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RESERVED ON	22.02.2022
PRONOUNCED ON	24.03.2022

A.No.6408 of 2019
in
C.S.Sr.No.112222 of 2019

P.VELMURUGAN, J.

Application in A.No.6408 of 2019 has been filed to grant leave to the applicants herein to institute a suit under Section 92 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) for framing a scheme for proper management and administration of the affairs of the Samyukta Gowda Saraswata Sabha, the 1st respondent herein.

2. C.S.Sr.No.112222 of 2019 has been filed for

(a) framing a scheme for proper management and administration of the affairs of the Samyukta Gowda Saraswata Sabha, 1st defendant, as to effectuate the objects set out in Bye-law 1 of the Sabha ;

(b) removing the defendants 2 to 12 as the Trustees of the 1st defendant and consequently appoint a Board of Trustees comprising of eminent persons drawn from the United Gowda Saraswat Community ;



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(c) directing the defendants 2 to 12 to deliver up the inventory and other properties belonging to the 1st defendant which are in their powers and possession and direct that the same be vested in the Board of Trustees constituted supra ;

(d) directing the defendants 2 to 12 to submit accounts for the incomes received by them for the 1st defendant and the amounts expended by them, and to cause the same to be inspected and audited ;

(e) to grant such other reliefs as are just and necessary for the purposes of effectively administering and managing the 1st defendant to ensure that its objectives of the charity are not frustrated or defeated ;

(f) in the event that this Hon'ble Court finds malversation of funds, to direct defendants 2 to 12 to personally make good all such losses caused to the 1st defendant ; and

(g) to award the costs of this suit.

3. According to the applicants the first respondent is a Sabha which was established in the year 1912 and registered under the Societies Registration Act, 1860 in the year 1925. Although the Sabha is registered under the Societies Registration Act, 1860, as amended by the Tamil Nadu Societies Registration Act, 1975, it is a Public Trust and a



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Charitable Institution. The main objectives of the Sabha are to provide financial and other assistance for the economically weaker section of the United Gowda Saraswata Community. It is further stated that the applicants are life members of the first respondent/Society.

4. It is further stated that during the initial period, the income of the Society was augmented by collecting membership subscription fees and donations from various persons and the said income was utilised for granting loan scholarships to deserving needy students of the community. Under this scheme, the students who availed the scholarship loans were required to repay the same in instalments after they get employment, so that the repaid amount could be used to other needy students. It is further stated that the first respondent purchased a land measuring an extent of 1-1/3 acres at West Mambalam and constructed a building in the said land and the same was completed in year 1967 from the funds collected by donations from the members of the Community and loans availed from the Banks. The property being land and building, now situated at No.55, Habibullah Road, T.Nagar, Chennai -17, is known as "Samyukta Gowda Saraswata Sabha". The market value of the property as on date is



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more than Rs.100 crores generating average income of approximately Rs.1 Crore per annum, for achieving the cause of the Society.

5. It is further stated that, even though, the first respondent/Society is registered under the Societies Registration Act, it is a Public Trust and a Charitable Institution, registered under Section 12-AA of the Income Tax Act, 1961 ('IT Act' for brevity) for claiming exemption under Section 11 of IT Act. The applicants herein are the interested persons and life members to the Society. Therefore, in order to get better management and administration of the affairs of the Society, the applicants have filed this application seeking leave of this Court to file a suit under Section 92 C.P.C for framing a scheme in respect of the Society.

6. The learned counsel for the respondents/defendants by referring the counter filed by the first respondent contended that the applicants failed to establish that the Sabha is a constructive Trust of Charitable and Religious nature, so as to attract the provisions of Section 92 CPC. The present application and suit have been filed for settling personal grievances of the 1st applicant, his brother and father against the Management Committee of the Sabha. He further referred paragraph



No.3(v) of the counter affidavit of the 1st respondent, which reads as follows :

"3(v) The following correspondences between the parties would substantiate the collusion by the 1st applicant, his brother and father to falsely discredit the Managing Committee (for the period 2016-2019) and the Auditor and Advocate-Income Tax of the Sabha so that persons of their choice including themselves are appointed as members of the Managing Committee and the Auditor and Advocate of the Sabha :

a) 03.11.2018 and 11.01.2019 - letters issued by the brother of the 1st applicant to the Sabha raising false and frivolous allegations against the Managing Committee (for the period 2016-2019) of the Sabha.

b) 28.01.2019 reply by the Sabha denying the allegations and stating the wrongful and unethical ulterior motives, as mentioned above.

c) 29.01.2019, the very next day, letter from the 1st applicant seeking to inspect the books of accounts of the Sabha.

d) 31.01.2019 - two days later, letter from the father of the 1st applicant seeking to inspect the minutes of the meeting of the general body and Managing Committee of the Sabha.

e) 20.02.2019 replies were issued to the 1st applicant



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and his father informing that their request for inspection is not *bona-fide*, but with the ulterior motive of espousing the wrongful intentions. However, they were permitted to inspect in the interest of complete transparency by the Managing Committee (for the period 2016-2016)."

7. The learned counsel for the respondents/defendants further contended that the 1st applicant/1st plaintiff has also filed C.S.No.553 of 2019 *inter-alia* seeking to declare the election of the Managing Committee of the Sabha held on 29.09.2019 as illegal and permanent injunction, restraining the members of the Managing Committee from conducting the elections for the Managing Committee of the Sabha on 29.09.2019 and filed O.A.No.863 of 2019 therein seeking interim injunction restraining the members of the Managing Committee for conducting elections for the Managing Committee of the Sabha on 29.09.2019 and also filed Application No.7132 of 2019 for appointment of Advocate Commissioner to conduct the elections for the said Committee. After detailed arguments, O.A.No.863 of 2019 and Application No.7132 of 2019 were dismissed, vide order of this Court, dated 27.09.2019. The suit in C.S.No.553 of 2019 is still pending before this Court.



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8. He further contended that the present application and suit have been filed not for the purpose of any alleged vindication of public rights, but for settling personal grievances against the Managing Committee (for the period 2016-2019) of the Sabha and to achieve personal benefits and secure positions in the management of the Sabha and hence, the allegations raised by the applicants/plaintiffs are false. The applicants have not come before this Court with clean hands and no indulgence should be afforded to them by this Court. Hence, the present application may be dismissed and suit may be rejected.

9. Heard both sides and perused the materials available on record.

10. It is the admitted case of the applicants/plaintiffs that the 1st respondent/Society is a Public Trust and a Charitable Institution and the applicants are life members and also interested persons in the Society. Hence, they have filed the application seeking leave of this Court to file a suit under Section 92 C.P.C for framing a scheme for better management and administration of the affairs of the Society.

11. Per contra, the respondents/defendants contended that first



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respondent/Society is not a Public Charitable Trust or Religious in nature and hence, the present application and suit are not maintainable. Further, in order to vindicate the personal interest, the applicants have filed the application, which would not attract Section 92 CPC.

12. On a reading of the entire plaint as well as the affidavit filed in support of the application, it reveals that the first respondent/Society is a Charitable Trust, which is registered under the Societies Registration Act. The object of the Trust clearly shows that it has been established for Charitable purpose and therefore, they are entitled to seek relief under Section 92 C.P.C.

13. For better appreciation, it is relevant to extract Section 92(1) C.P.C as follows :

"Section 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 [74][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 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."

Therefore, Section 92 (1) C.P.C is very clear that two or more persons having an interest in the Trust and having obtained the leave of the Court, may institute a suit, for the reasons contemplated under this Section.

14. Further, whether the allegations levelled in the plaint and in the application are true or not and whether the scheme is essential to be framed and whether the respondents are acting against the object of the Trust or not, can be decided only in the suit after trial, but not at this stage.

15. It is settled proposition of law that while deciding the application under Order VII Rule 11 C.P.C, the Court has to see the averments in the affidavit and plaint and not the defence taken by the



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defendants. If the Court is satisfied that the Trust is a Public Charitable Trust and the suit has been filed by one or more interested persons alleging that some of the Trustees, who are in-charge of the Trust, are acting against the object of the Trust, the suit can be entertained.

16. In the light of the above facts and circumstances, this Court finds that the applicants/plaintiffs have made out a case to sue the respondents/defendants and hence, leave is granted. Accordingly, this application is allowed.

17. The Registry is directed to number the suit, if it is otherwise in order.

24.03.2022

Index : Yes /No

Speaking Order / Non Speaking Order

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