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A.No.1480 of 2022 in C.S.DR.No.31019 of 2022

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KRISHNAN RAMASAMY.J.,

This Application has been filed seeking to grant leave for the institution of the suit to the applicants under Section 92 of CPC against the respondents.

2. The applicants/plaintiffs are the members of the 1st respondent/defendant Trust. They have filed the suit for declaration to declare that the MOU dated 13.12.2021 entered into between the 1st & 2nd respondents/defendants is illegal, null and void as the same has been entered into by the persons who are not authorized to do the same.

3. Learned counsel appearing for the applicants/plaintiffs would submit that the applicants/plaintiffs are the members of the 1st respondent/defendant Trust and therefore, they have interest in the Trust and since the respondents/defendants are acting contrary to the interest of the Trust, they intended to file suit against them and seek to leave to file the same under Section 92 of CPC.

4. On the other hand, the learned counsel appearing for 1st and 3rd respondents/defendants would submit that the present suit has been filed seeking to declare the Memorandum of Understanding dated 13.12.2021 as null and void itself, is the subject matter of O.S.No.14334 of 2010 pending before the City Civil Court, Chennai.



5. Learned counsel appearing for 2nd respondent also reiterated the same argument.

6. Further, the said Memorandum of Understanding has attained finality by order dated 10.03.2022 in CRP (PD).No.570 of 2022 and when such being the situation, the learned counsel for the respondents would submit that once again the applicants/plaintiffs cannot agitate the same subject matter before this Court. Hence, they opposed for grant of the relief.

7. Learned counsel appearing for 2nd defendant has also placed a reliance on the judgment of the Hon'ble Supreme Court in the case of '*Vidyodaya Trust Vs. Mohan Prasad R & others*' reported in '(2008) 4 SCC 115' and referred to paragraphs 19, 20 & 26 which is extracted hereunder:-

..... *“19. 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 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.*

20. In Swamy Parmatmanand’s case (supra) it was held



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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.....

26. 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.”

8. It appears that the present suit is filed by the applicants/plaintiffs who are all the members of 1st respondent Trust against the



respondents/defendants who according to the applicants, were acting contrary to the interest of the Trust and in this regard, they moved the present application seeking leave of this Court to institute the suit under Section 92 of CPC. For better appreciation, it is appropriate to extract Section 92 of CPC which reads as under:-

“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 Aectee.”

9. On perusal of the above provision, it is clear that in case of any breach of Trust created for public purposes of a charitable and religious nature where Courts intervention is required for administration of the said Trust, two or more persons having interest in the Trust, have to necessarily obtain leave of the Court to institute the suit for the subject matters of the Trust, viz., removing of any Trustee, appointing a new Trustee, etc.



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10. In the present suit, the applicants/plaintiffs sought for the relief to conduct elections of the 1st defendant Trust for the purpose of removing the previous Trust Board and electing new Trust Board and also for grant of mandatory injunction to direct the 1st respondent Trust to conduct its affairs, management and operation of bank accounts strictly in accordance with its Trust Deed dated 13.08.1987. Therefore, in the interest of the 1st respondent Trust, the applicants/plaintiffs who are 7 in number, and the members of the Trust having every interest to set right the affairs of the Trust and in such view of the matter, they have rightly come forward with the present suit since according to them, the respondents/defendants are acting contrary to the interest of the Trust and the terms of the Trust Deed. The prayers sought for in the suit will squarely fall within the ambit of Section 92 of CPC and the reliefs sought for in the pending suits in O.S.Nos.2230 & 2898 of 2021 on the file of the City Civil Court, Chennai, are entirely different and they will not have any bearing on the present suit in the event of even decreeing the said suits.

11. In such view of the matter, this Court is of the view that the applicants/plaintiffs can very well institute the present suit against the respondents/defendants in terms of Section 92 of CPC and thereby, they are entitled for the relief as sought for in the present application. The only object of Section 92 CPC is to protect public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. In the present suit, this Court does not find any such harassment being caused to the 1st defendant Trust by instituting the present suit by the applicants/plaintiffs



since the activities of the applicants/plaintiffs are only for protection of the interest of the 1st defendant Trust.

12. As regards to the contention raised on behalf of the respondents/defendants that the so called Memorandum of Understanding dated 13.12.2021 has already attained finality by virtue of the order passed in CRP.No.570 of 2022 is concerned, it is pertinent to note that this Court has only held that the leave under Order XXIII Rule 3(B) CPC is not required since the MOU has entered between the parties appears to be a convenient internal arrangement between the parties as to who should construct the temple and how the temple has to be managed. Pursuant to the said order of this Court in the CRP.No.570 of 2022, the trial Court without insisting upon the parties to seek leave under Order XXIII Rule 3(B) CPC has decreed the suit in OS.No.14334 of 2010 in terms of the MOU. Therefore, absolutely it cannot be held that the said MOU had attained finality since the very basic contention of the applicants/plaintiffs is that the respondents/defendants acted contrary to the interest of the Trust by entering into MOU and they have challenged the very MOU and it is the subject matter of the suit which has to be decided after full fledged trial of the suit. Therefore, the contention raised on behalf of the respondents/defendants is not acceptable. In fact, the respondents/defendants are always at liberty to agitate all the issues including maintainability of the suit itself by way of written statement.

13. A careful perusal of the reliefs sought for in the present suit by the applicants/plaintiffs being member of the 1st defendant Trust reveals that the intention behind the applicants/plaintiffs for instituting the suit which is well



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within ambit of Section 92 of CPC, is only to protect the interest of the 1st defendant Trust since they are none other than members of the Trust and allowing the present application would no way cause any prejudice to the respondents/defendants.

14. In the light of the above discussion and considering the nature of the reliefs sought for in the suit and in the interest of justice, this Court is inclined to allow this Application and leave for the institution of the suit under Section 92 of CPC against the respondents, is granted.

15. Accordingly, this Application stands allowed as prayed for.

24.08.2022

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