of those defendants happen to be within the jurisdiction of this Court, the present application in A.No.3656 of 2017 is filed for the relief stated supra.

4. In response to the applications, a common counter affidavit has been filed stating that no useful purpose will be served by granting permission under Section 92 CPC. The common counter affidavit contains detailed averments stating that the present two applications are not maintainable as on date.

5. According to the learned counsel for the respondents 1 to 6, 7 and 9 to 13, the main prayer in the suit, namely removal of defendants 3 to 13 as

Trustees, has become infructuous, as they have already served out their



term. By passage of time, all the other prayers in the suit also have become infructuous and there is no cause of action as on date in the suit to be maintained. It is also mentioned in the counter affidavit that no application seeking leave/permission has been sought under Order 1 Rule 8 CPC, has been filed, which is mandatory, as the second defendant-Trust is an unregistered body.

6. On behalf of the applicants/plaintiffs, it is submitted that the cause of action would still survive for consideration. According to the plaintiffs, all is not well with the administration of the respondents 1 and 2/defendants 1 and 2 /Trusts and therefore, leave has become necessary and imperative.

7. In support of his submissions, the learned counsel for the applicants, relied on the following decisions, and the relevant portion of the same are extracted hereunder:

(i) 2017 (5) LW 720 (Madras High Court) (Ch.Mahesh Kumar Reddy and others Vs. Sathyanarayana Charitable Trust and others):

"16. In the plaint the plaintiffs are alleged certain facts which according to them would constitute breach of trust. Whether they are able to prove those facts and the actual breach of trust is not a question that is to be considered at the threshold. The same will have to depend on the evidence that is to be let in. Even in Aurobindo Ashram Trust's case referred supra (Aurobindo Ashram Trust and othres Vs. R.Ramanathan and



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others (2016 (4) LW 117 = 2016 (6) SCC 126)), the Honourable Supreme Court has only reiterated the principles laid down in the Swami Paramatman and Saraswati's case (Swami Paramatman and Saraswati and another Vs. Ramji Tripathi and another - 1974 (2) SCC 695) and as well as the Vidyodaya Trust case (Vidyodaya Trust Vs. Mohan Prasad R. and others = 2008 (2) LW 724 = 2008 (4) SCC 115)), referred to supra, wherein it has been stated that the suit under Section 92 of the Code of Civil Procedure, is the suit of the special nature and unless it is shown that there was a breach of trust or the relief sought for is within frame work under Section 92 of the Code of Civil Procedure, such a suit could not be entertained. The fact that the plaintiffs are the grand children and the daughter-in-law of the founder of the trust is not in dispute. The fact that they have made certain allegations regarding breach of trust is also not in dispute. The only contention of the learned counsel for the respondents is that the prior conduct of the plaintiffs would show that what they are seeking as a relief is an espousal of their own cause and not the cause of the public. I am afraid such an inference cannot be drawn at this juncture in the absence of any evidence being let in the suit itself.

"20. On the averments made in the plaint when the plaintiffs are alleged breach of trust, I am of the considered opinion that they have made out a case of grant of leave. While considering the question of grant of leave, the Court cannot look for concrete evidence, which would 100% ensure that the plaintiffs would be entitled to a decree as prayed for. The grant of leave essentially based on prima facie material and the allegations made in the plaint in my considered opinion would constitute a prima facie material.

21. I do not think, it would be proper for me to go into the nature of the material and pronounce even a prima facie conclusion regarding the alleged breach of trust. I am making it clear that I am not going into the correctness or otherwise of



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the allegations made in the plaint. Taking the allegations in the plaint as they stand, I am of the considered opinion that the plaintiffs have made out the grant of leave under Section 92 of the Code of Civil Procedure, to file the above suit."

(ii) 2018 AIR CC 2102 (MAD) = 2018 (2) CTC 721 (Madurai Bench of Madras High Court) (A.R.Rangaraj Vs.Aranamanai Raman Chettiar Chathiram and another):

"13. It is contended that the scope of Section 92 is wide in nature and it covers to set right the irregularities and illegalities committed by the trustees of the public trust. Therefore, the scope of Section 92 cannot be confined, so as to institute a fresh suit for the purpose of recovering the properties, belonging to the public trust. In this regard, it is contended that the Hon'ble Supreme Court of India, held that "modification clause in a scheme decree is both appropriate and convenient so that the scheme may be amended or modified speedily for better administration without taking recourse to the cumbrous procedure of a suit and there is nothing in Section 92 against it." "

15. The Courts can interfere, when the terms and conditions of the trust are tampered with by the trustees or by any other person. ...

16. This Court is of an opinion that the ultimate object of the public trust is to be protected in all respects. The ultimate object of the public trust is to provide charities, which are to be done on enquiries. The charities are being performed continuously on the occasions specified. Thus, there cannot be any hindrance in respect of carrying out the very purpose and objects set out in the trust deed. Taking into consideration of the very object of the terms and conditions of the public trust, this Court is of an opinion that the properties dealt with by the managing trustee and one trustee, more



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specifically, by way of exchange deed in favour of the wife of the said trustee namely Mr.Ramasamy cannot be said to be in order.

21. Therefore, the very contention that the trustees had the knowledge and they have accorded consent for transferring the properties cannot have any merit consideration.

56. Thus, this Court is of a clear opinion that whoever files a petition in respect of public trusts and its properties are to be treated as informers and the Court shall deal with the matter in order to protect and secure the properties or otherwise in respect of public trust.

57. In this view of the matter, the technical grounds of maintainability raised by the respondents under Order 1, Rule 1 and Order 2, Rule 2, the petitions filed by the trust need not be entertained. Whether the petition was filed by the managing trustee of the trust or by the public or by the third party, then the same is to be dealt in accordance with the facts and circumstances and the ultimate object and the endeavour of the Court is to see that the original covenants in the public trust deed is protected in all respects, and also with reference to the scheme decree."

8. The above decisions relied on by the learned counsel for the applicants relate to seeking leave to sue under Section 92 CPC.

9. This Court has gone through the pleadings, averments in the application, draft plaint, the counter affidavit, perused the materials available on record and the above decisions.



10. This Court is fully convinced that there is no cause of action as on date calling for any adjudication and no triable issue exists as on date in the suit to entertain in the first place.

11. In the above context, it is useful to refer to the detailed contents of the counter affidavit filed by the respondents/defendants to hold that no issue survives for consideration before this Court as on date. The relevant paragraphs of the counter affidavit are extracted hereunder:

"5. Be that as it may, the applicants have filed the proposed suit under Section 92 of the Code of Civil Procedure, 1908 for a judgement and decree *"removing defendants - 3 to 13 all the present trustees from defendants No.1 and 2"* and for such other reliefs as prayed for in the suit. It is pertinent to state that the members of the 2nd respondent Trust shall be elected by the Synod of the Church with ex-officio members, all of whom elect the members of a Committee of Management (Board of Directors) which shall manage the business and affairs of the 2nd respondent Trust. The respondents- 3 to 13/defendants - 3 to 13 are those of the Committee (Directors) and shall retire periodically but shall be eligible for re-election. While so, the respondents - 3 to 9 and 12/defendants - 3 to 9 and 12 have retired to the knowledge of the applicants and the proposed suit is not maintainable as against them. With due respect, no useful purpose will be served by granting permission to file the proposed suit under Section 92 of the Code and this Hon'ble Court may be pleased to refuse such permission on this ground alone.

6. With reference to the reasons for the proposed suit in paragraphs 11 to 17 of the plaint,



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these respondents state that they do not render the suit to be sustainable on merits. In paragraph 11 of the plaint, all the allegations are general in nature and no particular incident has been stated against any of these respondents. That apart, the report in the Economic Times published on 7.1.2016 about an inspection audit by the Registrar of Companies in the year 2015/series of income tax audits since 2010 and the like in paragraph 12 of the plaint are vague statements of the applicants and will not give them a right to file the suit in question. Moreover, the alleged proceedings under the Companies/Income Tax Act against the respondents are a different matter and cannot give the applicants the right to seek the removal of the respondents - 3 to 13. In paragraph 13 of the plaint, the applicants have alleged about the closure of some hostels which might have been closed by administrative orders of the respective dioceses. And, had it been that the applicants were aggrieved, they ought to have proceeded against the respective dioceses/Bishops who would have reasons for the closure, if it was true. The same is the case with paragraph 14 of the plaint where the applicants allege that certain institutions were given to private parties. They have not given any details about the private parties who are running the institutions and a bald statement will not enable this Hon'ble Court to frame any issue to be decided in relation thereto.

7. The further allegations in paragraph 15 of the plaint that the bishops have increased their salaries and such other allegations are non-issues for the purpose of deciding the proposed suit. As regards paragraph 16 of the plaint, the parties arrayed as accused in C.C.No.3195 of 2010 on the file of the Hon'ble II Metropolitan Magistrate at Egmore are not the respondents herein. It is therefore irrelevant to the present case and cannot be a reason to maintain the proposed suit against these respondents. This includes paragraph 17 of the plaint where the applicants allege that the



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bishopric election for the Madras Diocese was not conducted for one year and the like.

8. In fine, the plaint does not disclose any triable issue to be decided by this Honourable Court for the removal of the respondents - 3 to 13 and for the grant of such other reliefs, much less has any breach of any express or constructive trust been made out. All the allegations have nothing to do with the respondents or is the proposed suit within the scope of Section 92 of the Code. The entire suit is on the basis of mere allegations with no pleadings or proof whatsoever to substantiate the same. It is equally pertinent to state that the applicants are daughter and father respectively and have filed the proposed suit for publicity and not for the vindication of public rights. They have no real, substantial or existing interest in the trust and their only interest is to harass the respondents for reasons best known to them. All the more, there is no case for any mismanagement/misappropriation and the proposed suit itself is wholly misconceived for the reasons noticed above.

9. The 1st respondent Church is also an unincorporated body with about 45-lakh members but no leave under Order I, Rule 8 of the Code has been sought for or obtained in respect thereof. As stated earlier, the 1st respondent Church is governed by its Constitution and the applicants have not invoked the alternative remedy provided for in Chapter XI of the said Constitution as to the Discipline of the Church and Settlement of Disputes, especially when they have made allegations against dioceses/bishops and others. In any case, the very foundation of the proposed suit under Section 92 of the Code as to breach of trust is not substantiated or have the applicants made out a case for any direction of this Hon'ble Court for proper administration of the trust.

10. It would be clear from the foregoing that there is no cause of action for the proposed suit or are the applicants/plaintiffs entitled to the reliefs claimed therein, much less is it a case for invoking



Section 92 of the Code and Clause 12 of the Letters Patent in the manner sought to be done. With due respect, the present applications in connection with the proposed suit are not maintainable and may be dismissed with costs."

12. From the above contents of the counter affidavit, it could be seen that as stated by the respondents 1 to 7 and 9 to 13/defendants 1 to 7 and 9 to 13, no purpose would be served to consider the present leave to sue application under Section 92 of the CPC. The suit has been filed in 2017 against the removal of certain Trustees and due to passage of time, the Trustees are stated to have retired after serving their term.

13. In fact, even on merits of the case, the above averments if taken into consideration, cumulatively, the applications seeking leave are lacking in bona-fides and also that Order 1 Rule 8 of the CPC application had not been filed. The leave to be sought under Section 92 CPC is a serious matter questioning the management and administration of the public charitable Trust. Merely because the plaintiffs happened to be CSI Christian, they cannot be considered as 'interested persons' in terms of Section 92 CPC. From the pleadings and the materials, this Court does see that the plaintiffs are vindicating public interest, nor this Court finds any palpable breach of trust of the Trust properties. Both the present applications suffer from



various legal infirmities and also on merits, it appears that no case has been made out for consideration of the above two applications in favour of the applicants/plaintiffs.

14. Even otherwise, the suit has lost its relevance with reference to the prayer being sought in the plaint as on date and it would be a travesty of adjudication if the suit is to be entertained any further and to deal with the same.

15. For all the above said reasons, both the applications shall stand dismissed. Consequently, the suit in C.S.Diary No.10685 of 2017 shall stand rejected. No costs

Sd./-V.P.N.J

21.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.