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O.S.A.Nos.176 & 178 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND

THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

O.S.A.Nos.176 & 178 of 2023

AND

C.M.P.Nos.21385 & 21459 of 2023

R.Mohan

.. Appellant in both OSAs

Vs.

1.R.Venkatesh

.. 1st Respondent in OSA No.176 of 2023

P.Ganapathi

.. 1st Respondent in OSA No.178 of 2023

2.R.Parthasarathy

.. 2nd Respondent in both OSAs

Original Side Appeals filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent, against the order dated 30.03.2023 passed in A.Nos.1129 & 1130 of 2023 in C.S.No.536 of 2009.

For Appellant : Ms.C.Auxilia Peter
in both OSAs

For Respondents : Mr.Niranjan Rajagopal
in both OSAs for M/s.G.R.Associates



O.S.A.Nos.176 & 178 of 2023

COMMON JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

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These Original Side Appeals have been filed to set aside the common order passed by the learned Judge in A.Nos.1129 and 1130 of 2023 in C.S.No.536 of 2009 on 30.03.2023.

2.Originally, the suit in C.S.No.536 of 2009 was filed by the plaintiffs praying to pass a decree : (i)to remove the defendants from the office of trustees of Thiruneelakandar Trust, (ii) for declaration that the first plaintiff is a life trustee of Thiruneelakandar Trust, (iii) to appoint the second plaintiff and Parthasarathi as co-trustees with the first plaintiff entitled to administer the trust with powers to take possession of the properties of the trust and to collect outstanding dues in favour of the trust; and (iv) to direct the defendants to account for the earnings of the trust that have been misappropriated and pay the same to the trust. It was stated in the plaint that the first defendant, wife of one Venugopal Reddy who constituted the said Thiruneelakandar Trust for the noble purpose of promoting education and other related purposes, has been committing several acts of maladministration of the Trust joining hands with her relative by name Mohan, the second defendant in the suit / appellant herein.



O.S.A.Nos.176 & 178 of 2023

3.The first plaintiff has been appointed as a life trustee of the said Trust, by the deceased Venugopal Reddy who constituted the Trust and he died on 05.01.2012 and the other two plaintiffs continued to conduct the case. The first plaintiff, by a Will dated 04.08.2010, appointed one D.Varadarajulu as the successor to the office held by him in the said Trust. Subsequent to the death of D.Varadarajulu, who has been appointed by way of a Will by his predecessor and one T.Chakravarthi, who was appointed as a Trustee of the Trust, A.No.1129 of 2023 has been filed by one R.Venkatesh praying that he be substituted as the first plaintiff instead of late D.Varadarajulu in C.S.No.536 of 2009 and A.No.1130 of 2023 has been filed by one P.Ganapathi, praying that he be substituted in the position of the second plaintiff instead of late T.Chakravarthi in the said suit. The said applications were resisted by the defendants stating that on the date when permission was obtained under Section 92 CPC for filing the suit, the applicants were not the trustees and hence, they cannot be inducted directly without getting any prior permission under Section 92 CPC and that, the resolution passed by the Trust in this connection itself is invalid.

4.Upon hearing both sides, the learned Judge allowed those applications by the order impugned herein. Therefore, the second defendant is before this court with the present appeals.



O.S.A.Nos.176 & 178 of 2023

5.The learned counsel for the appellant in these appeals submitted that the appellant herein is the nephew of late Venugopal Reddy and late Lakshmikanthammal and during their life time, they were not having any biological children and hence, they registered the Trust deed on 06.03.1981 naming the Trust as “Thiruneelakandar Trust”. The learned counsel further submitted that late Venugopal Reddy left a Will appointing D.Varadarajulu as life trustee of the Trust and the same was registered. That apart, late Lakshmikanthammal also executed a Will during her life time and the same was also registered and in the said Will, she had appointed the appellant as the life trustee of the Trust and after the death of Venugopal Reddy, she acted as a Managing Trustee and both D.Varadarajulu and the appellant acted as life trustees. In the mean while, the said D.Varadarajulu at the instigation of certain persons without the knowledge of the Managing Trustee called himself as Executor of Estate of the deceased Venugopal Reddy, which is a total entity created with an attempt to usurp the assets of Thiruneelakandar Trust. When the appellant and Lakshmikanthammal have resisted his illegal attempts, the said Varadarajulu and one T.Chakravarthy, allegedly appointed by D.Varadarajulu as trustees of the Trust, filed leave application of the Scheme Suit and the appellant also filed Scheme Suit and both the applications were allowed by the Court. When things stood so, the learned Judge failed to note that the suit was



O.S.A.Nos.176 & 178 of 2023

numbered and the appellant and Lakshmikanthammal did not prosecute their suit and instead, were carrying on the activities of the Trust. It is also submitted that pending the suit, the said Varadarajulu and Chakravarthy died on 05.01.2012 and 19.11.2021 and Lakshmikanthammal also died on 16.09.2017; that their demise was not reported to Court at the earliest point of time, but belatedly by the first respondent(s). The fact further remained that the application to set aside the abatement was also not filed before the Court. Thus, the first respondent(s)/applicants in A.Nos.1129 and 1130 of 2023 in C.S.No.536 of 2009 are not interested persons in the Trust as their appointments are illegal and only to settle personal scores, they have filed the said applications to substitute them in the place of the deceased plaintiffs. Without considering all these aspects, the learned Judge erred in allowing the said applications, by the order impugned herein, which will have to be set aside.

6.The learned counsel for the respondents submitted that the first respondent(s) / applicants were approved as trustees of the Trust and they are the interested parties in the affairs of the trust and hence, they sought to be substituted as plaintiffs in the place of the deceased plaintiffs 1 and 2. The learned Judge has considered the facts and circumstances of the case and



O.S.A.Nos.176 & 178 of 2023

arguments advanced on either side in proper perspective and has passed the impugned order, which does not require any interference in the hands of this Court.

7.Heard both sides and perused the records.

8.The challenge in these appeals is to the order of the learned Judge allowing the applications for substitution of the first respondent(s) / applicants in the place of the deceased plaintiffs.

9.The legal position relating to the issue involved herein is that as per Section 92 CPC, two or more persons having an interest in the trust and having obtained leave of the court, may institute a suit. The suit under Section 92 CPC is special in nature for the protection of public rights in Public Trust and charities; and it is representative in nature filed by the Plaintiffs on behalf of persons having common interest in the Trust. The main purpose of Section 92 is to give protection to Public Trusts of a charitable or religious nature against frivolous suit filed against them. In this connection, it may be useful to refer to the following judgments of the supreme court and High courts:



(i) *R. Venugopala Naidu v. Venkatarayulu Naidu Charities, [1989 Supp*

WEB (2) SCC 356]

“9. The legal position which emerges is that a suit under Section 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 Trust. It is for the vindication of public rights.”

(ii) *Raja Anand Rao v. Ramdas Daduram, [1920 SCC OnLine PC 68]*

“There was also a point that the person who originally raised the suit and got the sanction having died the suit could not go on, but there does not seem any force in that point either, it being a suit which is not prosecuted by individuals for their own interests, but as representatives of the general public.”

(iii) *A.V.M. Ramaswami Chettiar v. V.M.Muthukaruppan Chettiar and others [AIR 1925 Madras 1011]*

“where a suit is instituted by two or more persons interested, the joining of a person also who is not interested will not affect the institution of the suit. ”

(iv) *Hashim Haroon v. Gounslishah [AIR 1942 Sind 137]*

“the suit under this Section must be instituted by two or more persons having an interest in the trust but the necessity of two persons suing is restricted to the institution of the suit. There is nothing which requires that all the plaintiffs to whom sanction has been given for filing the suit should, after filing the suit, continue actively to prosecute the suit”.

(v) *Anand Prakash v. Sushil Kumar, [1987 SCC OnLine All 130]*

“3. Section 92 of the C.P.C. provides that “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.....” Thus the leave required to be obtained is for instituting a suit. Where the suit had been properly instituted according to S. 92, C.P.C..



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there exists nothing in the section which says that the suit cannot be continued if one of the original plaintiffs, who obtained permission and filed the suit along with the other plaintiffs in the manner laid down by the law happens to die or withdraw from the suit subsequent to the institution. Section 92 imposes a bar for filing a suit without prior permission, but once suit is filed with requisite permission, the bar stands finally removed. There remains no further bar in proceeding with the suit, nor any fresh permission is required under S. 92, C.P.C. for the same suit. Hence on withdrawal of one of the three plaintiffs, who had originally obtained and filed the instant suit with requisite permission the remaining plaintiffs can very well prosecute the suit.

.....

5. The contrary view taken by the High Court earlier in the case of Chhabila Ram v. Durga Prasad, AIR 1915 All 59, was held to be no more the correct law on the point after the decision of the Privy Council. A Division Bench of this Court in the case of Ram Ghulam v. Shyam Swarup, AIR 1934 All 1, following the law laid down by the Privy Council in the case of Raja Ananda Rao (supra) held “where the suit has been properly instituted according to S. 92, C.P.C., there is nothing in that section which says that the suit cannot be continued if one of the original plaintiffs, who instituted the suit in the manner laid down by law happens to die at a further stage of the suit or appeal.” The same view was taken up in the case of Ajai Prakash Singh v. Abhai Prakash Singh, 1984 All WC 289, by this Court. In the case of Ajai Prakash Singh (supra) transposition of one of the defendants as plaintiff. Under O. I, R. 10, C.P.C. in the suit relating to the public Trust after the death of one of the original plaintiffs, who had obtained requisite permission to file the suit and had accordingly instituted the suit, was found to be in order and proper. The suit on account of death of one of the plaintiffs was held to have neither abated nor fresh sanction under S. 92, C.P.C. was found necessary.”

(vi) Following the aforesaid decisions, the very same Bench in *Sri Dwaraka Doss Goverdhan Doss & Sowbhagyavathy Gangabai Memorial Trust rep. by its trustees v. Haridass Purushothamdas @ P.Haridas and another* [2023 - 4 - LW 97], was of the view that the suit instituted by two or more persons on obtaining leave of the court under section 92 of the CPC, a subsequent withdrawal by one / some of the plaintiffs resulting in sole plaintiff



O.S.A.Nos.176 & 178 of 2023

being left to prosecute the same, would not prove fatal to its continuity under section 92 of the CPC.

(vii) Thus, it is clear from the above judgments that the requirement of two or more persons as a condition precedent under section 92 CPC is only for institution of the suit and not for continuation / prosecution of the same. There is nothing in this section, which provides that the suit cannot be continued if some of the original plaintiffs who obtained leave to institute the suit under Section 92 CPC are no longer available to continue the suit either because of their death or withdrawal from the suit subsequent to its institution. Once leave is obtained under section 92 CPC and the suit is validly instituted, the withdrawal of some of the plaintiffs subsequent to the institution of the suit on obtaining the leave of the Court leaving a sole plaintiff to prosecute the suit, would have no bearing on the suit being validly continued. Even the joining of a person also, who is not interested, will not affect the institution of the suit.

10. In the instant case, admittedly, the suit under section 92 CPC, was filed after obtaining leave from the court. At the time of institution of the suit, there were three plaintiffs and subsequently, the plaintiffs 1 and 2 died on 05.01.2012 and 19.11.2021 respectively. Consequently, the first respondent(s) / applicants preferred separate applications seeking their substitution in the place



O.S.A.Nos.176 & 178 of 2023

of the deceased plaintiffs. On the side of the applicants, it was argued that in

view of the death of the plaintiffs and also considering the fact that the applicants have been approved as trustees of the Trust, they have to be substituted as plaintiffs. But, it was resisted by the appellant herein on the ground that at the time of obtaining permission under Section 92 CPC, the applicants were not the trustees and hence, the applicants have to obtain leave afresh for substituting them as plaintiffs. However, the fact remained that when the suit was filed, the original three plaintiffs were trustees of the Trust and they were permitted to file the suit under section 92 CPC on behalf of the Trust, taking note of its public nature. The learned Judge has observed that even though the trustees who had obtained permission, are no more, the permission granted is valid and is in force, since the same has been granted to save the interest of the Trust and not otherwise. It was further observed that the applicants in the applications are the interested parties, since they have been approved as trustees of the Trust. That apart, the relief sought in the applications filed by the applicants was only to substitute them as plaintiffs in the place of the deceased plaintiffs. Holding so, the learned Judge allowed the applications, granting liberty to the appellant to file additional written statement and raise objections as to the validity of the resolution passed for appointing the applicants as trustees or any other contentions in this regard.



O.S.A.Nos.176 & 178 of 2023

11.In the light of the aforesaid legal position, this court is of the opinion that there is no requirement for the first respondent(s) / applicants to obtain leave afresh for their substitution in the place of the deceased plaintiffs, as the suit was properly instituted by the original plaintiffs in the interest of trust, after having obtained leave of the court and the applicants were approved as trustees of the trust.

12.Therefore, we find no infirmity in the order so passed by the learned Judge in A.Nos.1129 and 1130 of 2023 in CS No.536 of 2009. Accordingly, the present appeals are dismissed. However, it is made clear that the contentious issues can very well be agitated by the appellant in the suit proceedings as observed by the learned Judge, as this Court has not expressed any views on the same. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D,J.] [M.S.Q, J.]
21.09.2023

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