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A.No.310 of 2021 in
A.No.1909 of 2020 in
C.S.No.296 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2021

Delivered on : 10 .02.2022

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

A.No.310 of 2021
in
A.No.1909 of 2020
&
O.A.Nos.555 of 2020 and A.No.2567 and 2568 of 2020
in
C.S.No.296 of 2020

Rt. Rev A.C. Solomon
Bishop
Diocesan Office,
10-3-165, Old Lancer Lane,
Secuderabad – 500025
Telengana.

...Applicant/10th Respondent/ 10th defendant

Vs

1.M.Satish Chandra

2.Ch.Jayapaul

3.D.George Samuel

4.Meesa Samuel Wesley

5.Pulkuri Simeon Titus

...Respondents 1 to 5/ Applicants/plaintiffs



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- 6.Church of South India Synod
Represented by its Moderator
CSI Synod Secretariat,
CSI Center,
No.5, Whites Road,
Royapettah,
Chennai – 600 014.
- 7.Church of South India Synod Executive Committee
Represented by its General Secretary
CSI Synod Secretariat,
CSI Center,
No.5, Whites Road,
Royapettah,
Chennai – 600 014.
- 8.Church of South India Synod Working Committee
Represented by its General Secretary
CSI Synod Secretariat,
No.5, Whites Road,
Royapettah,
Chennai – 600 014.
- 9.Moderator
Church of South India
CSI Synod Secretariat,
CSI Center
No.5, Whites Road,
Royapettah,
Chennai – 600 014.
- 10.Board of Appointment of Bishop for Medak Diocese
Represented by its Chairman/Moderator
CSI Synod Secretariat, CSI Center,



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No.5, Whites Road,
Royapettah,
Chennai – 600 014.

- 11.CSI Medak Diocese represented by its Bishop
Diocesan Office,
10-3-165, Old Lancer Lane,
Secunderabad – 500025
Telengana
- 12.CSI Medak Diocese Council represented by its Bishop/President
Diocesan Office,
10-3-165, Old Lancer Lane,
Secunderabad – 500025
Telengana
- 13.CSI Medak Diocese Executive Committee represented by its Bishop/
President
Diocesan Office,
10-3-165, Old Lancer Lane,
Secunderabad – 500025
Telengana
- 14.CSI Medak Diocese Administrative Committee represented by its
Chairman,
Diocesan Office,
10-3-165, Old Lancer Lane,
Secunderabad – 500025
Telengana. .. Respondents 6 to 14/Respondents 1 to 9/
Defendants 1 to 9

PRAYER : To revoke the leave granted to the Applicants in Application
No.1909 of 2020 order dated 08/09/2020.



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For Applicant : Mr.A.R.Karunakaran
For Respondents : Mr.A.Immanuvel for R1 to R5
Mr.Adrian D.Rozario for R6 to R14

ORDER

The applicant in A.No.310 of 2021 is the 10th defendant in the suit and respondents 1 to 5 in this application are the plaintiffs. The plaintiffs have filed the above suit for the following reliefs:

“ [a] For a declaration to declare that the tenth defendant cannot hold the post of Bishop of six defendant CSI Medak Diocese;

[b] For declaration to declare that second defendant CSI synod Executive Committee Resolution No.EC:2006-24 dated 11 & 12th October 2016 confirming the selection and appointment of tenth defendant as Bishop of CSI Medak Diocese is illegal, null and void;

[c] Permanent injunction restraining the tenth defendant from functioning as Bishop of six defendant CSI Medak Dioces;

[d] to appoint an administrator to administer six defendant CSI Medak Diocese to convene the six defendant Medak Diocesan Council, to elect a panel of pastors for the Bishopric of six defendant CSI Medak Diocese and submit the same to second defendant Synod Executive Committee to elect



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and appoint a suitable candidate from the panel of Bishop of sixth defendant CSI Medak Diocese;

[e] to appoint a statutory auditor to audit the accounts of sixth defendant CSI Medak Diocese from 01.04.2016 to 31.03.2019 and submit the same to this Honourable Court for further action;

[f] and pass such other further orders as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice;

[g] to award the cost of the suit.

2. For the sake of clarity and convenience, the parties are described as applicant on one side and plaintiffs/defendants on the other side. The plaintiffs have filed an application in A.No.1909 of 2020 along with the suit seeking leave of this Court to sue under Section 92 of CPC. A learned Judge of this Court vide order dated 08.09.2020 has passed the following order granting leave as prayed for in the said application:

“The plaintiff is a Public Trust and the suit is filed for removing the 10th defendant from the post of Bishop of the 6th defendant Diocese which is also a Public Trust. Therefore the suit comes within the purview of Section 92(1)(a) of the Civil Procedure Code. Hence, the leave is granted.”



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3. As against the grant of leave, the present application in A.No.310 of 2021 has been filed seeking to revoke the leave granted by this court. According to the applicant in this application seeking to revoke the leave, the leave as sought under section 92 CPC is not maintainable as the mandatory pre-requisite conditions to invoke Section 92 have not been fulfilled with reference to the prayer as sought in the suit.

4. According to the affidavit filed in support of the present application, leave to sue under Section 92 can only lie against public charitable or religious trust and there must be a breach of any express or constructive trust created for public purposes. The present suit primarily questioning the validity of the election of the 10th defendant, who is the applicant herein, cannot stated to attract Section 92 of CPC and therefore, the leave has been granted by this Court on a mistaken or erroneous understanding of the scope and ambit of the prayer, as sought in the suit.



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5. Prerequisites that are mandatory to exist before invoking Section 92 of CPC are stated in the affidavit as under:

“(i) There must be a trust, express or constructive, for public purposes of a charitable or religious nature.

(ii) The plaint must allege a breach of trust or necessity for direction as to the administration of that trust.

(iii) The suit must be in the interests of the public, i.e., it must be brought in a representative capacity for the benefit of the public and not to enforce individual rights; and

(iv) The relief claimed should be one of the reliefs set out in the section.”

6. In the absence of fulfillment of the above statutory requirements, the leave sought under Section 92 CPC is misconceived and therefore not maintainable in law. The leave granted by this Court overlooking various legal parameters that ought to have been taken into consideration by this Court by the learned Judge cannot hence be countenanced in law. In such circumstances, the leave granted by this Court is liable to be recalled and revoked.

7. On behalf of the Respondents 1 to 5/plaintiffs, a counter affidavit has been filed, in response to the application. In the counter



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affidavit, the facts which led to the filing of the suit have been stated in detail. As far as the fundamental legal objection as to the maintainability of the leave application under Section 92 of CPC, what is stated in the counter affidavit in substance is that, any Church is a public religious trust and the 1st defendant Church of South India (CSI) is a public religious trust, besides 6th defendant CSI Medak Diocese is also a public religious trust. Since the plaintiffs are filing the suit for removal of 10th defendant from the post of bishop of CSI Medak Diocese, which is a public religious trust, the plaintiffs have filed an application under Section 92 (1)(a) of CPC. In effect, the answer to the legal objection raised by the applicant (10th defendant in the suit) is that the Church of South India being a public religious trust and the individual diocese is also being a public religious trust, the leave is required under Section 92 of the CPC before instituting the suit touching upon the affairs of the CSI and the individual diocese, the 6th defendant. According to the counter affidavit by the plaintiffs, unless the leave is obtained from this Court, they may not be able to maintain the suit against the defendant trusts.



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8. In the above factual and legal backdrop, rival arguments have been advanced by the counsels appearing for the parties with respective supportive materials and case laws.

9. The learned counsel for the applicant Mr.A.R.Karunakaran, would at the outset submit that the leave sought under Section 92 by the plaintiffs was completely misconceived and incorrect, considering the nature of prayers, that are sought in the suit. He would particularly lay emphasis on the fact that the principal grievance as expressed in the plaint is only against the selection and appointment of the 10th defendant, the applicant herein as the bishop of the 6th defendant diocese. According to the learned counsel, from the entirety of the averments as contained in the plaint, the challenge is only against the 10th defendant's appointment, which is nothing but mere election dispute confined to the office of the bishop of a diocese and therefore, the question of trust being involved in the dispute did not arise at all.

10. The learned counsel would submit that obtaining leave under Section 92 is a very serious matter where the core trust activities like maladministration or mismanagement should be the subject matter of the



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lis. But any grievance that may arise on a day-to-day administration of the Church, relating to appointments of individuals to various positions in the Bishopric administration cannot stated be against the activities of the trust. According to the learned counsel, Section 92 envision a much larger picture governing a trust and the conduct of its business. He would particularly stress the fact that the said Section can never be invoked to settle personal scores of the plaintiffs, as against the 10th defendant, the applicant herein.

11. The learned counsel would in essence contend that there are two important issues that arise for consideration of this Court, i) whether the Church would be called a public religious trust at all attracting Section 92 of CPC and ii) whether in the face of the prayers and the averments as contained in the plaint, invocation of Section 92 is valid and maintainable or not?

12. As far as the first issue is concerned, the learned counsel would submit that CSI is an unregistered body and it has several dioceses under its control, which are again unregistered entities. The persons who have



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been associated with the bodies / entities have established themselves in a particular form of worship (Protestant) within the larger faith of Christianity. Therefore, there is no express or constructive trust created or contemplated for these plaintiffs to invoke Section 92 of CPC. According to the counsel, the application could be decided even without going into larger aspect of rendering a finding as to whether the CSI of the individual diocese is a public religious and charitable trust or not?

13. While adopting the above position, the learned counsel would submit that the plaintiffs' grievance is not relating to any mismanagement or maladministration of the trust and its properties by any trustees of the church warranting intervention of this Court to administer the trust by framing a scheme in terms of Section 92 CPC. Nowhere in the plaint this Court could find averments relating to the affairs or management of the trust, be it the apex body, namely CSI of South India or the individual diocese, the 6th defendant. In such factual circumstances, seeking leave of this Court under Section 92 is unwarranted in law.



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14. The learned counsel in the course of his submissions would also submit that if at all any suit to be filed in the subject matter of *lis*, the same has to be filed in a representative capacity under Order I Rule 8 of CPC as the respondents, namely Church of South India (1st defendant) and the 6th defendant Diocese are unregistered bodies. According to the learned counsel, it is always open to the plaintiffs to have recourse to a regular suit for assailing the nomination and appointment of the applicant herein /10th defendant and still maintain the suit without altering the rights of the plaintiffs.

15. The sum and substance of the submission of the learned counsel is that this Court need not go into the question as to whether the Church activities can be construed as public charitable and religious trust or not and it can simply recall the leave granted by this Court on the ground that the prayers as sought in the plaint and the averments in its entirety do not make out a case for invoking Section 92 of CPC.



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16. The learned counsel in support of his legal contention relied on the following decisions:

i) ***Vidyodaya Trust Vs. Mohan Prasad & Ors.***

reported in ***Manu/SC/7227/2008***. This Court's attention has been drawn to paragraphs 18 to 25 which are extracted hereunder:

“18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act, 104 of 1976 the expression used was "consent in writing of the Advocate-General". This expression has been substituted by the words "leave of the Court". Sub-Section (3) has also been inserted by the Amendment Act. The object of Section 92 CPC 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 purpose are run for the benefit of the public. No individual should take 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. The harassment might dissuade respectable and honest people from becoming trustees of public trusts. Thus, there is need for scrutiny. In the suit



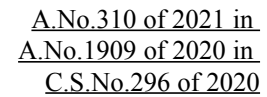
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against public trusts, if on analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in Swami Parmatmanand's case (supra) a suit under Section 92 CPC is a suit of special nature, which presupposes the existence of a public trust of religious or charitable character. When the plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has no application.

19. In Swamy Parmatmanand's case (supra) it was held that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92. But if after evidence is taken it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in fact or reason but is made only with a view to bringing the suit under the Section then suit purporting to be brought under Section 92 must be dismissed.

20. In Chettiar's case (supra) it was held that normally notice should be given before deciding the question as to whether leave is to be granted.



22. One of the factual aspects which needs to be highlighted is that the allegations which have been made against respondents 2, 3 and 10 are referable to a decision taken by the Board, though may be by majority. The fundamental question that arises is whether allegations against three of them would be sufficient to taint the Board's decision. As was observed by this Court in *Swamy Parmatmanand's case*, (supra) to gauge whether the suit was for vindicating public rights, the Court has to go beyond the relief and to focus on the purpose for which the suit is filed. To put it differently, it is the object or the purpose for filing the suit and not essentially the relief which is of paramount importance. There cannot be any hard and fast rule to find out whether the real purpose of the suit was vindicating public right or the object was vindication of some personal rights. For this purpose the focus has to be on personal grievances.

23. *On a close reading of the plaint averments, it is clear that though the color of legitimacy was sought to be given by projecting as if the suit was for vindicating public rights the emphasis was on certain purely private and personal disputes.*



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24. *In Sugra Bibi v. Hazi Kummu Mia (AIR 1969 SC 884) it was held that the mere fact that the suit relates to public trust of religious or charitable nature and the reliefs claimed fall within some of the clauses of sub-Section (1) of Section 92 would not by itself attract the operation of the Section, unless the suit is of a representative character instituted in the interest of the public and not merely for vindication or the individual or personal rights of the plaintiffs.*

25. *To put it differently, it is not every suit claiming reliefs specified in Section 92 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 by persons whose activities were not for protection of the interests of the public trusts. In that view of the matter the High Court was certainly wrong in holding that the grant of leave was legal and proper. The impugned order of the High Court is set aside. The appeal is allowed but without any order as to costs.*

17. In the above case, the Hon'ble Supreme Court has held that it is



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not every suit claiming reliefs specified in Section 92 that can be brought within the scope of the Section. Suits which are filed and are found to be vindicating private or personal interests behind the cloak of advancing public interest cannot stated to come within the framework of Section 92. Therefore, invocation of the said Section in the facts and circumstances of this case cannot be countenanced in law. According to the counsel, the above judgment would squarely apply to the factual matrix of the present case.

ii) ***Swami Paramatmanand Saraswati and Ors. Vs.***

Ramji Tripathi and Ors reported in ***MANU/SC/0023/1974***

This case is a landmark judgment of the Hon'ble Supreme Court of India and has been oft-quoted in various other judgments rendered thereafter. It is useful to refer to the succinct observation of the Court in paragraph 10 of the judgment, which is extracted hereunder:

“10. A suit under Section 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the



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trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail, and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 [see Shamukhan v. Govinda A.I.R. 1938 Mad 92 Tirumalai Devasthanams v. Krishnayya A.I.R. 1943 Mad 466 Sugra Bibi v. Hazi Kummu Mia (1969) 3 S.C.R 23 and Mulla : Civil Procedure Code (13th ed.), Vol. 1, p. 4001. A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section 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; and in deciding whether a suit falls within Section 92, 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



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brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the, trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.

After making the above observation, the Hon'ble Supreme Court has also held that while considering an application for grant of leave under Section 92, the Courts must look into the allegations as contained in the plaint, in Paragraph 14, which is extracted hereunder:

“14. It is, no doubt, true that it is only the allegations in the plaint that should be looked into in the first instance, to see whether the suit falls within the ambit of Section 92 [see Association of B.D.B. Bagga Singh v. Gurnam Singh MANU/RH/0072/1972, Solhan Singh v. Achhar Singh & Others MANU/PH/0101/1968 and Radha Krishna & Others v. Lachmi Narain & Others MANU/OU/0054/1947]. But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in facts or reason



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but is made only with a view to bring the suit under the section, then a suit purporting to be brought under Section 92 must be dismissed. This was one of the grounds relied on by the High Court for holding that the suit was not maintainable under Section 92.”

18. The learned counsel draws support from the above observation of the Hon'ble Supreme Court in contending that if the allegations as contained in plaint are to be taken into consideration by this Court, the application filed under Section 92 has to be dismissed as not maintainable as no iota of case has been made out for invocation of Section 92 of CPC.

(iii) The learned counsel also referred to a decision of the High Court of **Allahabad (Lucknow Bench) in *Dhirendra Singh and Ors. Vs.Dhanai and Ors.*** reported in **MANU/UP/0595/1982**.

19. As far as the above decision is concerned, the observations as made in paragraph 7 alone are relevant for the purpose of adjudication of this application. Paragraph 7 is extracted hereunder:-



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'7. In order to maintain a suit under Section 92, of Code of Civil Procedure it must, therefore, be shown that there exists a trust for public purposes of a charitable or religious nature; that there is a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the reliefs claimed in the suit must be one or more of the relief; that are mentioned in the section. Where any one of these conditions is absent Section 92 would have no application to the suit. If the suit does not relate to a public trust but relates to private properties owned by the individual or to a private trust, Section 92, Code of Civil Procedure would not apply. "

20. The learned counsel would therefore submit that the above decisions would point to the legal position that seeking leave under Section 92 is legally permissible only when a suit of a special nature is instituted and not in respect of suits which are ordinary in nature. According to him, filing of application under Section 92 is a serious matter, which cannot be invoked as a matter of routine for all kinds of issues that may arise in day-to-day management of the Church activities. As a matter of fact, the nomination and appointment of bishop is fully governed and regulated by the Constitution of the CSI, as well as the



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Constitution of the individual diocese.

21. Any grievance against the nomination or appointment of the 10th defendant remedies are available and can be agitated within the frame work of the Constitution of the CSI governing such appointment. Unfortunately, the plaintiffs herein on a mistaken impression and on an erroneous understanding that assailment to the appointment of the 10th defendant amounted to challenging the administration of the trust have filed an application seeking leave under Section 92. This Court on a *prima facie* consideration of the facts presented on behalf of the plaintiffs has granted leave under Section 92 CPC. This Court while granting the leave on a *prima facie* consideration did not have the benefit of the present legal objection by the applicant herein. In the above circumstances, the leave granted by this Court needed to be revoked .

22. On behalf of Defendants 1 to 5, Mr.Adrian D.Rozario appeared. Although no counter affidavit has been filed on behalf of these defendants/respondents, Mr.Rozario supported the case of the applicant herein stating that invocation of Section 92 CPC in the face of



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the averments and the prayers in the plaint is misconceived and is not maintainable in law. According to the learned counsel, a decision of the Madras High Court in this regard would clarify the position in unmistakable terms. The learned Judge of this Court has dealt with the rival contentions on the subject matter in detail and held under what circumstances invocation of Section 92 of CPC could be upheld in his elaborate judgment in **2014 SCC OnLine 140**. The learned judge, of course, in the decision factually found that there was a legal requirement of compliance with Section 92.

23. The learned counsel would refer to the discussion and findings of the learned Judge as extracted hereunder:

'22.But, it is the reply of the learned counsel for the applicants/plaintiffs that Rule 3 Chapter XI of the Constitution of CSI prevents a person from going to Court against the Church and such persons can be removed from basic membership of CSI. Hence, unless the said provision is stayed as illegal and unconstitutional, the members will lose their right to seek their remedy under Section 92 of CPC. Hence, addition of the said declaration prayer in the plaint filed under Section 92 of CPC cannot take the suit out of the scope of Section 92 of CPC. In this regard, the learned counsel for the applicants/plaintiffs has also relied upon a judgment of the Rajasthan



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High Court reported in AIR 1972 RAJASTHAN 263 [Association of Radhaswami Dera Baba Bagga Singh & another Vs. Gurnam Singh & others], wherein it has been held as follows:-

“22.In the present case, the facts are quite different from those covered in the above-referred to cases. Substantially the plaintiffs' suit is for reliefs specified in [Section 92](#). There is of course an additional prayer for declaring Exs.1, 2 and 3 as void; but, in our opinion, mere addition of a prayer for declaration cannot take the suit out of the ambit of [Section 92](#), C.P.C., when substantially all other conditions of the section are otherwise fulfilled.

23.The dictum laid down in the above said judgment is squarely applicable to the facts of the present case also. The declaration prayer is only an additional prayer in nature and that will not take the suit out of the scope of Section 92 of CPC. As contended by the learned counsel for the applicants/plaintiffs, unless the above said provisions viz., Rule 3 Chapter XI of the Constitution of CSI is stayed, the applicants will be removed from their membership and they will be non-suited and they will lose their right to seek remedy under Section 92 of CPC, since the said provision virtually places an embargo on the members of CSI from approaching the Court. Therefore, absolutely there is no impediment in adding the declaration prayer as auxiliary prayer in the suit filed under Section 92 of CPC.



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24.It is another objection of the learned counsel for the respondents/defendants that the other prayers also are not in conformity with the provisions of Section 92 of CPC and other than the reliefs mentioned in Section 92 of CPC have also been included in the suit.

25.Before dealing with this objection, it would be appropriate to extract Section 92 of CPC.

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 been removed or a person who has ceased to be a trustee, to deliver possession of any



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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 in one or more the following circumstances, namely :

(a) where the original purposes of the trust, in whole or in part,



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- (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.*

It is the contention of the learned counsel for the respondents/defendants that the reliefs sought for by the applicants/plaintiffs in the plaint will not fall within the purview of the provisions of Clause (a) to (h) of Section 92(1)



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of CPC. Therefore, the suit is not maintainable under Section 92 of CPC.

26. But, it is the reply of the learned counsel for the applicants/plaintiffs that the suit is maintainable under Section 92 of CPC. In support of his contention, the learned counsel for the applicants/plaintiffs relied upon the judgment reported in 1975(1) SCC 298 (Charan Singh & another VS. Darshan Singh & others), wherein it has been held as follows:-

7. The High Court in the Letters Patent appeal has taken the view that the relief sought for in the suit does not fall under any of the clauses (a) to (h) of section 92 of the Code. Learned counsel for the appellant has assailed this view and submitted that the relief sought for falls under clause (e) or (g) or in any event under clause (h). In our judgment the relief sought for in this case does not strictly or squarely fall within clause (e) or (g) but is very much akin to either and hence is covered by the residuary clause (h).

8. Lord Sinha delivering the judgment of the Judicial Committee of the Privy Council in Abdur Rahim and others v. Syed Abu Mahomed Barkat Ali Shah (1) rejected the argument that the words "such further or other relief as the nature of the case may require" occurring in clause (h) must be taken, not in connection with the previous clauses (a) to (g) but in connection with the nature of the suit. The argument was that any relief other than (a) to (g) in the case of an alleged breach



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of an express or constructive trust as may be required in the circumstances of any particular case was covered by clause (h). It was repelled on the ground that the words "further or other relief" must on general principles of construction be taken to mean relief of the same nature as clause (a) to (g). It would be noticed that the word used after clause (g) and before clause (h) is "or". It may mean "and" in the context, or remain "or in the disjunctive sense in a given case. If any further relief is asked for in addition to any of the reliefs mentioned in clauses (a) to (g) as the nature of the case may require, then the word "or" would mean "and". But if the relief for is other relief which is not by way of a consequential or additional reliefs in terms of clause (a) to (g), then the word "or" will mean "or". The other relief however, cannot be of a nature which is not akin to or of the same nature as any of the reliefs mentioned in clauses (a) to (g). According to the plaintiffs case one of the objects of the religious trust was the worship of Granth Sahib and its recital in congregations of the public. In the suit a decree declaring what portion of the trust property should be allocated to the said object could be asked for under clause (e). The plaintiffs could also ask for the settling of a scheme under clause (g) alleging mismanagement of the religious trust on the part of the trustees. In the settlement of the scheme could be included the worship and recital of Granth Sahib the holy Granth. The plaintiffs in their plaint did not in terms ask for the one or the other. They, however, alleged acts of breach of trust, mismanagement,



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undue interference with the right of the public in the worship of Granth Sahib. They wanted a decree of the Court against the appellant to force him to carry out the objects of the trust and to perform his duties as a Trustee. Reading the plaint as a whole it is not a suit where the plaintiffs wanted a declaration of their right in the, religious institution in respect of the Granth Sahib. But it was a suit where they wanted enforcement of due performance of the duties of the trustee in relation to a particular object of the trust. It is well-settled that the maintainability of the suit under Section 92 of the Code depends upon the allegations in the plaint and does not fall for decision with reference to the averments in the written statement.

11.....In the plaint of the instant case the relief claimed is not primarily for the establishment of the right of the public to the religious institution. It recites the facts as to the right without mentioning any appreciable dispute concerning it, mainly alleges breach of duty on the part of the trustee, and the plaintiffs seek the courts aid against the trustee for forcing him to discharge his obligations by due performance of his duties. In our judgment therefore the Courts below were right in taking the view that the present suit was a suit for a decree under section 92 of the Code.”

The learned counsel for the applicants/plaintiffs has also placed reliance upon the judgment reported in (2013) 1 MLJ 433 (Nadigar Sangham Charitable Trust rep. By its Managing Trustee R.Sarathkumar, Chennai



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and another vs. S.Murugan @ Poochi Murugan, Memebrship No.6728, Chennai and others), wherein it has been held as follows:-

“6.According to Plaintiffs/Respondents 1 and 2, the power of attorney dated 6.8.2010 is illegal, 2nd and 3rd appellants have completely ignored the basic principles of collective responsibility in the affairs of the Trust and they have taken unilateral decisions and thereafter approached the Executive Committee for expost facto approval. The plaintiffs' allege that valuable property of Rs.150 Crores has been leased out for a period of 29 years and 11 months and the amount to be collected as rental security deposit is a paltry sum of Rs.1,44,00,000/-. The terms and conditions in the lease deed are more favourable to the 3rd respondent and the rental income is far less when compared to the value of the property. All these issues have not been discussed before the General Body of SIAA or the Board of Trustees. The Charitable Trust was created only for the welfare of poor artists of SIAA and anything to be done in the interest of the Charitable Trust must be done only through the Board of Trustees as contemplated in the Trust deed. In the suit filed under [Section 92\(1\)](#) (d) (g) and (h), the plaintiffs initially sought for declaration:-

(i) to declare the General Power of Attorney dated 6.8.2010 and the lease deed dated 6.8.2010 executed by the 3rd appellant in favour of the 2nd appellant as null and void;

and



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(ii) to declare that the lease deed dated 25.11.2010 executed by the 2nd appellant in favour of the 3rd respondent as null and void.

Amendment application:-

7. In the suit filed in CSD No.15568 of 2012, respondents 1 and 2/plaintiffs filed application A.No.2757 of 2012 seeking leave to file the suit under Section 92 C.P.C. In the said application, notice was ordered and the same was served on the appellants. The appellants entered appearance and filed their counter statement inter alia stating that the suit in CSD. No.15568 of 2012 is not maintainable as the same does not fulfil the requirements of Section 92(1) of C.P.C and that none of the prayers sought for in the plaint would come within the ambit of Section 92 of C.P.C. On such objection being raised by the appellants, Respondents 1 and 2/ plaintiffs filed amendment application - A.No.3519 of 2012 in CSD. No.15568 of 2012 under Order XIV Rule 8 of O.S.Rules read with Order VI Rule 17 of C.P.C. seeking amendment of the plaint and to include the following prayers:

"i. To direct the first defendant to produce accounts and inquiries pertaining to affairs of the first defendant trust.

ii. Settling a scheme of administration of the first defendant trust.

iii. Removing the defendants 2 and 3 from the trusteeships.



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By Order dated 11.9.2012, the amendment application - A.No.3519 of 2012 was allowed and consequently the plaint was amended.

.....

20. In order to apply Section 92 C.P.C., the following conditions must be satisfied:

(a) There is a Trust created for public purpose of a charitable or generous nature;

(b) there is a breach alleged of such trust, or the direction of the Court is necessary for the administration of such Trust;

(c) The suit must be a representative one on behalf of the public and is not by individuals for their own interest; and

(d) the relief claimed in the suit is one or other reliefs mentioned in Section (a) to (h) of Section 92.

The real test for the applicability of Section 92 of the Code is to see whether the suit is fundamentally on behalf of the public for vindication of a public right.

.....

24. In P.V.Mathew and others Vs. K.V.Thomas and others (supra), Division Bench of Kerala High Court has laid down the procedure to be followed by Court in granting leave under Section 92(1) C.P.C. The said judgment was referred and relied upon by the First Bench of this Court



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in M.Anandan vs. Ayyanna Gounder Memorial Trust & others (1993-2-L.W.308).

25. In M.Anandan Vs. Ayyanna Gounder Memorial Trust and others (supra) case, the Division Bench of this Court has observed that for safeguarding of the interest of the Trust, passing of such interim orders are necessary and held as under:

"11. We may also point out here that one of the grounds on which the learned Single Judge has affirmed the order appointing the Receiver is that Receiver can even be appointed in any proceeding, not necessarily in a suit, and therefore, the fact that the leave has not been granted under S.92, Code of Civil Procedure and the suit cannot be held to have been validly instituted, does not come in the way of appointing a Receiver...."

26. The Supreme Court in N.Narayana Chettiar v. N.Lakshmanan Chettiar (AIR 1991 SC 221) observed that the issuance of the notice is not a statutory requirement to be complied with before granting leave under Section 92 of C.P.C. The Supreme Court further observed that any construction of the provisions of Section 92 of C.P.C in favour of giving notice before granting leave would render it difficult for the beneficiaries of a Public Trust to obtain urgent interim orders of the Court even though the circumstances might warrant such a relief being granted. This Judgment throws light on the scope of opposition before granting leave. Once the Court finds that it is a public trust, Court is to consider what is in the best interest of the Trust.



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27. *The plaint originally filed by the appellants was under Section 92(1)(d), (g), and (h) read with Order 4 Rule 1 of Original Side Rules and under Order VII Rule 1 of C.P.C. Even though suit was filed for declaring that the general power of attorney (dated 6.8.2010) and lease deeds (dated 6.8.2010 and 25.11.2010) are null and void, by perusal of plaint, it is seen that it contains averments as to execution of lease deeds and that 2nd and 3rd appellants have completely ignored the basic principles of collective responsibility in the affairs of the Trust and that they have taken upon themselves the task of administering the Trust property as if it is their own property apparently with the mala fide intentions. It is also averred that there is no transparency in the dealings of the Trust and that valuable property has been leased out for a period of 29 years and 11 months and competitive bidding has not been resorted to ensure maximum income for the Trust. Though the plaint contains the essential averments regarding the breach of trust committed by the trustees, the fact remains that there was no prayer originally for accounting, removal of appellants from the trusteeships and to settle a scheme for administration of the Trust. By way of the amendment, the respondents 1 and 2 incorporated those three prayers. Except this, no other changes were made in the plaint.*

28. *As pointed out above, the plaint originally filed by the respondents 1 and 2 contains the details of the allegations levelled against the appellants. In the plaint, respondents 1 and 2/ plaintiffs alleged that the 1st appellant and the 2nd appellant being close relatives acted in a collusive manner to show undue benefit on a third party by giving the valuable property of the Trust for a pittance. They have also produced*



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the sale deed, General Power of attorney dated 6.8.2010 and the subsequent lease deeds dated 6.8.2010 and 25.11.2010 along with the plaint to prove that the appellants committed a serious breach of trust by giving the property on lease in a collusive manner and with an option given to the builder even without calling for public participation. The plaint originally filed and the documents enclosed along with the plaint were sufficient to grant leave. Since the provision of law was correctly quoted, the amendment was only a formal one without changing the nature of suit.

.....

30. On behalf of the appellants, it was then contended that the single Judge erred in making observations as to the affairs of the Trust while passing orders in the application under Section 92(1) of C.P.C. Placing reliance upon decision of Supreme Court in Swami Paramatmanand Saraswati and another Vs. Ramji Tripathi and another (1974) 2 SCC 695 = AIR 1974 SC 2141, it was contended that while hearing the application under section 92 C.P.C, only the allegations in the plaint should be looked into in the first instance to see whether the suit falls within the ambit of Section 92 and the plaint does not contain any allegation as to the breach of trust and while so single Judge was not right in observing that there was gross mismanagement of property. Reliance was also placed upon decision of Supreme Court in N.Narayana Chettiar v. N.Lakshmanan Chettiar (supra).

32. The learned counsel for respondents 1 and 2 has drawn our attention to Clause 13 of the Lease deed dated 25.11.2010, as per



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which the 3rd respondent have the option of preemptive purchase of the property, which, according to the counsel, is in the nature of a sale. Learned counsel had also submitted that lease deed is not terminable for the long period of 29 years and 11 months and in case of any earlier termination of the lease deed on any ground before the lock up period of 29 years and 11 months, the 3rd respondent/ developer shall be entitled to compensation by payment of the then current value and till the matters are determined by the Arbitrator, the 3rd respondent/developer will be entitled to use and occupation of the schedule property and clauses in the lease deed dated 25.11.2010 are heavily loaded in favour of the 3rd respondent.

.....

39. We do not find any merit in the said contention. Respondents 1 and 2 challenged the alleged action taken by the appellants to grant lease of the trust property for a paltry sum to a private party in a collusive and secret manner. The Court is concerned only about the said action. The fact that the General Body subsequently met and approved the action taken by the appellants would not deprive the Court from considering the bona fides of the action originally taken by the appellants as trustees. In fact, the learned counsel for respondents 1 and 2 contended that the minutes in respect of the General Body itself was fabricated and genuineness of the records could be tested only during the time of trial. We are not expressing any opinion on this aspect.

Keeping in view the dictum laid down in the above said judgments, I perused the averments as well as the prayer made in the plaint. In the



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plaint, there is a specific allegation with regard to the violation of the by-laws of Trust by the 3rd respondent, who is the Chairman of the Trust. Hence, in the background of the allegation made against the 3rd respondent, who is the Chairman of the 2nd respondent, I am of the opinion that the prayers made in the plaint are in conformity with Section 92 of CPC. I find that prayers (a),(c),(d) & (f) will fall under Section 92(1)(h) of CPC. Prayer (b) will fall under Section 92(1)(a) of CPC. Prayer (e) will fall under Section 92(1)(b). In view of the same, I am not inclined to accept the submission made by the learned counsel for the respondents that the prayers made in the plaint are not in conformity with the provisions under Section 92 of CPC. Hence, leave is granted in A.No.3015 of 2013.”

24. According to the learned counsel the above ruling of the learned Judge would unambiguously clarify the legal position that unless the prayers made in the plaint are in conformity with the sub-clauses as contained in Section 92 of CPC as explained above in the judgment, the question of invoking Section 92 does not arise. In the present case, the reliefs are centered around the validity of the nomination and election of the 10th defendant and his appointment as bishop of the 6th defendant diocese, which cannot be said to be falling within the legal parameter, laid down by the Courts to attract application of Section 92. A simple election dispute is sought to be agitated as if it is in relation to the



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management or administration of the trust.

25. Mr.A.Immanuvel, the learned counsel who appeared for the plaintiffs made his submissions elaborately. The main thrust of his arguments are that the Church is a public religious and charitable trust and therefore, for any relief prayed in respect of the administration of the Church, it is imperative to invoke Section 92 of CPC. The entire arguments of the learned counsel hinged on the said factual framework.

26. The learned counsel has filed a compilation of decisions containing 11 judgments of various High Courts and Hon'ble Supreme Court of India in order to highlight how the Courts have construed the activities of the Church and held they are public religious and charitable trusts. Once the activities of the Church whether the same is registered or unregistered are to be construed as one relating to public religious and charitable trust, institution of suit without obtaining leave under Section 92 is not legally permissible. According to him, in this case, nomination and appointment of the 10th defendant as of the 6th defendant diocese touch upon the very administration and its management . Every diocese individually is again a public religious and charitable trust, hence it



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cannot be gainsaid that the dispute in the suit is only a simple election controversy and can be brushed aside on such conclusion. If the power enjoined upon the head of the diocese, namely bishop is prone to be exercised, against the interest of the diocese by an illegal occupant of the Bishopric, the same would adversely impact the administration of the diocese in very many ways. Therefore, the application was rightly filed for grant of leave and on proper appreciation of the material averments and reliefs prayed in the plaint, this Court granted leave, vide its order dated 08.09.2020.

27. According to the learned counsel, the case for invocation of Section 92 of CPC cannot be faulted with, as the challenge to the appointment of 10th defendant as bishop of the 6th defendant diocese relating to unregistered body, namely 'Medak Diocese' which is nothing but a public religious and Charitable trust. Therefore, invocation of Section 92 of CPC was a mandatory legal pre-requisite which had been rightly complied with.

28. Further, Church of South India (CSI), the apex body, is again



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unregistered public religious and charitable trust administering various dioceses under its control including the 6th defendant diocese. The averments and the prayers in the suit touch upon the constitutional role of the apex body in appointing the 10th defendant as of the 6th defendant diocese. Therefore, for suing the CSI, leave needed to be obtained under Section 92 CPC.

29. The learned counsel would rely on the following decision in support of his principal contention that the Church is a public religious and charitable trust and therefore there is every justification for invoking Section 92 CPC. He placed heavy reliance on a decision, from the compilation of the Kerala High Court in the matter of ***St. Peters Orthodox Syrian Church & Ors. Vs. Fr.Abraham Mathews & Ors.*** reported in ***2011 SCC OnLine Ker 4034***. There, the facts were that one of the factions, of the Syrian Christian, had approached the Court seeking declaration that all religious worship and administration of the assets of the plaint schedule Church (St.Peters Orthodox Syrian Church) are to be carried on under the authority of the Catholics and in accordance with



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the constitution of the Maiankara Orthodox Syrian Church.

30. The Kerala High Court in respect of the factual narrative therein with reference to the controversy relating to the very administration of all the activities of the Church and its assets, had come to the conclusion that St. Peters Orthodox Syrian Church was a public religious and charitable trust. The Court had gone into the historicity of the formation of the Church on the basis of the materials made available by the parties and finally held that Section 92 of CPC squarely would apply.

31. The learned counsel has painstakingly drawn reference to various other decisions that are part of the compilation in order to impress upon this Court that CSI and the individual diocese are consequently public religious trusts and any suit to be laid against them compliance with Section 92 CPC is a must. This Court, however would refer to the citations relied on by the counsel, its relevance and usefulness at the appropriate place in the order. The application of the citations with reference to the factual matrix of this case, in the opinion of this Court, is



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to be relegated to the home stretch for the following reasons.

32. With a view to steer clear from the larger controversy that has been trumped up in the suit by the plaintiffs, this Court can dispose of the application on a simple premise 'whether the averments and the reliefs as contained in the plaint, are said to attract Section 92 at all'. However, to proceed in that direction, a short foray into the activities of the CSI and its dioceses is imperative to pronounce on the foundational contention raised on behalf of the plaintiffs whether the CSI and the individual dioceses are to be construed as public religious and charitable trust, amenable to Section 92 CPC in the first place, before embarking upon the principal contention of the applicant that *de horse* any conclusion on the above issue the dispute as projected in the suit does not attract application of Section 92 of CPC.

33. In the decision cited earlier reported in **2014 SCC OnLine Mad 140: (2014) 7 MLJ 549 [N.P.Thangaraj and another Vs. Church**



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of South India and Ors, the learned judge of this Court has succinctly and briefly dealt with formation of the Church of South India and the constitution of the Church of South India Trust Association (CSITA), the legal holding body of all the movable and immovable properties of the CSI that included all the individual dioceses, under its control. It is very relevant to extract paras 6 (3) to 6(5) of the decision for clear and proper understanding as to how the plaintiffs herein are attempting to contrive a case for invoking Section 92 CPC.

"6(3) The applicants are interested in the affairs of CSI Kanyakumari Diocese, Church of South India and Church of South India Trust Association. Church of South India, the largest protestant church in India, was formed in September, 1947 by amalgamating all the protestant churches in South India such as Anglican, Methodist, Presbyterian and the South India United Church in the four Southern States of Tamil Nadu, Kerala, Karnataka and Andhra Pradesh. The Church of South India is a protestant religious denomination. The headquarters of Church of South India is situated in Chennai. There are 22 constituent dioceses in Church of South India. Kanyakumari Diocese, one of the 22 constituent dioceses of Church of South India, is having its headquarters in Nagaercoil and administering churches, hospitals,



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educational institutions etc., in Kanyakumari District in Tamil Nadu. The apex body is the Synod of Church of South India and the constituent bodies are dioceses.

6(4) The Church of South India (hereinafter referred to as 'CSI') is an unregistered Society. CSI Kanyakumari Diocese is also an unregistered Society. The applicants are filing this suit on their behalf and on behalf of the members of CSI and the Church is being sued in representative capacity represented by its Moderator.

6(5) The Church of South India Trust Association (hereinafter referred to as 'CSITA') was constituted as a legal holding body of the movable and immovable properties of the CSI. CSITA was registered in September, 1974 under Section 26 of the Indian Companies Act 1913 (now Section 25 of the Indian Companies Act, 1956), as a Religious and Charitable Company, which has no business character and with no profit motive. The properties of the Churches in Union have been transferred to CSITA. The jurisdiction of the CSITA covers the 22 Dioceses and other units under their control spread over the four southern States ie., Andhra Pradesh, Karnataka, Kerala and Tamil Nadu, and Union Territory of Pondicherry. The 1st respondent-Church of South India Synod, in its biennial session, elects 15 members of the General Body of 2nd respondent-CSITA. The 15 members of the General Body of the 2nd respondent-CSITA elects 6 persons among themselves as members of the Managing Committee of the 2nd defendant-CSITA.



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The members of the Managing Committee of the 2nd defendant-CSITA and officers of the synod are Trustees of the 2nd defendant-CSITA. The composition of the Board of Trustees/the Managing Committee of the second defendant-CSITA is as follows:-

S.No

Position in CSI

Position in CSITA

1.Moderator of CSI

Chairman of CSITA(ex-officio)

2.Deputy Moderator of CSI

Member of CSITA(ex-officio)

3.Secretary of CSI

Secretary of CSITA(ex-officio)

4.Treasurer of CSI

Treasurer of CSITA(ex-officio)

5.

6 persons elected by the General Body of CSITA

Members of CSITA



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The applicants are filing the present suit for removal of the 3rd respondent/3rd defendant from the post of Chairman of the Public Religious Charitable Trust called Church of South India Trust Association (CSITA) and to appoint the 4th respondent as Chairman of CSITA, as the 3rd respondent has committed criminal breach of trust. Hence, the applicants have filed an application under Section 92 of CPC seeking to grant leave to file the present suit.

34. In this regard, it is germane to refer to the larger definition of 'Trust' as extracted by the Kerala High Court in ***St. Peters Orthodox Syrian Church*** case [2011 SCC OnLine Ker 4034] in para 20 as under:

"20. "Trust" is an obligation annexed to the ownership of property and arising out of the confidence reposed in a person to whom the legal title to the property is conveyed for the benefit of another, the obligation being that such person will faithfully apply the property according to such confidence. (See Underbills Law of Trust and Trustees). The beneficial title or ownership of property of which the legal title is vested in another is also called "trust". The person who reposes or declares the confidence of trust is called the "author or founder of the trust" or the "settlor". The person who accepts the confidence or in whom the confidence is reposed is called the "trustee". The person for whose benefit the confidence is accepted or reposed or for whose benefit the trust is created, is called the "beneficiary" or the "cestui que trust. The subject matter of the trust is called the "trust property". The



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instrument, if any, by which the trust is declared or created is called the “instrument of trust”. The breach of any duty imposed on a trustee either by the instrument of trust or by law is called a “breach of trust”. A “trustee de son tort” is a person who, of his own authority, enters into possession or attends to the management of a property which belongs beneficially to another. When express trusts are created by deed or will and some third party takes upon himself the administration of the trust property, such third party becomes a trustee de son tort and as such is bound to account as if he were the rightful trustee. A trust arises as a result of a manifestation of an intention to create it. The two primary types of trusts known to English law are private trusts and charitable trusts. A “private trust” is a trust created for the financial benefit of one or more designated beneficiaries rather than for the public benefit. An English charitable trust, on the other hand, is a trust created to benefit a specific charity or the general public rather than a private individual or entity. Such charitable trusts are dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received. (See Blacks Law Dictionary - 9th Edition). While under the English law, all charitable or religious trusts are public trusts, under the Indian Law there can be a religious trust of a private character among the Hindus. In other words, a private charity, either religious or non-religious is alien to English law.

35. The Trust as defined above is predominantly relating to the administration of the assets in favour of the trustee/trustees for the benefit of the public, as endowed. In this case, the properties of the



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entire CSI that included all the dioceses, are exclusively under the management and administration of CSITA which is a company incorporated under the Companies Act. The said Association is not a party in the suit. In such circumstances, there cannot be any valid complaint against mismanagement or maladministration of the trust properties belonging to the CSI or the individual diocese. As a matter of fact, there are no averments even remotely touching upon the management of the trust properties in the entire plaint, nor the prayers in the suit suggest on the said aspect.

36. That apart, even in religious matters the trust being a Church it has to be demonstrated that the religious activities of the denominational faith are being undermined affecting the religiosity or spirituality of the followers of the faith. The plaintiffs' case herein is not on that aspect either. In the entire plaint, there is not even a whisper or an averment suggesting about disruption of any established religious practices of the Church. The complaints are focused only on the suitability and validity of the appointment of the 10th defendant as bishop of the 6th defendant



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diocese. As stated above, the nomination and appointment of bishop of a diocese is entirely regulated by the constitution of the CSI. The Constitution provides for a mechanism, should there be a challenge to any nomination or appointment of bishop to a diocese. Therefore, a simple case of questioning the validity of the appointment of the 10th defendant as bishop of the 6th defendant diocese has been deviously magnified, as if there is a breach of trust calling for intervention of this Court in terms of Section 92 of CPC, when none pleaded or existed.

37. In the above backdrop, the essence of consideration of this Court is whether invocation of Section 92 is maintainable or valid in the face of the averments as contained in the plaint and read with the prayers, as sought in the suit. In this regard, the most relevant consideration of this Court is the main prayer in the suit. The principal prayer in the suit is to declare the confirmation of the selection and appointment of 10th defendant as bishop of 6th defendant CSI Medak Diocese as illegal, null and void. Consequential prayers have also been sought like, appointment of statutory auditor to audit the accounts of the 6th defendant CSI Medak



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diocese. As rightly contended by the learned counsel for the applicant, the election dispute has been needlessly projected as if that there is something seriously wrong with the administration of the Church itself.

38. The justification for invoking Section 92 CPC as contained in the plaint averment is stated in paragraph 4 of the plaint, which reads as follows:

“4. The plaintiffs submit that Church is a trust, Church of South India, being a church, is a trust. The tenth defendant is one of the 24 bishops in Church of South India. This suit is filed for removal of tenth defendant from the post of Bishop of Church of South India Medak Diocese. Hence, this suit is filed under Section 92 of Civil Procedure Code seeking removal of the tenth defendant from the post of bishop of sixth defendant diocese. “

39. According to the respondents/plaintiffs, the legal basis for invoking Section 92 of CPC is that CSI being a Church, is a public religious trust and 10th defendant is one of the 24 dioceses under the overall control of the CSI, is again a public religious trust. The plaint contains several averments touching upon various constitutional provisions of the CSI relating to the selection and appointment of bishop



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to a diocese. As stated earlier, not a word has been spelt out in the entire plaint complaining about mismanagement or maladministration of any of the activities of the trust or its properties for invoking Section 92 of CPC.

40. As a matter of fact, at the risk of repetition it must be emphasized that in terms of the CSI constitution, all properties are to be owned and administered by a registered body Church of South India Trust Association (CSITA), which has not been made a party to the suit. Apart from various decisions as found in the compilation filed on behalf of the plaintiffs bolstering their contention for invoking Section 92 of CPC or justifying filing of the present suit, the learned counsel for the plaintiffs placed heavy reliance on the decision of the learned Judge of this Court that has been referred to *in extenso* supra. ***N.P.Thangaraj and another Vs. Church of South India and Ors.*** reported in ***2014 SCC OnLine Mad 140***. The reliance placed by the learned counsel for his support, reflects his poor understanding of the legal principle laid down therein by the learned Judge.

41. In that case, the bone of contention and the *lis* qua parties is



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with reference to the administration of the third defendant therein, namely the Church of South India Trust Association (CSITA). While considering material averments in the plaint therein, the learned Judge found that there were specific violation of the by-laws of the trust by the third respondent. On the basis of the finding of fact, the learned Judge held that the prayers made in the plaint were in conformity with Section 92 of CPC and upheld its invocation by the parties therein. A specific finding was rendered by the learned counsel holding that prayers in that plaint, namely (a), (c), (d) and (f) would fall under Section 92(1)(h) of CPC. As far as the case on hand is concerned CISTA is not even a party and there is no averment in the entire plaint questioning the administration of the trust at all.

42. As stated above, election dispute of appointment of a person in position can never be considered as a issue which can be adjudicated, enlarged and amplified to bring it within the framework of Section 92 of CPC. Section 92 has been extracted in the judgment of the learned single Judge of this Court in the judgement rendered in *N.P.Thangaraj Vs.*



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Church of South India case (supra).

43. Even assuming on a hypothetical consideration that Section 92 could have application in the present facts and the circumstances, the principal and the foremost requirements for invoking Section 92 are two fold as held by various Courts in India as well as Supreme Court of India. The first principle is that whether the persons invoking Section 92 CPC are interested person and their *bona fide* need to be established in unequivocal terms. The courts have consistently held that the persons who are seeking leave under Section 92 need to first establish their bonafide credentials as, a) they are vindicating public interest and b) they have no vested interest in the matter. The Courts further have held that unless the persons who are invoking Section 92 satisfy the Court that they have more than causal contingent interest in the administration of the trust, the Courts would not entertain applications seeking leave at the instance of such person. As a corollary, if the Courts find that the persons who are invoking Section 92 are indirectly trying to promote and vindicate private interest and entangle the trust into a needless litigation,



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the Courts ought not entertain such application.

44. As far as the present case on hand is concerned, such plea has not been raised at all on behalf of of the plaintiffs. As a matter of fact, the Courts have also held that merely being a member of the faith or worshiper, which fact alone cannot make them interested person unless they are able to show more than a contingent or causal interest and they have a special benevolent interest and relationship with the administration of the trust. No attempt has been made in the plaint to fulfill the fundamental legal requirement for invoking Section 92 of CPC by the plaintiffs on the said aspect. Even on the hypothetical scenario, the application seeking leave under Section 92 CPC has to be rejected on this ground alone.

45. Be that as it may, now reverting to the nucleus of the consideration of this Court, whether Section 92 application is maintainable at all in the present facts and circumstances of the case or it is a matter to be adjudicated in an ordinary suit confining the challenge only to the election or appointment of the 10th defendant as bishop. As held by the Courts consistently that suit under Section 92 is of a special



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nature and in order to maintain an application under Section 92, there must be an existence of a case of alleged breach of any express or constructive trust created for public purposes of a charitable or religious in nature.

46. The allegations of breach must be serious enough pointing fingers against the administration of the trust and the direction of the Court is deemed necessary for the administration of the trust which means the prayer in the suit must be *inter alia* for removing any trustee, appointing a new trustee, vesting any property in a trustee, directing the trustee who has been removed or who has ceased to be a trustee, to deliver possession of any trust property, directing accounts etc., the language used in Section 92 is clear, lucid and simple, which does not require any elucidation. If these provisions are juxtaposed to the averments and the prayer as sought in the plaint, it does not require a profound judicial acumen to hold that the present suit with its averments and reliefs sought, fall outside the edifice of Section 92 CPC.



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47. This Court would reiterate that the basic premise on which the present suit has been laid, namely challenge to the selection, nomination and appointment of the 10th defendant as bishop of the 6th defendant diocese. A bishop is the head of a diocese in charge of a particular geographical area involved in overseeing ecclesiastical and canonical activities of the Church in the Bishopric. His selection, appointment and its validity or otherwise is entirely governed by the CSI Constitution and Court ruling on the validity of his appointment, need not mean that the administration of the CSI trust itself is at stake. A dispute relating to the appointment of a bishop or for that matter, to any other position in the Bishopric cannot be said to be transcending beyond the narrow confines of suitability of a persona in terms of the constitutional provisions of the CSI and take within its sweep administration of the CSI trust as well. In a challenge like the present one, only an ordinary suit would lie. The plaintiffs herein ostensibly having an axe to grind against the appointment of the 10th defendant, have given a needless colouration as if the suit is of special nature attracting application of Section 92 CPC.



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48. The courts have been consistently holding that filing of application under Section 92 is permissible where compelling circumstances exist calling for its intervention in regulating its administration of the public charitable or religious trust. As a matter of fact, the Courts have also been consistently holding that the interest of public trusts is to be protected against vested interests entangling the trusts in protracting litigations before the Courts, for serving their own ends, affecting the activities of the trust for which it was established and administered. If this Court were to grant leave to the present plaintiffs to sue the entire CSI and its body structure on the simple challenge to the election and appointment of the 10th defendant as bishop of the 6th defendant diocese, the whole CSI and its administration would be unjustly and needlessly enmeshed in this litigation, at the instance of a few persons who claim themselves to be aggrieved by the so called illegal appointment of the 10th defendant. The Courts must be wary and circumspect in entertaining a leave application where it finds that behind the cloak of questioning the appointment of the 10th defendant as bishop,



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the entire CSI body is being dragged into the Court's net for its administration.

49. As stated above, the learned counsel for the plaintiffs has also come with a compilation of judgments seeking to draw support as to why the leave application was a legal necessity with reference to the issues raised in the plaint and the reliefs sought in the suit. He relied on the following decisions as enclosed in the compilation.

"23. The learned counsel apart from the above Kerala High Court judgment relied on the following decisions:

(i) Fr.O.S.Kuriakose Vs.Fr. Andrews Chiravathara and others [2020 SCC OnLine Ker 2832];

(ii) Christ the King Cathedral Vs. John Ancheril and another [(2001) 6 SCC 170];

(iii) Stanish Keshavbhai Chauhan Vs. District Education Officer [1996 SCC OnLine Gujarat 514];

(iv) Rev. Fr. Farcisus Mascarenhas Vs. The State of Bombay [1960 SCC Online Bombay 73];

(v) Anbiah and others Vs. Rev. J. George Robinson and others [AIR 1992 Madras 265];

(vi) Vinod Kumar Mathurseva Malvia and another Vs. Maganlal Mangaldas Gameti and others [(2006) 9 SCC 282];

(vii) Dr. Rangnath Pandurang Joshi Vs. Hanmant



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Ganpati Bhosale [2016 SCC OnLine Bom 9945];

(viii) Anant Prasad Lakshminiwas Ganeriwal Vs. State of Andhra Pradesh and others [AIR 1963 SC 853];

(ix) The Servants of India Society, Poona Vs. The Charity Commissioner of Bombay [AIR 1962 Bombay 12];

50. The decisions as cited above have no application at all, in view of the conclusion by this Court categorically on appreciation of all the facts and materials herein. The findings of the respective Courts in the above decisions either confined to the factual matrix of those cases under its consideration or the same relate to the application of different enactment like Indian Trust Act, 1920 Bombay Trust Act, 1950 and not the application under Section 92 of CPC. On the whole, this Court does not find any decision which can even be remotely applied herein. The findings of the Court therein are entirely within the contours of the respective "lis" and the facts presented therein. However, the facts herein are solid enough to hold that the suit does not attract application of Section 92 CPC. In such circumstances, there cannot be any cliched and trite importing and applying the case laws, uncritically, which do not



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match with the underlying facts as presented before this Court in the proceedings.

51. In the conspectus of the elongated judicial discourse, this Court is of the considered view that the 'lis' as projected in the plaint cannot qualify to be construed as a suit of a special nature, warranting filing of application under Section 92 of CPC.

52. In the said circumstances, this Court has to come to an inevitable conclusion that the leave application filed by the plaintiffs, invoking Section 92 of CPC cannot be countenanced both in law and on facts.

53. This court has granted leave originally on a *prima facie* consideration vide its order dated 08.09.2020, but on a incisive examination of various materials, the averments, the prayers cumulatively and conjunctively, this court finds that the leave granted by this Court ought to be recalled and revoked.



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54. In the above circumstance, A.No.310 of 2021 is allowed and the leave granted by this Court vide order dated 08.09.2020 stands revoked. Consequently, the suit is also dismissed as not maintainable. Connected applications are closed. No costs.

Registry is directed to return the suit papers to the plaintiffs.

10.02.2022

Index:Yes/No
Internet:Yes
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