



<u>A.No.2622 of 2021</u> <u>in</u> <u>CS.D.No.28517 of 2021</u>	
RESERVED ON:	10.03.2022
PRONOUNCED ON:	25.03.2022

P.VELMURUGAN.,J

This application has been filed by the applicants/plaintiffs seeking leave to institute the Suit under Section 92 of the Civil Procedure Code.

2. The applicants/plaintiffs filed the Suit against the respondents/defendants under Sections 92(1)(a)(b)(c) and (d) of C.P.C., read with Order IV Rule 1 of Madras High Court O.S.Rules and Order VII Rule 1 of C.P.C., The applicants have filed the Suit for

(a) Declaring that the plaintiffs 2 and 3 are the first trustees of the first defendant /Trust as defined under the Trust deed dated 06.12.2000.

(b) Declaring that any vacancy of the first trustee in the first defendant/Trust Board can be nominated only by the first plaintiff as defined in the Deed of Trust dated 06.12.2000.



(c) Removing the second defendant from managing/first trustee of the first defendant's Trust Board for acting against the interest and against the objects and aims of the trust.

(d) to grant an order of mandatory injunction directing the second defendant to keep all the accounts of the first defendant/Trust including the Income Tax Returns, if any, submitted to the Tax Authorities and all other connected records including the Minutes at the Registered Office of the first defendant/ Trust at No. 12(43), Ramanujam Street, T.Nagar, Chennai 600 017.

(e) Declaring that the Resolution passed on 15.03.2015 to appoint the third defendant as the rotation Trustee and consequently from 05.07.2015 acting as a first trustee of the first defendant is *void -ab-initio*.

(f) to grant permanent injunction restraining the defendants 2 and 3 from operating any of the Bank accounts in the name of the first defendant/ Trust either in the banks at Chennai, Trichy or elsewhere.

(g) directing the defendants 2 and 3 to pay the costs of this Suit to the first plaintiff.



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3. They have stated in the plaint that the first plaintiff is a registered Society, registered under the Tamil Nadu Societies Registration Act as No.251/1983 and has its own Memorandum and Bye-Laws. One of the active members of the first plaintiff was one Mr.S.Viswanathan, who founded the first defendant Trust by a Deed of Trust dated 06.12.2000, which is registered as Doc.No.1286/2000, SRO, T.Nagar, Chennai. The Office of the first defendant/Trust is the same as the office of the first plaintiff. Further averment in the plaint is that the second defendant, in order to swindle the Trust money and in order to secure the Ttrust properties for his personal benefits, amended the Trust Deed according to his whims and fancies and in violation of the Trust Deed, he is spending huge money to Hanuman Yagna, printing Hindu Mithran at Trichy from the Trust deposits, changed the Trust office from Chennai to Trichy and for his own convenience, changed the nomination power of the first Trustee, appointed and co-opted Trustees to strengthen his hand, so as to pass Resolutions as per his wish, which were against the interest of Trust and in violation of the Trust Deed. Further, the Trust functioning has suffered a lot by not providing proper accounts to the audit office at Chennai.



4. There are several acts of mis-feasance and mal-feasance committed by the second defendant. Neither the second defendant, nor even the body of the first Trustee have the power to shift the office of the first defendant Trust from Chennai to Trichy. The change of Registered Office is impermissible under law. Reply dated 10.10.2018 and rejoinder dated 13.11.2018 was issued to the defendant calling upon him to withdraw the appointment of the third defendant. Since the second defendant has not come forward to comply with the requests, the plaintiffs have preferred the Suit for various reliefs.

5. Respondents have filed counter affidavits repudiating the allegations levelled in the affidavit filed in support of the application and the averments of the plaint.

6. Learned counsel for the applicants/plaintiffs submitted that as per Section 4(iv) of the Trust Deed, the post of first Trustee shall be filled by the Managing Committee of the first applicant. Even without approval of the Income Tax Department and also consent of the applicants, the respondents amended the Trust Deed which, is against clause 4(iv) of the Trust Deed. He further submitted that he averred in the plaint about the breach of Trust and mal-practices committed by the respondents 2 and 3 and the second respondent



also colluded as total stranger to the Trust and has nexus with the International BHP , which had destroyed the Trust Deed. An independent entity and the International BHP with the eye of the properties of the Trust, in order to enrich the entity, by grabbing the trust property, has necessitated the second defendant to create a turmoil in the Trust to achieve their objectives and made amendment in the Trust. Only in order to swindle the Trust money and in order to secure the Trust properties for his personal benefits, Trust deeds were amended by the defendants. According the whims and fancies and in violation of the Trust Deed, they are also spending huge money against the objectives of the trust, there is a breach of trust and therefore, the applicants have filed the present Suit under Secion 92 C.P.C., which mandates to get the leave of this Court to file this Suit. Therefore, these applications have been filed. The applicants set out the allegations against the respondents/defendants, which would attract the breach of trust. Therefore, leave is necessary and the Court may grant the leave.

7. Learned counsel for the respondents/defendants submitted that, absolutely there are no allegations against the respondents and the averments leveled against the defendants in the plaint are not sufficient to grant leave. Further, the applicants have filed the Suit against the respondents in order to



indicate their personal motive and animosity. The Court can grant leave to file the Suit under Section 92 C.P.C., only. If there is breach of Trust or acting against the objectives of the Trust and Section 92 C.P.C., well defines as to under what circumstances, one can file the suit and the Court can grant the leave and the averments in the plaint do not disclose any cause of action against the respondents/defendants and the Suit has not been filed for the interest and benefit of the Trust. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in **2008(3) MLJ 967 SC [Vidyodaya Trust Vs. Mohan Prasan R and Others]** and referred to para 18 of the said judgment, which reads as follows:

18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act, 104 of 1976 the expression used as “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 C.P.C 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 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 provisions does not lie. As noted in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, a suit under Section 92 C.P.C. Is a suit of special nature which pre-supposes 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 of any other persons or persons in whom they are interested, Section 92 has no application.

8. In the above case, the applicants therein have filed the Suit for declaration of their individual and personal rights and there is no breach of Trust and therefore leave cannot be granted. Leave cannot be given for their personal interest.



9. Heard the learned counsel appearing for both the parties and perused the materials available on record.

10. Admittedly, the first respondent is a Public Charitable Trust. First applicant is a Society. Clause 4 of the Trust Deed of the first respondent reads as follows:

Any Vacancy in the Trust Board caused on account of death, resignation or otherwise of a First Trustee shall be filled up by the Managing Committee of Vishwa Hindu Parishad, a registered society having the office at No.43, Ramanujam Stree, Theagaraya Nagar, Madras – 600 017. The vacancy in the office of the co-opted Trustee shall be filled up the First Trustee by consensus.

11. On a further reading of the averments in the plaint, it shows that the applicants have made allegation against the second respondent/D2 that in order to swindle the money and for personal gain, they amended Bye laws of the Trust and also the activities of the Trust which amount to breach of Trust.



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12. Section 92 (1) C.P.C., is very clear that

In 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.

13. Therefore a reading of Section 92(1) C.P.C., and also on perusal of the averments in the plaint, it is clear that the applicants/plaintiffs have made out a case and there is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in the decision referred to by the learned Senior Counsel for the respondents 2 and 3 reported in **2008 (3) MLJ 967 SC. (supra)**, Whereas in this case, on a reading of the averments made in the plaint, this Court is satisfied that the applicants/plaintiffs have made out a *prima facie* case to grant leave to file the Suit under Section 92 C.P.C., The above Citation referred to by the learned Senior Counsel for the respondents/defendants would not be applicable to the present case at hand.



Since the present suit on hand is not for vindication of individual or personal rights of some persons.

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14. It is well settled proposition of law that the maintainability of the suit under section 92 C.P.C depends upon the allegations in the plaint and does not fall for decision with reference to the averment in the written statement. Therefore, at the time of deciding the application to grant leave, this Court has to see the averments in the plaint and not defence of the defendant.

15. On a reading of the averments in the plaint and also Section 92 C.P.C., it is clear that the applicants have made out a prima-facie case that leave can be granted to file the Suit. Accordingly Leave is granted. Application is allowed.

25.03.2022

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