



WEB COPY



O.S.A. No.307 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.07.2023

Pronounced on : 11.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**O.S.A. No.307 of 2022
and
C.M.P. No.21024 of 2022**

1.Sri Dwaraka Doss Goverdhan Doss &
SowbhagyavathyGangabai Memorial Trust
Rep. By its Trustees
(1) Govinddas
(2) Bharat Kumar K.Shah

2.Govinddas Purushothamdas
3. Bharat Kumar K Shah

...Appellants/ Defendants

Vs.

1.Haridas Purushothamdas @ P.Haridas

2.D.Parthasarathy

...Respondents/ Plaintiffs

(As per the order dated 01.03.2022 in A. No. 543 of 2022 the 2nd plaintiff has been deleted)

PRAYER: Original Side Appeal filed under Order 36 Rule of O.S. Rules read with Clause 15 of Letters Patent, praying to set aside the Order and Decreetal Order dated 22.09.2022 made in Application No.3862 of 2022 in C.S. No.232 of 2021 on the file of this Court.



O.S.A. No.307 of 2022

For Appellants : Mr.R.Thiagarajan

For Respondents : Mr.K.V.Babu
for Mr.K.Shakespeare (for R1)

JUDGMENT

MOHAMMED SHAFFIQ, J.

A short question that arises for consideration herein is whether a suit under Section 92 of the Civil Procedure Code, 1908 (hereinafter referred to as “the CPC”) having been instituted by two persons on obtaining the leave of the Court, can be maintained/ continued though one of the two persons / plaintiffs withdraws himself from the suit during its pendency resulting in a sole plaintiff alone remaining to prosecute the suit.

1.1. For the sake of convenience, the parties are referred to as per their ranking in the suit in C.S.No.232 of 2021.

2. Brief Facts:

2.1. The 1st appellant herein (1st defendant in the suit) is a Public Trust created under a Deed of Declaration of Trust dated 07.03.1961, registered as Document No.1100 of 1961. The Trust was created for religious and charitable purpose as set out in the Trust deed dated 16.03.1961. Subsequently, another Deed



of Declaration of Trust dated 24.10.1964 was created and registered, in order to deal with the assets to meet the objects of the Trust as well as the management of the combined Trust. Thereafter, one more Trust was created on 01.09.1965 which was also duly registered.

2.2. The 1st and 2nd respondents herein (plaintiffs 1 & 2 in the suit) viz., Mr. Haridoss Purushothamdas and Mr.D.Parthasarathy filed the suit under Section 92 of the CPC as against the appellants herein viz., Sri Dwaraka Doss Goverdhan Doss and Sowbhagyavathy Gangabai Memorial Trust, and its two Trustees viz., Mr. Govinddas Purushothamdas and Mr. Bharat Kumar K Shah *inter alia* with the following prayers viz.,

- a. To declare the removal of the 3rd appellant/ 3rd defendant viz., Mr. Bharat Kumar K Shah from the office of the Managing Trustee.
- b. Consequential injunction restraining the 3rd defendant therein from interfering with the management of the 1st appellant/ 1st defendant Trust and other consequential relief.

2.3. The plaintiffs/ respondents herein also filed an application in A.No.1936 of 2021 seeking leave of this Court to institute the suit on the premise that the 3rd appellant herein (3rd defendant in the suit) who is acting as the



O.S.A. No.307 of 2022

Managing Trustee of the Trust has been mismanaging and misappropriating the Trust funds and properties, contrary to the objects of the Trust, taking undue advantage of the old age of the 2nd appellant herein (2nd defendant in the suit) viz., Mr. Govindas Purushothamdas. By an order dated 21.06.2021, leave was granted on the basis of the averments contained in the affidavit filed in support of the application that the 1st Respondent herein is directly interested in the welfare of the Trust as one of the legal heirs of the founder Trustee and also entitled to be inducted as a Trustee and the 2nd Respondent herein is associated with the Trust activities for a long time.

2.4. Pursuant to the aforesaid order, the suit was registered as C.S.No.232 of 2021 along with two interim applications viz., O.A.No.436 of 2021 for grant of interim injunction restraining the 3rd appellant herein from interfering with the Management of the Trust pending disposal of the suit; and O.A.No.2542 of 2021 for appointment of Interim Administrator. Notice was ordered in both the applications and interim injunction was granted on 27.07.2021 in O.A.No.436 of 2021. Written statement was also filed by the appellants herein.

2.5. While so, an application in O.A.No.543 of 2022 was filed by the 2nd respondent herein and the 2nd plaintiff in the suit Mr.D.Parthasarathy seeking



O.S.A. No.307 of 2022

permission of the Court to delete his name from the array of parties in the suit in C.S.No.232 of 2021. In the affidavit filed by him, it was stated that he was not a Trustee or a beneficiary of the 1st appellant Trust nor was he connected with the affairs of the Trust except the fact that he was a well-wisher of the family of the 1st Respondent as well as the 2nd and 3rd appellants herein. It was further stated that being a senior citizen and of advanced age, he does not have any grievance against any of the parties to the present proceedings and does not wish to participate or continue in the legal proceedings and thus, desired withdrawing himself from the suit. By order dated 01.03.2022, the said application was allowed, directing the 1st respondent herein and the 1st plaintiff in the suit to delete the name of the applicant viz., the 2nd respondent herein and the 2nd plaintiff in the suit from the cause title of the suit. Further, liberty was granted to the 1st plaintiff /1st respondent herein to include any other interested person as plaintiff in the suit, while granting liberty to the appellants herein to challenge the maintainability of the suit, after relieving the 2nd respondent herein from the suit, if they are so advised.

2.6. Thereafter, the appellants herein filed an Application in A.No.3862 of 2022 to revoke the leave granted in Appln.No.1936 of 2021 to institute the suit under Section 92 of the CPC on the following grounds viz.,



a. That leave has been obtained by suppression of material facts. The 1st respondent herein i.e., Haridas Purushothamdas has abused the process of Court to ventilate his personal grievance and animosity against the appellants herein and that, the entire litigation itself is frivolous, vexatious and speculative.

b. That on the basis of discrete inquiry, it was found that the 2nd respondent herein who is purported to have instituted the suit along with the 1st plaintiff / 1st respondent herein, was not in sound health condition and he was made a party in the suit, though he neither understood the reason nor the consequences of being arrayed as a party in the suit.

c. That the leave has been obtained by misleading the Court, though the 2nd plaintiff / 2nd respondent herein had no *locus standi* to maintain the suit.

d. That the requirement under Section 92 of the CPC is that two or more persons interested in the suit, are required to institute the suit. However, in the present case, there is only one plaintiff, who is presently remaining to prosecute the suit and thus, the condition precedent for a suit to be maintained under Section 92 of the CPC is absent.

2.7. The above application in A.No.3862 of 2022 came to be heard on 22.09.2022 and this Court passed the following order:



WEB COPY

15. *Once rival contentions are raised it would only be prudent that this could relegates that particular aspect to be examined by evidence adduced on that particular aspect.*

16. *Therefore, it would not be possible, on the basis of the application to hold that the suit was instituted without disclosing the true nature to the 2nd plaintiff or to hold that the 2nd plaintiff was induced to file A.No. 543 of 2022.*

17. *These are issues to be canvassed during the course of trial. It would be appropriate that these issues and the averments made in Application No.3862 of 2022 are also put to trial and the parties are permitted to adduce evidence in that regard.*

18. *The learned counsel seeks to advance further arguments in the application. I shall grant such opportunity..”*

2.8. Aggrieved by the above order, the appellants are before us with the present appeal.

3. It is submitted by the learned counsel for the appellants herein that a suit under Section 92 of the CPC must have two or more persons as plaintiffs throughout the pendency of the suit. In other words, if subsequent to the institution of the suit on leave being granted by Court, withdrawal by one or some of the plaintiffs resulting in only one plaintiff being left/available to continue with the suit, would prove fatal to the continuity of suit. The learned counsel for the appellants had filed a written submission reiterating the same, the relevant portions of which are extracted below:



O.S.A. No.307 of 2022

WEB COPY

- (1). There is only one plaintiff in the suit as of the amended plaint, since the 2nd plaintiff has been deleted from the array of parties. If so can the suit be proceeded, with only one plaintiff?*
- (2). The affidavit filed by the 2nd plaintiff clearly states that he is not a beneficiary to the 1st defendant trust and has no grievances against the defendants 2 and 3, the trustees. If so, is the leave granted under section 92 CPC maintainable?"*

4. To the contrary, it was submitted by the learned counsel for the respondents that Section 92 of the CPC provides that two or more persons having an interest in the Trust and on obtaining the leave of the Court, may institute a suit; and the suit having been instituted validly on obtaining the leave of the Court, the subsequent withdrawal by any of the parties to the suit, even if there was only one person/party alone being left to continue the suit, would have no bearing on the maintainability or continuation of the suit as the requirement of two or more persons having an interest in the Trust mandated under Section 92 of the CPC is only for institution of the suit.

5. Heard both sides. Perused the material available on record.

6. At the outset, we would deal with the following grounds raised by the appellants, while challenging the order of the learned Judge passed in the application filed to revoke the leave granted to institute the suit under section 92 of the CPC:



a. Firstly, the mandate under section 92 of the CPC that the suit must be instituted by two or more persons, is a condition precedent and must exist during the entire course of the suit and on the withdrawal of the 2nd plaintiff, there is a sole plaintiff left and thus, the suit under section 92 of the CPC cannot be maintained/ continued.

b. Secondly, the suit was instituted without disclosing the true nature of the same to the 2nd plaintiff and that, the 1st plaintiff has played a fraud on the court as the 2nd plaintiff was not in any way interested in the appellant Trust and the entire suit was instituted to settle personal scores and is thus, vexatious.

7. Before we proceed further it may be relevant to refer to Section 92 of CPC which reads as under:

"(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 [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 inquiries;*
- (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.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied in one or more of the following circumstances, namely :

- (a) where the original purposes of the trust, in whole or in part,
 - (i) have been, as far as may be, fulfilled; or
 - (ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or
- (b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or
- (c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or
- (d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or
- (e) where the original purposes, in whole or in part, have, since they were laid down,
 - (i) been adequately provided for by other means, or
 - (ii) ceased, as being useless or harmful to the community, of
 - (iii) ceased to be, in law, charitable, or
 - (iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.] "

8. To answer the question that arises for consideration herein, it is necessary to appreciate the nature of a suit instituted on obtaining leave under Section 92 of the CPC. It is well settled that the primary object of Section 92 is to give protection to Public Trusts of a charitable or religious nature against frivolous suits



filed against them. In the judgment in the case of *R.Venugopala Naidu v. Venkatarayulu Naidu Charities*, reported in 1989 Supp (2) SCC 356, it was held by the Hon'ble Supreme Court as under:

“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.”

(emphasis supplied)

8.1. Thus, a suit under Section 92 is special in nature for the protection of public rights in Public Trust and charities. Another facet of a suit under Section 92 is that the suit is representative in nature filed on behalf of persons having common interest in the Trust.

9. Yet another aspect which we intend to touch upon before proceeding to deal with the issue is that an appeal under Clause 15 of Letters Patent would lie against a “judgment”. The expression “judgment” under the said Clause must be understood liberally and receive a wider meaning than under CPC. Any order which vitally affects the valuable right of party or works serious injustice would qualify as “judgment” for the purposes of Clause 15 of Letters Patent*.The appellants herein are aggrieved by the impugned order whereby the learned Judge has permitted to continue the suit while leaving both the questions raised above to

* Shah Babulal vs. Jayaben, AIR 1981 SC 1786
Mitsubishi Finance vs. Neyveli Lignite Corporation Limited, AIR 1985 Mad 300 (DB)



be decided on trial on the basis of the evidence that may be adduced. Thus, according to the appellants, the impugned order by permitting the suit to be continued though the condition precedent viz., the existence of two or more persons interested in the suit, no longer exists, with the withdrawal of the 2nd plaintiff, defeats the very object of Section 92 of the CPC, which is to ensure that the Public Trusts are not subject to harassment by vexatious suit. According to the appellant Trust, they are now compelled to undergo the ordeal of trial, though the condition precedent for maintaining / continuing the suit under Section 92 of the CPC is absent and the valuable right of the Public Trust intended to be protected under Section 92 of the CPC is impaired, causes grave and serious injustice to the appellant Trust.

10. We shall proceed to examine the grounds raised by the appellants as referred to above. As regards the first ground on maintainability viz., the need for two or more persons having interest in the trust for institution of a suit under Section 92 of the CPC is a condition precedent only for institution or must exist throughout the entire suit proceedings, is no longer *res integra*, in view of the judicial pronouncements cited *infra*, more particularly, in *Anand Prakash v. Sushil Kumar* [1987 SCC Online All 130], wherein, the Allahabad High Court has categorically



held that *"the leave required to be obtained is for instituting a suit. Where the suit had been properly instituted according to Section 92 CPC, 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"*. As such, the suit instituted by two persons, subsequent withdrawal by one of the plaintiffs leaving the first plaintiff alone to continue the same, cannot be held to be not maintainable.

11. We would now proceed to deal with the cases relied upon by the learned counsel for the appellants in support of their contention that the withdrawal of D.Parthasarathy, the respondent herein and 2nd plaintiff in the Suit, would result in proving fatal to the continuation of the Suit instituted in terms of Section 92 of the CPC. All the cases that have been relied upon by the respondents are prior to CPC (Amendment) Act, 104 of 1976, whereby Section 92 of the CPC was amended and for the words “consent in writing of the Advocate General”, the words “leave of the Court” was substituted. The reason which prompted the above amendment was



the 54th Report of the Law Commission, which found that obtaining leave of the Advocate General takes time and the consideration which he takes into account can be done by the Court as well. Since the jurisdiction under this Section is vested in the principal Civil Court of original jurisdiction, it can be expected that discretion to grant leave under the amended section will be exercised in responsible manner.

12. Keeping the above amendment in mind, we shall now proceed to examine the judgments relied upon by the appellants:

a. Maddala Bagavannarayana and Ors. vs. Vadapalli Perumallacharyulu and others reported in (1915) 29 MLJ 231:

This judgment may not have any bearing in resolving the issue on hand for two reasons:

i) The above judgment was examining the question as to whether when more than two persons interested in the Trust, had obtained the consent of the Advocate General whether any two alone may sue or is it necessary for all the persons to whom the consent had been given to sue.

ii) This Court was not dealing with the question where the Suit had been instituted as in the instant case, but instead, was considering the legality of



instituting a Suit by a lesser/fewer number of persons than those who had obtained the consent of the Advocate General in terms of Section 92 of the CPC as it then stood/existed. The following portion of the judgment may be relevant and extracted hereunder:

“2. Section 92 of the Code of Civil Procedure provides that two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General may institute a suit under that section. The question is whether when more than two persons interested in the trust have obtained the necessary consent, any two of them may sue without the others. We think the language used shows that the persons authorised to sue are all the persons to whom the consent has been given, and not any two of them. On the opposite contention, there might be competition between the various persons authorised as to who should sue. Besides, the provision for giving consent to two or more persons shows that the Legislature considered that in some cases it might not be desirable for only two to sue.”

(emphasis supplied)

b) *Davular Pitchayya and Ors. vs. Divi Venkatakrishnamacharlu and Ors.*
reported in AIR 1930 Mad 129 :

This was again a case relating to institution of a Suit by only some of the persons to whom sanction under Section 92 of the CPC was granted, the following portion is relevant and thus extracted below:

“10..... As regards the maintainability of the suit we think that the suit by some only of the persons to whom sanction was given under Section 92 would not lie.....”



12.1. The judgment of this Court in *Maddala Bagavannarayana* case was relied upon in support of the contention that suit must be instituted by all the parties, who were given consent/ sanction by the Advocate General to institute the suit under Section 92 of the CPC, as would be evident from the extract below:

“13. Having regard to these considerations we think that where permission or sanction is given by name to more than two persons, that power should be exercised by them all. So far as the authorities go, they support this view. The question directly arose for consideration in Maddala Bagavannarayana v. Vadapalli Perumallacharyulu 31 Ind. Cas. 236 : 29 M.L.J. 231 where Sir John Wallis, C.J, and Seshagiri Aiyar, J., held that where sanction is given under Section 92 of the Civil Procedure Code to more than two persons, two of them alone cannot sue....

.....

15..... It, is only after a suit has been rightly instituted, the public become constructive parties to the suit. If the suit is not properly instituted, there is no question of the Court treating the suit as one which is properly instituted and then remedying any defects by the addition of parties.”

c) Narain Lal v. Sunderlal Tholia Jorhi, (1967) 3 SCR 916:

In this case, four parties viz., Narain Lal, Mool Chand, Mangilal and Kesharichand obtained consent in writing of the Advocate General to institute a Suit under Section 92 of the CPC. After obtaining the consent of Advocate General, Maangilal died and only the other three instituted the Suit, couple of years later Kesari Chand also died. The issue that was framed was as under:

“ISSUE: Whether the suit is not maintainable on the strength of the permission obtained by the plaintiffs along with Mangi Lal who died prior to the institution of the suit?”



12.2. The above issue was answered by the Hon'ble Supreme Court by holding that a Suit under Section 92 of the CPC must be brought by all the persons to whom the sanction / leave was given by the Advocate General and a Suit instituted only by some of them is not maintainable. The following portions of the judgment are relevant and thus extracted:

“5. The decided cases show that a suit under Section 92 must be brought by all the persons to whom the sanction of the Advocate-General has been given, and a suit instituted by some of them only is not maintainable.

6. We hold that an authority to sue given to several persons without more is a joint authority and must be acted upon by all jointly, and a suit by some of them only is not competent.....Once the representative suit is validly instituted, it is subject to all the incidents of such a suit; the subsequent death of a plaintiff will not render the suit incompetent, see Raja Anand Rao v. Ramdas Daduram [LR 43 IA 12] , and an appeal by some of the plaintiffs impleading the remaining plaintiff as a respondent is not incompetent because all did not join as appellants, see Musammat Ali Begam v. Badr-ul-Islam Ali Khan.”

d) In the case of B.S.Adityan in O.S.A.191 and 194 of 2007 dated 08.01.2010:

This was again a case which dealt with institution of a Suit under Section 92 of the CPC by a lesser number of persons than those to whom sanction was given. Originally, a Suit was filed under Section 92 of the CPC by four parties. Thereafter two applications were taken up to implead two others. The above application to implead though rejected by the Single Judge, came to be allowed by a Division Bench of this Court. The primary contention put forth was that in view of the order



of the Division Bench allowing the applications to implead, those two applicants must also be arrayed as co-applicants in the application for leave and the Suit should be instituted by all the six parties. That having not been done, the Suit itself was not maintainable. The learned Division Bench after referring to the judgments in Maddala, Davular Pitchayya and Narain Lal, found that when the sanction is given to a number of persons, the suit must be filed by all since it is a joint authority and the institution of the Suit without adding all the parties who had been granted sanction would make the Suit itself not maintainable. The following portions of the above order of the Division Bench are relevant and thus extracted:

“8. The main contention put forth by the appellants before the learned trial Judge and equally here also is that in view of the order made by the Division Bench allowing the applications in A.Nos.215 and 1901/94, those applicants became co-applicants in the application for leave in A.No.33/94; that under Sec.92(1) of the CPC by allowing A.No.33/94, leave was granted not only to the four applicants in A.No.33/94, but also to the applicants in A.Nos.215 and 1901/94; that in short, leave granted was for six persons and hence they should have been impleaded as applicants and the suit should have been instituted by all the six; that since it was not done so, the suit was defective, and hence it was not maintainable at all.....

.....

12. From the above decisions, it would be quite clear that when the sanction is given to number of persons, the suit must be filed by all since it was a joint authority. In the case on hand, since the applications filed by the applicants in A.Nos.215 and 1901/94 seeking impleadment in A.No.33/94 were allowed whereby permission was granted to them to implead themselves in the said proceedings, it would be quite clear that they were all joined in the proceedings seeking for leave. Once the leave was granted in their favour also without adding them as parties or co-plaintiffs, the suit filed by the other four plaintiffs was only incompetent, and thus the institution of the suit by the plaintiffs 1 to 4 was not in conformity with the order of the Division Bench to implead the applicants in A.Nos.215 and 1901/94 as parties to the proceedings in A.No.33/94. Hence the



O.S.A. No.307 of 2022

institution of the suit without adding them as parties at that stage itself was defective, incompetent and could not be maintained."

WEB COPY

(emphasis supplied)

13. The common issue involved in all the above cases relied by the appellants is relating to the permissibility of institution of a Suit by a lesser number of persons / parties than those to whom sanction/ leave/ consent was granted in terms of Section 92 of the CPC. Whereas, the question that this Court is required to resolve in this appeal is whether after institution on obtaining the leave of the court by two persons withdrawal by one of the plaintiffs leaving only one left to prosecute the Suit would result in proving fatal to the continuation of the Suit. It is trite law that a decision is precedent for what it actually decides and not what logically flows therefrom. In this regard, it may be relevant to refer to the following judgment of this Court in the case of *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111:

"59. A decision, as is well known, is an authority for which it is decided. and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See Ram Rakhi v. Union of India [AIR 2002 Del 458 (FB)] , Delhi Admn. (NCT of Delhi) v. Manohar Lal [(2002) 7 SCC 222, Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496 and Nalini Mahajan (Dr) v. Director of Income Tax (Investigation) [(2002) 257 ITR 123 (Del)]]"



13.1. Thus, the decisions relied on by the learned counsel for the appellants would have no bearing on the question that arises for consideration in the present appeal.

14. Having found that the judgments relied upon by the appellants have no bearing on the question that arises for consideration in the present appeal viz., whether a suit which is instituted under Section 92 of the CPC after obtaining the leave of the Court can be continued even after withdrawal of some of the plaintiffs resulting in a sole plaintiff being available to continue with the suit. We find that the said question is no longer *res integra* and has come up for consideration on more than one occasion. It has been held that there is nothing in the 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 of the CPC are no longer available to continue the suit either because of their death or withdrawal from the suit subsequent to its institution and as a result of such withdrawal or death there are no longer two or more persons to continue the suit but only a sole plaintiff remain to prosecute/continue the suit. Once leave is granted and suit is instituted validly, the subsequent event be it withdrawal or death of some of the plaintiffs resulting in suit being left to be prosecuted / continued by a sole plaintiff, would



have no bearing on the maintainability / continuity of the suit under Section 92 of the CPC. In this regard, it may be relevant to refer the following judgments:

a. Mahant Avtar Singh v. Joginder Singh, 2000 SCC OnLineP&H 1300:

"On the contrary learned Counsel appearing on behalf of the respondents submitted that the requirement of Section 92 C.P.C. is only that two persons should institute the suit but the suit can continue in the absence of one of them. There is a merit in the contention raised by the counsel for the respondents. The reading of Section 92 C.P.C. which I have quoted above, would show that the requirement of the law is that this type of suit can be instituted either by the Advocate General or two or more persons having an interest in the trust. In my opinion the right to institute the suit and right to continue with the suit are two different things. Otherwise the Legislature in his wisdom could say that presence of two or more persons is necessary for the continuation and for the institution of the suit. Let us develop this proposition further. If the suit is instituted by two persons and one person makes an application before the Court that his name may be deleted as he is not interested to prosecute the suit, would in these circumstances, such a request can be allowed? The answer of this court is in the negative. Let us further develop this point. Two persons institute a suit. Subsequently, one person colludes with the defendant for some reason or the other. Even in that eventuality the suit cannot fail because the scheme of Section 92 C.P.C. is that such like suits are suits in the shape of representative capacity and property of the Trust should not be misappropriated by any person. This point came up for consideration before the different High Courts. In AIR 1942 Bombay 125 it was observed by their Lordships that 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 (see 1942 Sind 137 (DB)). Further it has been observed by High Court in AIR 1915 Oudh 181 that surviving plaintiff-appellant alone can carry on the appeal in the suit which was originally instituted by two or more persons as required. Again in AIR 1925 Madras 1011 it was observed that 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. "

(emphasis supplied)



b. The Allahabad High Court in *Anand Prakash v. Sushil Kumar*, 1987 SCC

OnLine All 130, considering whether the withdrawal of one of the three plaintiffs who had originally instituted the suit, would result in its dismissal held as follows:

“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., 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.”

(emphasis supplied)



14.1. It is thus clear that the requirement of two or more persons as a condition precedent is only for institution of the suit and not its continuation / prosecution of the suit. 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.

15. We stand fortified in our view that the requirement of two or more persons as provided / mandated under Section 92 of the CPC is only with reference to institution of the suit, by the judgments of various Courts including that of the Hon'ble Supreme Court, which examined the said issue in the context of death of plaintiff(s) subsequent to the institution of the suit resulting in a sole plaintiff being left to continue the suit. The above circumstance was held not to result in the suit getting abated nor would it in any manner affect the valid continuation / prosecution of the suit. This would again point out the fact that the requirement of two or more persons is only for the purpose of institution of suit and not a condition which needs to be maintained throughout the duration of the suit. In this regard, it may be relevant to refer to the following judgments:

i. The Patna High Court in *Jagdam Ram v. Asarfi Ram*, 1936 SCC OnLine Pat 171, drawing parallel between the suit under Section 92 of the CPC and suit



instituted by several plaintiffs in representative capacity, has held as under:

“6. A suit instituted by some on behalf of numerous interested persons is analogous to a suit under Section 92 of the CPC. It has been held by the Privy Council in 48 IA 12, [Anand Rao v. Ram Das, AIR 1921 PC 123 : 62 IC 737 : 48 IA 12 : 48 Cal 493 (PC).] at p. 16 that in a suit instituted by two plaintiffs under Section 92 of the CPC, death of one of them was not fatal to the suit as it was a representative suit. In 133 IC 823 [M.I. Kadri v. Khubmia Mohomedmiya, AIR 1931 Bom 388 : 133 IC 823 : 33 Bom LR 546.] the Bombay High Court held that if those who obtained the consent of the Advocate-General to institute a suit under Section 92 of the CPC, die or collude with the defendant the Court may add other persons as parties under O. I, R. 10, and for this consent of the Advocate-General is not necessary. I express no opinion on the last point decided in the case as it is not before me. I am relying upon the case for the proposition that in such cases the question of abatement does not arise. I therefore hold that the appeal has not abated. Now an application has been filed by the appellants for permission to proceed with the appeal against the remaining respondents. The original permission granted by the trial Court to institute the suit was to 10 persons. Permission to prosecute the appeal against the remaining persons should not in my opinion be given without notice to the public of the village concerned. I, therefore, direct that a notice of this application, by publication in the village concerned, be given to the inhabitants of the locality. The appeal will come up for hearing after the return of service of the notice.”

(emphasis supplied)

ii. The rationale of the Privy Council in the case of *Raja Anand Rao v. Ramdas Daduram*, 1920 SCC OnLine PC 68 was approved by the Hon'ble Supreme Court as would be clear from the following extract in *Charan Singh v. Darshan Singh*, (1975) 1 SCC 298 at page 301:

*“5. The last two points may be shortly disposed of as they have to be stated merely to be rejected. Point (2) was eventually given up as it was completely devoid of substance. Since the suit had been filed in a representative capacity, it is clear that on the death of one of the plaintiffs it did not abate. In *Raja Anand Rao v. Ramdas Daduram* [AIR 1921 PC 123 : 48 IA 12 : 62 IC 737] it has been said by Lord Dunedin at p. 16:*

“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.”

WEB COPY

It is plain that the second appeal did not lose its competency on the death of one of the plaintiffs-appellants. The only point which requires discussion and determination in this appeal is whether the suit filed by the plaintiffs was barred under sub-section (2) of Section 92 of the Code.”

15.1. From a reading of the above judgments, it would be clear that a suit under Section 92 of the CPC being representative in nature and instituted in the interest of public at large, does not abate as a result of death or withdrawal of one of the plaintiffs, after being validly instituted, though such death/withdrawal may result in a sole plaintiff being left to prosecute the suit.

16. Inaction / Inertia of Parliament's – Indicative of affirmation by Parliament on interpretation by Court:

There has not been any amendment to Section 92 of the CPC, despite several pronouncements (cited supra) including that of the Hon'ble Supreme Court stating that a suit having been instituted under Section 92 of the CPC the subsequent withdrawal or death of one or some of the plaintiff which may result in a sole plaintiff being left / remaining to prosecute the suit, would not affect the valid continuity of the suit. Now, despite the expression of above judicial opinion by Courts, Parliament in its wisdom has not chosen to bring about any amendment /



change providing for the existence of condition of two or more plaintiffs throughout the pendency of the suit. It is trite law that when Courts have expressed their opinion and there has been no legislative action, altering the position, has been held to be a circumstance indicative that the legislature is in agreement with the view expressed by the Courts. For, when the Courts have interpreted and understood the provision in a certain way, if it did not accord with the legislative intent, there would have been legislative intervention through affirmative legislative action. However, the very fact that there has been no subsequent amendment to Section 92 of the CPC is indicative that the interpretation accords with the legislative intent. In this regard, it may be useful to refer to the following judgments:

a. Ramnandan Prasad Narayan Singh v. Kapildeo Ramjee, 1951 SCC

OnLine SC 2:

“16. In each one of these cases, the question of the true meaning of Section 7 was pointedly considered. This construction no doubt enables a creditor to circumvent the beneficent provisions of the Act by taking a document for the interest due and adding it to the principal amount. Gwyer, C.J. points out this difficulty at p. 59 in Surendra Prasad Narain Singh v. Sri Gajadhar Prasad Sahu Trust Estate [Surendra Prasad Narain Singh v. Sri Gajadhar Prasad Sahu Trust Estate, (1940) 2 FCR 39 : 1940 SCC OnLine FC 6]. If the interpretation does not carry out the intentions of the framers of the Act by reason of unhappy or ambiguous phrasing, it is for the legislature to intervene. But far from doing so, it has acquiesced, during all these years in the construction which the Patna High Court has been placing upon the section from the very next year after the enactment of the statute. Having regard to the great obscurity in the language employed in the relevant provisions and the inaction of the legislature, it is, in our opinion, legitimate to infer that the view expressed by the Patna High Court



is in accord with the intention of the legislature.”

(emphasis supplied)

WEB COPY

b. Union of India v. G.M. Kokil, 1984 Supp SCC 196 : 1984 SCC (L&S) 631 at page 203:

"12.Counsel for the appellants pointed out that if such construction was placed on Section 70 it will lead to an anomalous situation that even employees of a factory occupying positions of a Manager or a General Manager would become entitled to overtime wages which could not have been the intention of the State Legislature, but that, in our view, is a matter of the State Legislature and not for the Court but it must be pointed out that since the rendering of the aforesaid decision by this Court in 1960 the State Legislature has not intervened, which perhaps suggests that the State Legislature is not keen to limit the operation of the non obstante clause in any manner. The second contention must also fail.

(emphasis supplied)

17. The CPC has been amended more than thirty times, with the last major amendment having been made *vide* the Code of Civil Procedure (Amendment) Act, 1999 and the Code of Civil Procedure (Amendment) Act, 2002. These amendments are subsequent to the pronouncements discussed supra including that of the Hon'ble Supreme Court in the case of *Charan Singh v. Darshan Singh*, (1975) 1 SCC 298, wherein it was held that death/withdrawal resulting in a sole plaintiff being left to prosecute a suit instituted under Section 92 of the CPC does not result in abatement of the suit nor prove fatal to the valid continuation of the suit. When the Courts have understood and repeatedly interpreted the provision in the said



manner and the legislature having chosen not to introduce any amendment to alter the position, it must be presumed that the legislature has accepted the above construction of the Courts on Section 92 of the CPC.

18. From the above discussions, we are 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 being left to prosecute the same, would not prove fatal to its continuity under Section 92 of the CPC. However, the question as to whether the 2nd Plaintiff was never interested in the appellant Trust or was induced to be a plaintiff or that the suit is an abuse of process of Court to settle personal scores, though relating to jurisdiction, requires examination of facts to be proved on the strength of evidence to be adduced by both parties and thus, we refrain from expressing any opinion on the same, while making it clear that the parties are permitted to adduce evidence and canvass all other issues during trial including the question as to whether the suit was instituted without disclosing the true nature of the suit to the 2nd plaintiff or whether the 2nd plaintiff was induced to file A.No.543 of 2022.



O.S.A. No.307 of 2022

WEB COPY

19. Accordingly, this Original Side Appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No Costs.

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

11.08.2023

Index: Yes/No

Speaking /Non speaking order

Neutral Citation: Yes/No

shk/mka



WEB COPY



O.S.A. No.307 of 2022

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

Shk/mka

O.S.A. No.307 of 2022
and
C.M.P. No.21024 of 2022

11.08.2023