



A.No.4140 of 2022
in
C.S.No.678 of 2019

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C.V.KARTHIKEYAN,J.,

This application has been filed by a third party to the suit seeking to be impleaded as a further defendant in the suit.

2. The suit in C.S.No.678 of 2020 has been filed questioning the management and administration of the Trust, which is the 1st defendant/Sathrasala Venkatachellum Chetty Charities.

3. Prior to the institution of the suit, necessary leave had been granted by this Court in A.No.3354 of 2019, by an order dated 31.10.2019.

4. For all practical purposes, the 1st defendant had been categorized as a Public Trust falling within the ambit of Section 92 of the Code of Civil Procedure.

5. The code envisages institution of a suit if there is a breach of any express or constructive terms of a trust created as a public trust and various clauses had been given under Section 92 stipulating the grounds which can be raised in the plaint.



6. The two plaintiffs who have instituted the suit, had originally impleaded seven defendants. Thereafter, the 8th defendant came to be impleaded by filing an application in A.No.3109/2021 by an order dated 23.11.2021.

7. The 8th defendant claimed that she was a necessary and proper party and also claimed that she was the blood relation of the plaintiff and had stated that she had a direct interest in the cause of trust. Her contentions were taken note of and by the order aforementioned, in the said application, she had been impleaded as a party.

8. Thereafter, the present application came to be filed and the present applicant is none other than the brother of the 8th defendant. He appears to have serious grievances. Various allegations have been levelled against the 8th defendant particularly with respect to opening of a bank account.

9. But I must also point out it has been the contention of the learned counsel for the 8th defendant that the bank account had been opened only as per resolutions passed.

10. These are issues to be examined during the course of trial.



11. It is also contended by the learned counsel for the applicant herein that as a member of the family, he is directly interested in the functioning of the trust and therefore, he should also be heard before any orders are passed in the suit which directly affect the functioning of the trust.

12. As a matter of fact, Section 92 of the Code of Civil Procedure envisages, prior to institution of the suit, an application will have to be filed seeking leave and if such leave is granted, then, those interested can join the proceedings and it is not open to them to institute a separate suit.

13. The object is that every issue related to the Public Trust should be decided in one proceeding and orders passed thereunder and this would avoid inconsistent orders being passed in different litigations.

14. It is stated by the learned counsel on behalf of the applicant as a member of the family, he is certainly a necessary party and he would tender evidence which would help in deciding the relief sought in the suit.

15. The learned counsel for the plaintiffs had left the issue open and stated that he also has grievances against the 8th defendant and therefore had stated that the Court can take a decision whether to implead or not to implead the applicant.



16. It must be kept in mind that though in normal circumstances, in a Civil Suit the plaintiff would be termed as dominus litis in an issue where a Public Trust is involved and leave had been granted under Section 92 of CPC, all the parties to the suit can contribute their knowledge and assistance for the betterment of the trust and that has to be the object which the Court has keep in mind while examining whether any party is to be impleaded as further defendant in a suit which is already pending.

17. One specific object which the Court should take care is that no further suit is filed on the same issues and that no two separate forums should examine the same issues and passed inconsistent orders thereby directly affecting the functioning of the trust.

18. Viewed from that particular angle, I hold that it would always be better that if a third party comes to the Court to assist and if such party is taken on board and evidence recorded, a considered decision can be given on the functioning of the trust or on the allegations relating to the administration of the trust.

19. The grievance of the learned counsel for the 8th defendant is that the present applicant is expressing his personal grievance and it is stated that the applicant herein is the own brother of the 8th defendant and that the plaintiffs are half-brothers.



20. Be that as it may, taking an over all consideration of the entire issue, I would allow the present application and permit the present applicant to be impleaded as a further defendant in the suit.

22. The learned counsel for the applicant had placed reliance on the Judgment reported in ***AIR 1990 SC 444 [R.Venugopala Naidu and Others v. Venkatarayulu Naidu Charities and Others]*** wherein, the issue before the Hon'ble Supreme Court had been reduced in paragraph No.2 of the said Judgment which is as follows:

“2.The question for consideration in this Appeal is whether “parties” mentioned in Clause 14 of the scheme-decree reproduced above mean only the named plaintiffs and defendant in the suit-title and their successors-in-interest or the suit being representative it includes all those who re interested in the trust.”

23. That came to be answered in paragraph No.9 and the said paragraph is extracted below in entirety.

“9.The legal position which emerges is that a suit under S.92 of the Code is a suit of a special nature for the protection of Public rights in the public Trusts and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the



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trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under S.92 of the Code and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are on the suit-title are the only parties to the suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust all such interested persons would be considered in the eyes of law to be parties to the suit. A suit under S.92 of the Code is thus a representative suit and as such binds not only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that explanation VI to Section 11 of the Code constructively bars by res-judicata the entire body of interested persons from re-agitating the matters directly and substantially in issue in an earlier suit under S.92 of the Code.”

24. The Hon’ble Supreme Court was of the firm opinion that all persons who are interested in the trust should be parties to the suit and



should also be heard.

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25. The question is whether they should be heard as witnesses or should be made as defendants to the suit.

26. A witness to a suit can present evidence but cannot urge a particular relief being granted by the Court. In view of that limitation which attends on a witness, I hold that everybody directly or indirectly connected with the family of the Trust should be made parties and that materials placed by all of them should be examined and analyzed to determine the best option to be taken for proper administration of the Trust which in effect of the object of any suit under Section 92 of the Code of Civil Procedure.

27. In view of the above reasons, I would allow the application.

28. The application stands allowed accordingly. No costs.

15.11.2022
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