



C.M.A(MD)No.1048 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.10.2022

Pronounced On : 02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1048 of 2021

and

C.M.P(MD)No.9970 of 2021

1.V.Manonmani (Trustee)

2.V.Senthil Devi (Trustee)

3.V.Sudhakar (Trustee)

4.V.Rajarajan (Trustee)

5.V.Santhakumari

6.R.Sujatha : Appellants /Respondents/Defendants

Vs.

1.Madhavi @ V.Malathi Serin

2.V.Serin

3.V.Rajarajeswari : Respondents/Petitioners/Plaintiffs

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1 (r) of C.P.C., to call for the records and set aside the fair and decretal order,



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dated 01.10.2021 in I.A.No.48 of 2021 in O.S.No.213 of 2021 on the file of the Fast Track Mahila Judge, Dindigul in so far as it relates to grant for interim injunction against the appellants and in favour of the respondents to allow this Civil Miscellaneous Appeal with costs.

For Appellants : Mr.K.Lakshmi Shankar

For Respondents : Mr.R.Subramanian,
for Mr.S.R.Suresh Kumar,
Caveator for R3.

: No Appearance, for R1& R2.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the order passed in I.A.No.48 of 2021 in O.S.No.213 of 2021, dated 01.10.2021 on the file of the Additional District Court/Fast Track Mahila Court, Dindigul, granting temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

2.The appellants/petitioners are the respondents/defendants and the respondents/respondents are the petitioners/plaintiffs in I.A.No.48 of 2021 in O.S.No.213 of 2021 on the file of the Fast Track Mahila Court, Dindigul.



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3.The first respondent, as the managing trustee and the respondents 2 and 3, as trustees of Victory Educational Trust, have filed the above suit against the petitioners/appellants, claiming the following reliefs :

(a) directing the defendants 4 and 6 to pay compensation of Rs.11,00,000/-for causing defamation to the plaintiffs ;

(b) declaration that as per resolution, dated 25.06.2021 passed in the Victory Educational Trust, the first plaintiff is the managing trustee of the Victory Educational Trust;

(c) consequential permanent injunction restraining the defendants and their men from in any way causing disturbance or interference to the functioning of first plaintiff as the managing trustee of the Victory Educational Trust;

(d) declaration that the supplementary trust deed, registered as document No.9 of 2021, dated 14.06.2021, before the Sub-Registrar Office, Periyakulam, is legally invalid.

4. For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking / status in the original suit.



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5. Admittedly, the fifth defendant is the wife, the defendants 1 and 2 are the daughters and the defendants 3 and 4 are the sons of the deceased Vadivel and that the sixth defendant is the wife of the fourth defendant.

6. According to the plaintiffs, the first plaintiff is the second wife and the second plaintiff is the daughter of the deceased Vadivel. Admittedly, the third plaintiff is the daughter of the first plaintiff through her first husband. No doubt, the defendants have disputed the status of the first plaintiff as the second wife of the deceased Vadivel.

7. The plaintiffs' case is that the first plaintiff's father-in-law Murugan @ Martin Murugan and his second son M.Soundararajan founded Vadivel Educational Trust on 19.08.1988; that the first plaintiff along with her father-in-law Murugan, had founded Victory Educational Trust on 19.04.1991 and that since both the trusts had similar objectives, were merged into a single trust by name Victory Educational Trust vide deed of transfer, dated 09.04.1999.



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8. It is their further case that the said Vadivel became Managing Trustee and the first plaintiff as Secretary of the said Trust on 14.05.1999; that the plaintiffs 2 and 3 and the defendants 1 and 2 were inducted as trustees; that the said Vadivel had died on 14.05.2021 and that the first plaintiff, who was the then Secretary of the trust, was made the Managing trustee vide resolution, dated 25.06.2021.

9. It is their further case that the defendants created a resolution dated 09.06.2021 removing the plaintiffs from trusteeship and nominating the fourth defendant as managing trustee; that the above resolution was filed and got registered before the Sub Registrar Office, Periyakulam, though the trust is situated in the jurisdiction of Vadamadurai, Dindigul District, that the plaintiffs came to know about the illegal resolution removing them from trusteeship, from the notice received on 28.06.2021 and that therefore, they were constrained to file the present suit.

10. It is the specific case of the plaintiffs that the defendants 3 to 6 have no connection whatever with the Victory Educational Trust and that at the instigation of the defendants 4 and 6, the defendants have been



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interfering with the management of the trust; that the defendants 4 and 6 by using their influence as advocates, have been attempting to grab the trust and its properties; that the writ petitions filed by the fourth defendant in W.P.(MD)Nos.11742 and 11727 of 2021, claiming himself as the managing trustee with a prayer to transfer the trust account, were ordered to be dismissed.

11. The defendants 1, 2, 3 and 5 and the fourth defendant have filed separate counter statements, disputing the affidavit averments of the plaintiffs and further stated that the fourth defendant was unanimously selected as managing trustee of the trust in the meeting held on 09.06.2021 and fourth defendant has been administrating Educational Institutions of the suit trust; that the plaintiffs have already been removed from the trusteeship as per the decision of majority in the meeting held on 09.06.2021 and that the plaintiffs have absolutely no right in the suit trust and in the educational institutions run by the trust.

12. During enquiry, the plaintiffs and defendants have not chosen to adduce any oral evidence, but the plaintiffs have produced and exhibited 29 documents as Ex.P.1 to Ex.P.29 and the defendants have produced and exhibited 30 documents as Ex.R.1 to Ex.R.30.



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13. The learned Additional District Judge, upon considering the pleadings and documentary evidence and on hearing the arguments of both the sides, has passed the impugned order, dated 01.10.2021, granting temporary injunction against the defendants 1 to 6 as prayed for till the disposal of the suit and further directed the plaintiffs to issue notice to the defendants 1 to 4 for all meetings to be conducted by the trust and that the defendants 1 to 4 are entitled to participate in the trust meetings till the disposal of the suit. Aggrieved by the said impugned order, the defendants have preferred the present appeal.

14. The learned counsel for the appellants would strongly contend that the very suit filed by the plaintiffs is not maintainable under Section 92 of C.P.C, as the plaintiffs are agitating their personal rights ; that the plaintiffs in their plaint as well as in the affidavit filed in support of the injunction application have projected the rival claim in respect of the Office of the Managing Trustee and the right to be in management between the first plaintiff and the fourth defendant and hence, the entire suit is not on behalf of public trust or in a representative capacity to vindicate the rights of the public trust or seeking any of the reliefs under Section 92 of C.P.C and that since the present suit is filed with a purpose



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to remedy the infringement of an individual right or to vindicate a private right, the suit falls outside Section 92 of C.P.C and that therefore, the suit as framed, is legally not maintainable.

15. No doubt, the defendants have raised many other objections, but since they have challenged the very maintainability of the suit itself, let us consider that objections at first.

16. At the outset, it is pertinent to note that the present suit, admittedly, is filed under Order 7 Rule 1 and Section 92 of the Code of Civil Procedure. It is not in dispute that the plaintiffs have filed an application in I.A.No.174 of 2021, seeking leave of the Court under Section 92 of C.P.C and that the petition was ordered by the learned Principal District Judge, Dindigul, while taking the suit on file on 02.08.2021.

17. According to both the parties, the suit trust is a public trust and is running educational institutions. According to the plaintiffs, the plaintiffs 1 to 3 and the defendants 1 and 2 along with deceased Vadivel were the trustees at the time of the death of the said Vadivel and that at that time, the said Vadivel was the Managing Trustee and the first plaintiff was the Secretary of the Trust.



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18. But according to the defendants, though the plaintiffs were made trustees earlier, since they were acting against the interest and welfare of the trust, they were removed from the trusteeship in the meeting held on 09.06.2021 and that the fourth defendant was made the managing trustee.

19. Before entering into further discussion, it is time to consider the legal aspects.

20. It is pertinent to note that as per Section 92 C.P.C, leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section . There existed a controversy as to whether notice to the other side and hearing the other side is necessary, before granting the leave.

21. The object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. In ***R.M.Narayana Chettiar Vs. N.Lakshmana Chettiar*** reported in ***1991 AIR 221***, the Hon'ble Supreme Court while



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answering the question, as to whether it is obligatory on the Court, before granting leave to institute a suit as required under section 92 of the Code of Civil Procedure, 1908, to give an opportunity to the respondents to show cause against the grant of such leave, and whether leave granted without such opportunity having been given is void.

“ A plain reading of section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section: unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying section 92 and the language thereof, it appears to us that, as a rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under section 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave under section 92 can be granted as that would lead to unnecessary



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delay and, in a given case. cause considerable loss to the public trust. Such a construction of the provisions of section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion. although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit. the court' is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.

22. Considering the above, it is very much clear that the leave must be obtained for instituting a suit under Section 92 of C.P.C and that it is open to the Court to grant leave, even without notice to the defendants, if the Court considers that no such notice is necessary and leave granted without notice to the defendants cannot be held to be bad in law. But at the same time, if the leave is granted without notice to the defendants, it is always open to the defendants to file an application for revocation of



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the leave and on such filing of the application, the Courts are duty bound to consider the same on merits and according to law.

23. Now turning to the case on hand, it is not in dispute that the leave sought for by the plaintiffs for filing the suit under Section 92 C.P.C has been granted, without notice to the defendants. It is not known as to whether the defendants have filed any application to recall or revoke the leave already granted. Whatever it is, just because, the defendants have not filed any application to recall or revoke the leave already granted, it cannot be said that the defendants cannot challenge the maintainability of the suit under Section 92 C.P.C.

24. A suit under Section 92 C.P.C, is a suit of a special nature, which presupposes the existence of a public trust of a religious or charitable character. Such suit can be proceeded only on the allegation that there is a breach of such trust or that directions of the court are necessary. It is only when these conditions are fulfilled that the suit has got to be brought in conformity with the provisions of section 92, Civil Procedure Code.



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25. In *Swami Paramatmanand Saraswati Vs. Ram Tripathi*

reported in (1974) 2 SCC 695, the Hon'ble Supreme Court has held that if the allegation of breach of trust is not substantiated or that the plaintiff has not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit would fail; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 CPC.

26. It is pertinent to note that 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 the section. It is not every suit claiming the reliefs specified in the section 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; and in deciding whether a suit falls within Section 92, the Court must go beyond the reliefs and have regard to the capacity in which the



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plaintiffs are suing and to the purpose for which the suit was brought.

When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.

27. In ***Swami Paramatmanand Saraswati's*** case referred above, the Hon'ble Apex Court, has specifically observed that when the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, Section 92 C.P.C has no application. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***Vidyodaya Trust Vs. Mohan Prasad R and others*** reported in ***(2008) 4 Supreme Court Cases 115.***

“18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act, 104 of 1976 the expression used was "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 CPC 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.

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 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 or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has no application.

.....

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



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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.

28. The learned counsel for the defendants would contend that the plaintiffs in their entire plaint and the affidavit filed in support of the injunction petition have narrated the formation of trusts and the dispute between the plaintiffs and the defendants and that they have claimed the reliefs claiming damages for defamation and declaration and consequential permanent injunction with respect to the first plaintiff's alleged right of being managing trustee of the trust and for declaration with respect to the supplementary trust deed entered into by the defendants.

29. As rightly pointed out by the learned counsel for the defendants, the Hon'ble Supreme Court in ***Swami Paramatmanand***



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Saraswati's case referred above, has held that to decide as to whether the suit falls within the ambit of Section 92, only the allegation in the plaint should be looked into in the first instance. To counter the same, the learned counsel for the plaintiffs has relied on the judgment of **Vidyodaya Trust's** case above referred, wherein the Hon'ble Supreme Court after referring to the **Swami Paramatmanand Saraswati's** case has observed that “ 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.

30. The learned counsel for the plaintiffs, by referring to the above portion, would submit that the maintainability of the suit can only be decided after evidence.

31. As rightly contended by the learned counsel for the defendants, the Hon'ble Supreme Court in **Swami Paramatmanand Saraswati's** case has specifically held that it is only the allegations in the plaint that should



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be looked into in the first instance. Suppose, if the defendant fails to raise such an issue at an initial stage, even after recording of evidence, he is certainly entitled to raise the maintainability of the suit and in that situation, if the Court found that the breach of trust alleged has not been made out or that the prayer for direction is vague and is not based on any solid foundation, the suit is liable to be dismissed.

32. In the case on hand, a cursory perusal of the plaint and the reliefs claimed, make it clear that the plaintiffs are not suing to vindicate the rights of the public and that the suit has not been filed in the representative capacity. Admittedly, the plaintiffs have filed the above suit claiming personal reliefs and as individuals.

33. As rightly contended by the learned counsel for the defendants, it cannot be said that the present suit has been laid on behalf of the beneficiaries and members of the public to protect the interest of the public trust and not for vindicating the personal grievances.

34. It is pertinent to note that the discretionary reliefs under Section 92 C.P.C shall not be granted when the plaintiffs have no genuine



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interest or intention to protect the public right of the beneficiaries. To put it in other way, as rightly contended by the learned counsel for the defendants, a cursory perusal of the plaint would makes it clear that the plaintiffs were highlighting personal grievances. Even as per the plaint averments, it can easily be inferred that the plaintiffs are highlighting the disputes between the alleged two wives and the children of the deceased Vadivel.

35. The Hon'ble Supreme Court in ***Sugra Bibi Vs. Hazi Kummu Mia*** reported ***AIR 1969 SC 884***, has held that the mere fact that the suit relates to public trust of religious or charitable nature and the reliefs claimed fall within some of the clauses of sub-Section (1) of Section 92 would not by itself attract the operation of the Section, unless the suit is of a representative character instituted in the interest of the public and not merely for vindication or the individual or personal rights of the plaintiffs.

36. It is not the case of the plaintiffs that they have filed the above suit in the representative capacity or character.



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37. Considering the above, this Court is of the view that the suit, *prima facie* is not maintainable and as such, the question of granting temporary injunction does not arise at all. But, at the same time, the trial Court is to be directed to consider the maintainability of the suit under Section 92 C.P.C and decide the same at the first instance, by invoking Order 7 Rule 11 C.P.C.

38. It is not in dispute that the plaintiffs have been enjoying the injunction order from the date of the suit till now. Since the suit trust is running the educational institution, this Court is not inclined to open the pandora's box at this stage and hence, in the interest of educational institutions, this Court directs the parties to maintain Status Quo as of now till the disposal of the suit. Moreover, order of the trial Court, directing the plaintiffs to issue notice to the defendants 1 to 4 for all meetings to be conducted by the trust and the defendants 1 to 4 are entitled to participate in the trust meetings till the disposal of the suit, is to be confirmed. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.



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39. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order passed in I.A.No.48 of 2021 in O.S.No.213 of 2021, dated 01.10.2021, on the file of the Fast Tract Mahila Judge, Dindigul, granting temporary injunction, is set aside. The learned trial Judge is directed to decide the maintainability of the suit under Section 92 C.P.C, invoking Order 7 Rule 11 of C.P.C within a period of two months from the date of receipt of copy of this order. The parties are directed to maintain Status Quo as of now till the disposal of the suit. The order of the trial Court, directing the respondents/plaintiffs to issue notice to the appellants/defendants 1 to 4 for all the meetings to be conducted by the trust and that the appellants 1 to 4/defendants 1 to 4 are entitled to participate in the trust meetings till the disposal of the suit, shall stand confirmed. Consequently connected Miscellaneous Petition is closed.

02.12.2022

Index : Yes : No
Internet : Yes : No
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To

- 1.The Fast Tract Mahila Judge,
Dindigul.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-deliver order made in
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and
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02.12.2022