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CRP.No.2424 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2424 of 2018
and CMP.No.14922 of 2018

K.Sadhasivam

... Petitioner

Vs.

- 1.Shivam Charitable Trust
Moolakadu
Represented by its Chairman,
Office at S.S.Nagar,
Moolakadu Village,
Mettur Taluk,
Salem District
- 2.M.Senthilvelu
- 3.Usharani
- 4.B.Praveenkumar
- 5.E.Elavarasan
- 6.K.Sugamathi
- 7.S.S.Nivedha
- 8.M.Vimala
- 9.K.P.Gowrishankar
- 10.G.Rubharani

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order of the Principal District Judge's Court at Salem dated 31.08.2017 in IA.No.209 of 2016 in IA.No.139 of 2016 in OS.No.126 of 2016.

For Petitioner : Mr.P.Valliappan



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For Respondents

For R1 to 5 : Mr.I.Abrar Mohamed Abdullah

For R6 to 10: No appearance

ORDER

This civil revision petition has been filed to set aside the fair and decretal order of the Principal District Judge's Court at Salem dated 31.08.2017 in IA.No.209 of 2016 in IA.No.139 of 2016 in OS.No.126 of 2016, thereby dismissing the petition seeking to revoke the leave granted under Section 92 of CPC.

2. The petitioner is the first defendant in the suit filed by the respondents 1 to 5 herein for declaration and other reliefs. In the said suit, the respondents 1 to 5 filed application under Section 92 of CPC seeking to grant leave to them to institute the suit and the same was allowed. Thereafter, the petitioner herein filed application to revoke the leave granted under Section 92 of CPC and the same was dismissed. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner would submit that the first respondent is a private trust and other respondents are trustees. The suit under



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Section 92 of CPC presupposes the existence of a public trust of religious or charitable nature. Grant of leave under Section 92 of CPC is not automatic but based on the compliance of certain procedures. The respondents 1 to 5 failed to satisfy the mandatory requirements for filing the suit under Section 92 of CPC. He further submitted that all the prayers sought for in the suit are in the private interest and not for the public interest since the first plaintiff accepts it is a private trust. All the prayers sought for in the present suit is not for any public interest. Cancellation of supplementary trust deed dated 31.12.2014, sought for accounts in respect of the trust and removal of defendants 1 to 6 are only in private interest. Therefore, no public interest is involved in the suit and as such, the suit itself is not maintainable under Section 92 of CPC. In fact, in the supplementary trust deed, the second plaintiff is one of the parties and as such he cannot challenge the supplementary deed which was executed by him, that too under Section 92 of CPC. In fact, the second plaintiff was the Managing Directory and subsequently in the General Body Meeting, he was expelled from the trust. Therefore, in order to take revenge due to private interest, the present suit has been filed.

3.1 He further submitted that in order to maintain the suit under



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Section 92 of CPC, there must exist a trust for public purpose of charitable or

religious nature. The plaint must either allege that there is a breach of trust or

that the direction of the court are necessary for the administration of the trust.

The suit must be representative one on behalf of the public and not for the

assertion of the personal rights of the plaintiffs. The relief claimed must be one

of the reliefs enumerated in Section 92 of CPC. In order to substantiate his

contention, he relied upon the judgment in the case of ***Vidyodaya Trust Vs.***

Mohan Prasad R. and Ors reported in ***Manu/SC/7227/2008***, in which the

Hon'ble Supreme Court of India held that to find out 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. It is the object or the purpose for filing

the suit and not essentially the relief which is of paramount importance. 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. He also relied upon

another judgment of the Hon'ble Supreme Court of India in Civil Appeal

No.1589 of 1973 in the case of ***Swami Paramatmanand Saraswathi and Ors***



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Vs. Ramji Tripathi and Ors, in which it is held that if the allegation of breach of trust is not substantiated 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 Section 92 would fail and even if all the other ingredients of a suit are made out. 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 Section 92 of CPC.

3.2 He further submitted that in fact the second respondent herein applied for approval of the Girls High School and subsequently it was withdrawn by him. Now in the present case, he prayed that without approval, the petitioner should not conduct school. In fact, the wife of the second plaintiff was the accountant of the trust and as such there was misappropriation of the trust money. Therefore, the petitioner caused legal notice on 14.05.2016, thereby called upon to submit accounts and also to hand over the entire accounts of the trust. Immediately after receipt of the notice, the present suit has been laid by the respondents herein. Therefore, the court below ought not to have granted leave to file the suit under Section 92 of CPC.

4. Per contra, the learned counsel for respondents 1 to 5 would submit that the suit is filed for only public interest. The first plaintiff is the



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public trust and all the prayers are in the nature of public interest. They

challenged the supplementary deed which was executed on 31.12.2014, thereby completely changed the objects of the trust. Therefore, necessarily it has to be declared as null and void only for the purpose of general public since it is a public charitable trust. Further, the respondents made out prima facie case to maintain the suit under Section 92 of CPC and as such, the court considering the application under Section 92 of CPC, cannot go into the entire merits of the case. In support of his contention, he relied upon the judgment in the case of ***Ch.Mahesh Kumar Reddy and others Vs. Sathyanarayana Charitable Trust rep. by its Managing Trustee and others*** reported in (2018) 2 CTC 262 ,in which this Court held that on the averments made in the plaint when the plaintiffs are alleged breach of trust, they have made out a case for grant of leave. While considering the question of grant of leave, the court cannot look for concrete evidence, which would 100% ensure that the plaintiffs would be entitled to a decree as prayed for. The grant of leave essentially based on prima facie material.

4.1 He further submitted that the grant of leave is mandatory requirement for institution of a suit under Section 92 of CPC. It does not



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essentially involve adjudicatory process. The court should look into the averments and the allegations in the plaint to arrive at a prima facie satisfaction that the suit fall within the ambit of Section 92 of CPC. Therefore, the court below rightly came a conclusion that the plaintiffs made out a prima facie case to maintain the suit under Section 92 of CPC.

5. Heard, Mr.P.Valliappan, the learned counsel for the petitioner and Mr.I.Abrar Mohamed Abdullah, the learned counsel for respondents 1 to 5.

6. The respondents 1 to 5 are the plaintiffs and they filed suit for the following prayers:

“(a) declaring that the defendants 1 to 6 have ceased to be Trustees of the first plaintiff Trust

(b) directing the first defendant to submit true and proper accounts in respect of the Trust and School

(c) interdicting the defendants 1 and 2 by a permanent injunction from admitting any student in Queen Park Girls High School run by the first plaintiff till State Government grants recognition

(d) interdicting the first defendant by a permanent injunction from conducting any meeting on 26.04.2016 in respect of the first plaintiff Trust



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(e) interdicting the first defendant by a permanent injunction from continuing the running of the School till the State Government gives recognition

(f) declaring that the Supplementary Trust Deed dated 31.12.2014 is void

(g) and for a consequential permanent injunction restraining the first defendant from doing any act on the basis of the said Supplementary Deed

(h) awarding costs of the suit payable by the defendants

(i) granting such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of this case and thus justice be rendered”

7. On perusal of averments made in the plaint, revealed that the first respondent had taken on lease a vacant land by the lease deed dated 03.02.2015. In a small portion of the lease land, a school was constructed and the entire administration was carried out by the petitioner herein. There was some misappropriation of funds by him at the time of construction and the construction has attained finality. Even before getting approval, the petitioner decided to commence the school and admitted students. Further averred that without constituting the school committee and without getting proper recognition from the authority concerned, the petitioner with the support of the



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other defendants started school. Further by the supplementary trust deed dated 31.12.2014, the petitioner and the second respondent herein accordingly changed the object of the trust. Though the second respondent herein is also one of the parties to the supplementary deed, other trustees objected the same and as such they sought for nullity of the supplementary deed dated 31.12.2014.

8. In order to maintain the suit under Section 92 of CPC, the following conditions are mandatory:

(i) The Trust is created for public charitable or generous nature

(ii) There was breach of trust or direction from court is necessary for administration of such Trust

(iii) The relief claimed in the suit is one or other relief enumerated in provision

(iv) The suit must be representative one on behalf of public and not by individual for their own benefit.

9. Respondents 1 to 5 are the plaintiffs, in which respondents 2 to 5 are the trustees of the first respondent trust. In the interest of the first



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respondent trust, other trustees have filed the present suit. The learned counsel for the petitioner mainly contended that the first respondent trust is a private trust. On perusal of the trust deed produced by the respondents herein, revealed that the object of the trust is to provide education and medical facilities to the general public without any discrimination on the basis of caste, religion and other criteria. The beneficiaries under the trust is public in general and not to group of persons or individuals. Therefore, it is a charitable public trust in nature. Insofar as the other allegations made in the plaint, there was misappropriation while constructing school building and also not submitted accounts of the trust. There were complaints from the general public. Therefore, the other reliefs were sought for in the present suit. The present suit is not filed for claiming any right to the individual benefit. Therefore, the respondents made out a prima facie case to maintain suit under Section 92 of CPC.

10. On perusal of the judgments relied upon by the respondents herein are squarely applicable to the case on hand. The court has necessarily a duty to protect the interest of the public trust. A public trust should be administered in a transparent manner. While dealing with an application for leave under Section 92 of CPC, the court should not adopt a hyper-technical approach.



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There cannot be a hard and fast rule in a case of this nature involving a public charity. Therefore, the court below rightly granted leave under Section 92 of CPC to file a suit and rejected the petition filed for revocation of leave.

11. In view of the above, this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, this civil revision petition is dismissed. However, the trial court is directed to dispose of the suit within a period of twelve months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

22.12.2022

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

Principal District Judge's Court



at Salem

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