



O.S.A.No.322 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 20.11.2023

CORAM :

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

Original Side Appeal No. 322 of 2022  
and  
CMP. No. 22594 of 2022

Shree Chandrabrabhu Maharaj Juna,  
Jain Mandir Trust (Regd)  
represented by its Secretary,  
345, Mint Street, Chennai 600 079.

.. Appellant

Versus

1. Nirmal Bhurath
2. Shri Sampathraj Ranka
3. Shri.Dhanraj Kochar
4. Shri.Hastimuli Choudhary
5. Shri. Pannalal Singhvi
6. Shri.Parasamal Vaid
7. Shri.Jitendar Kumar Sandaria
8. The Dadabadi Sri Jin-Kuhalsuriji  
Jin-Chgandrasurihi Trust  
represented by its Managing Trustee,  
No.370, Konnur High Road,  
Chennai - 600 023.
9. Dr.Gyan Jain

.. Respondents

This Original Side Appeal filed under Order 36 Rule 9 of the Original Side Rules read with clause 15 of the Letters Patent to set aside the fair and decreetal order dated 24.08.2022 in A.No.1480 of 2022 in C.S(D) No.31019 of 2022.



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For Appellant : Mr.K.V.Babu  
for K.R.B.Dhaaranee

For R1 to R4, R6 & R7 : Mr.S.Namasivayam

For R8 : Mr.D.Ferdinand  
for M/s. BFS Legal

For R9 : Mr. Prithvi Chopda

### **JUDGMENT**

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

This Original Side Appeal is filed assailing the order dated 24.08.2022 passed by the learned Judge in Application No.1480 of 2022 in C.S.(D)No.31019 of 2022, insofar as granting leave to the respondents 1 to 7 herein, who claim to be the members of the appellant Trust, to institute a suit under Section 92 of the Civil Procedure Code (in short, "the CPC") against the appellant-Trust and the respondents 8 and 9 herein.

2. At the outset, it would be necessary to refer to the factual background leading to the filing of this appeal, according to the appellant - Trust, as follows:

2.1 The appellant is a registered Trust and is functioning in terms of the Trust Deed dated 20.08.1987 registered as document No.1003/1987 on the file of the Registrar of Madras North. As per clause 13 of the Trust Deed, the entire management, control and administration of all the affairs of the Trust and all its



branches and activities shall be vested with the Trust Board. The Trust Board consists of 22 trustees, 11 each from Khartar Gachh and Tapa Gachh members. The Tapa Gachh and the Khartar Gachh members of the Trust shall independently elect eleven Trustees from among themselves. The 22 trustees so elected, shall form the Trust Board and they shall retire from office after 5 years and the members of the Trust shall elect new Trustees comprising of eleven from Tapa Gachh and eleven from Khartar Gachh on the same lines as stated above at all times. Therefore, it is clear that the election for all the 22 trustees shall have to be conducted simultaneously.

2.2. The main objects of the appellant Trust *inter alia* include the administration and management of Shree Sumathinath Bhagwan Jain Swethambar Temple situated at No.370 Konnur High Road, Chennai - 600 023 and Sri Sadharan Bhawan Temple situated at Old No.108, New No.346, Mint Street, Chennai, achievement of the high tenets of Jain religion, propagation and advancement of Jain beliefs. The said Shree Sumathinath Bhagwan Jain Swethambar Temple was built in the year 1925 for the worship of Shree Sumathinath Baghwan, a celebrated Jain Tirthankara and worship of the four other Jain Tirthankaras.

2.3. In 2007, the appellant Trust embarked on rebuilding a fitting shrine and temple for Shree Sumathinath Bhagwan adhering to religious dictates and agamas and accordingly, transferred the idols to a temporary shrine and pulled down the old temple structure for putting up a new temple.



2.4. While so, the eighth respondent Trust, which has been using the place where Shree Sumathinath Bhagwan Jain Swethambar Temple is situated as its registered office, had issued a notification dated 02.05.2007 stating that they proposed to do Bhoomi pooja and stone laying for Shree Sumathinath Bhagwan Jain Swethambar Temple at No.370 Konnur High Road, Chennai. Pursuant to the same, confrontation arose between the appellant and the eighth respondent Trusts, which resulted in institution of a suit in CS No.440 of 2007 by the appellant Trust before this court for permanent injunction restraining the eighth respondent trust from interfering and involving in any manner whatsoever with the appellant trust's administration, management, construction and any other work relating to Shree Sumathinath Bhagwan Jain Swethambar Temple. In the said suit, the appellant Trust has got an ex parte interim injunction on 27.04.2007, was subsequently modified to an order of *status quo*, at the instance of the eighth respondent Trust. Thereafter, due to the enhancement in pecuniary jurisdiction of this Court, the said suit was transferred to the City Civil Court and re-numbered as Original Suit in O.S.No.14334 of 2010.

2.5. The fact remains that the election of 11 trustees each from Khartar Gachh members and Tapa Gachh members could not be done simultaneously after the tenure of office ended on 31.03.2018.



2.6. In such circumstances, based on the Trust Board Meeting held on 25.02.2021, the appellant Trust sent a notice dated 27.02.2021 to the Tapa Gachh members of the Trust, calling upon them to attend the meeting held on 21.03.2021 to elect the 11 trustees from Tapa Gachh members for a period of five years. Aggrieved by the same, one of the members of the Khartar Gachh by name Navarathan Chand Bothra, filed a suit in O.S.No.2230 of 2021 before the XV Assistant City Civil Court, Chennai for declaring that the appellant trust shall be entitled to function only with the participation of 22 Trustees consisting of 11 Trustees each from the Khartar Gachh and Tapa Gachh members and for permanent injunction restraining the appellant from conducting election for 11 trustees from the Tapa Gachh members without conducting election for 11 trustees from Khartar Gachh members and for appointment of an advocate commissioner to conduct election simultaneously electing 22 Trustees for the appellant Trust.

2.7. Stating that though the period of five years for 22 trustees was over before three years, there was no election conducted for eleven from Tapa Gachh members and eleven from Khartar Gachh members, but the trustees are continuing to hold the office, which is *per se* illegal, the aforesaid Navarathan Chand Bothra, filed another suit in O.S.No.2898 of 2021 before the XI Assistant City Civil Court, Chennai seeking permanent injunction restraining the appellant trust from taking decision in respect of immovable properties, gold and silver ornaments including



financial matters of the appellant trust, till the election for 22 Trustees *i.e.*, 11 each from Tapa Gachh members and Khartar Gachh members is conducted.

2.8. Thereafter, the appellant and the eighth respondent Trusts amicably settled the dispute by entering into a Memorandum of Understanding (MoU) dated 13.12.2021 between them. As per the terms of the said MoU, a Temple committee will be constituted consisting of 8 members (4 each from Khartar Gachh and Tapa Gachh) from the appellant trust and two trustees from the eighth respondent; and the same will be dissolved after completion of construction of the new temple. It was also agreed that the administration and management of the affairs of the temple shall be continued to be looked after only by the appellant Trust as per their Trust Deed; and that, none of the parties will interfere in the administration and management and affairs of their respective Trust. Subsequently, both the parties filed a joint memo dated 10.01.2022 and prayed that the MoU dated 13.12.2021 may be recorded and a judgment and decree may be passed in the suit in O.S.No.14334 of 2010 as per the terms of MoU. However, by order dated 10.01.2022, the said memo was rejected by the VII Additional City Civil Court, Chennai, on the ground that it is necessary for the parties to obtain leave of the Court before entering into a compromise, as provided under Order XXIII Rule 3(B) of the CPC.

2.9. Challenging the aforesaid order dated 10.01.2022, the appellant trust filed a revision petition viz., CRP(PD).No.570 of 2022, which was allowed on



10.03.2022. Based on the same, the suit in O.S. No.14334 of 2010 came to be decreed, in terms of the aforesaid MoU, by judgment dated 04.04.2022 passed by the VII Additional Judge, City Civil Court, Chennai. Feeling aggrieved, Special Leave to Appeal (c) No(s).6146 of 2022 was filed by the second defendant in O.S.No.14334 of 2010 against the order dated 10.03.2022 passed in the civil revision petition and the same was disposed of, by the Hon'ble Supreme Court, on 08.04.2022, granting liberty to file review. Pursuant thereto, the second defendant in the suit, filed a review application No.88 of 2022 against the order dated 10.03.2022 made in C.R.P.(PD).No.570 of 2022 and the same ended in dismissal on 27.05.2022.

2.10. Thereafter, the respondent 1 to 7 herein, who are the members of the appellant trust, filed an application in A.No.1480 of 2022 in CS (D) No. 31019 of 2022, seeking leave for institution of a suit under Section 92 of the CPC. The learned Judge allowed the said application, *vide* order dated 24.08.2022, the relevant paragraphs of which are quoted below for ready reference:

*"10. In the present suit, the applicants/plaintiffs sought for the relief to conduct elections of the 1st defendant Trust for the purpose of removing the previous Trust Board and electing new Trust Board and also for grant of mandatory injunction to direct the 1st respondent Trust to conduct its affairs, management and operation of bank accounts strictly in accordance with its Trust Deed dated 13.08.1987. Therefore, in the interest of the 1st respondent Trust, the applicants/plaintiffs who are 7 in number, and the members of the Trust having every interest to set right the affairs of the Trust and in such view of the matter, they have rightly come forward with the present suit since according to them, the respondents/defendants are acting contrary to the interest of the Trust and the terms of the Trust Deed. The prayers sought for in the suit will squarely fall within the ambit of Section 92 of CPC and the reliefs sought for in the pending suits in O.S.Nos.2230 & 2898 of 2021 on the*



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*file of the City Civil Court, Chennai, are entirely different and they will not have any bearing on the present suit in the event of even decreeing the said suits.*

*11. In such view of the matter, this Court is of the view that the applicants/plaintiffs can very well institute the present suit against the respondents/defendants in terms of Section 92 of CPC and thereby, they are entitled for the relief as sought for in the present application. The only object of Section 92 CPC is to protect public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. In the present suit, this Court does not find any such harassment being caused to the 1st defendant Trust by instituting the present suit by the applicants/plaintiffs since the activities of the applicants/plaintiffs are only for protection of the interest of the 1st defendant Trust.*

*12. As regards to the contention raised on behalf of the respondents/defendants that the so called Memorandum of Understanding dated 13.12.2021 has already attained finality by virtue of the order passed in CRP.No.570 of 2022 is concerned, it is pertinent to note that this Court has only held that the leave under Order XXIII Rule 3(B) CPC is not required since the MOU has entered between the parties appears to be a convenient internal arrangement between the parties as to who should construct the temple and how the temple has to be managed. Pursuant to the said order of this Court in the CRP.No.570 of 2022, the trial Court without insisting upon the parties to seek leave under Order XXIII Rule 3(B) CPC has decreed the suit in OS.No.14334 of 2010 in terms of the MOU. Therefore, absolutely it cannot be held that the said MOU had attained finality since the very basic contention of the applicants/plaintiffs is that the respondents/defendants acted contrary to the interest of the Trust by entering into MOU and they have challenged the very MOU and it is the subject matter of the suit which has to be decided after full fledged trial of the suit. Therefore, the contention raised on behalf of the respondents/defendants is not acceptable. In fact, the respondents/defendants are always at liberty to agitate all the issues including maintainability of the suit itself by way of written statement.*

*13. A careful perusal of the reliefs sought for in the present suit by the applicants/plaintiffs being member of the 1st defendant Trust reveals that the intention behind the applicants/plaintiffs for instituting the suit which is well within ambit of Section 92 of CPC, is only to protect the interest of the 1st defendant Trust since they are none other than members of the Trust and allowing the present application would no way cause any prejudice to the respondents/defendants.*



*14. In the light of the above discussion and considering the nature of the reliefs sought for in the suit and in the interest of justice, this Court is inclined to allow this Application and leave for the institution of the suit under Section 92 of CPC against the respondents, is granted."*

2.11. In view of the above order, the suit was numbered as C.S.No.195 of 2022. Challenging the order so passed by the learned Judge granting leave to the respondents 1 to 7 to file the suit, the appellant trust has filed the present Original Side Appeal.

3. Mr.K.V.Babu, learned counsel for the appellant submitted that the validity of the Memorandum of Understanding dated 13.12.2021 had already been considered and upheld in C.R.P.(PD)No.570 of 2022 and that, the said order had attained finality. Therefore, the suit itself is not maintainable in the light of Order XXIII Rule 3 A of the CPC which clearly states that no fresh suit can be filed to invalidate a duly recorded compromise and that, the only remedy is to move the Court which recorded the compromise. In support of the said submissions, reliance was made to the Judgment of the Hon'ble Apex Court in ***Sree Surya Developers & Promoters vs. N. Sailesh Prasad*** [(2022) 5 SCC 736] wherein it was held that if the party to a consent decree based on a compromise, intends to challenge the same on the ground that the compromise was not lawful and it is void or voidable, he/she has to approach the same court which recorded the compromise and a separate suit



challenging the consent decree is not maintainable. Thus, according to the learned counsel, the respondents 1 to 7 / plaintiffs are attempting to re-agitate the same issue by instituting the instant suit. It is also submitted that since the subject matter of *lis* had already gone upto the Apex Court, the settled matters could not be unsettled again.

3.1. Continuing further, the learned counsel for the appellant submitted that the respondents 1 to 7 have intended to file the suit only with respect to the inter-se dispute between the members of two sects regarding the manner of electing the Trustees and challenging the consequential decisions taken by the existing Trust Board of the appellant trust. Further, there is absolutely no allegation of breach of trust; and the respondents 1 to 7 have failed to establish as to how they are interested in the affairs of the trust. As such, the reliefs sought in the suit do not fall within the purview of section 92 of the CPC. To substantiate the said contention, the learned counsel placed reliance on the judgment of the Hon'ble Apex Court in ***Vidyodaya Trust vs. Mohan Prasad R. & Ors. [(2008) 4 SCC 115]*** to highlight the settled position of law that a suit under Section 92 of the CPC cannot be instituted for settling private or personal disputes.

3.2. Elaborating further, the learned counsel for the appellant submitted that the term of the office bearers of the Trust Board ended on 31.03.2018 and



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hence, election was conducted on 18.03.2018, in which, Khartar Gachh members elected their 11 trustees, whereas no trustees were elected from Tapa Gachh members. In view of the non-election of 11 trustees from Tapa Gachh members, the 11 trustees elected from Khartar Gachh members were not given charge, as new trustees will be inducted into the Trust Board only after completion of the pending election of 11 trustees from Tapa Gachh members i.e., 22 trustees in all. Thus, the existing trustees continue to be trustees of the appellant trust Board and hold their respective posts as per the provisions of the trust deed. It is also submitted that the appellant trust does not have any grievance about the conduct of election. With these submissions, the learned counsel prayed to allow this appeal and set aside the leave granted to the respondents.

4. Mr.S.Namasivayam, learned counsel appearing for the respondents 1 to 7, would submit that the extent of the subject property is 151 grounds in Ayanavaram area, which was originally given to the Jain community by the British Government and that, Jain Sangh built a temple called Shree Sumathinath Baghwan Jain Swethambar Temple in the said place way back in the year 1925. Adding further, the learned counsel submitted that the patta in respect of the temple land, was issued to the Manager of the Trust in his individual capacity and hence, a suit for cancellation of patta was filed and it is pending. Therefore, the aim of the respondents is only to



restore the temple to its original glory and they have no other private interest. With respect to the issue regarding the validity of the MoU, the learned counsel for the respondents 1 to 7 submitted that the MoU has not been tested by the Hon'ble Supreme Court much less given a seal of approval; and that, the subject matter in issue before the Apex Court was only pertaining to the issuance of notice to all the parties. It is the specific case of the respondents 1 to 7 that they were not heard before recording the MoU; the bye-laws governing the appellant trust, were breached and no resolution of the Trust Board was passed; and the interests of the General body members was not at all called for; and hence, the compromise entered into between the parties adversely affects the interests of the Trust. Thus, the learned counsel submitted that the respondents have *locus* to file the suit, after obtaining permission from the court. It is also submitted that the decisions relied on the side of the appellant are not applicable to the present case, as the respondents 1 to 7 are not parties to the compromise and that, they are not challenging the decree *per se*, but only the compromise entered into between the appellant and eighth respondent.

4.1. Ultimately, the learned counsel for the respondents 1 to 7 submitted that elections should be directed to be held for both sects and that, the elected Trust Board should take a decision as to whether they have to act in accordance with the



compromise entered into or to modify its terms and thereafter, construction of temple should be continued. According to the learned counsel, the appellant has no *locus standi* to claim continuance of trusteeship, because, even according to them, the five-year term has already ended on 31.03.2018. It is also submitted that the temple activities are being regularly carried out and that, the respondents are extending utmost co-operation for the smooth functioning of the temple. Therefore, the learned counsel submitted that leave granted by the learned Judge may not be disturbed.

5. Mr.Ferdinand, learned counsel appearing for the eighth respondent made his submissions on the similar lines of the learned counsel for the appellant. In addition, the learned counsel submitted that in the order passed in C.R.P.(PD)No.570 of 2022, it was categorically observed that there is no necessity to obtain leave under Order XXIII Rule 3(B) of the CPC for recording the compromise. Aggrieved by the same, one of the members approached the Hon'ble Apex Court by filing an appeal, and thereafter, he filed a review application before the same court, which passed the order in the civil revision petition. However, the review came to be dismissed and accordingly, the order passed in CRP (PD) No. 570 of 2022, attained finality. Thus, according to the learned counsel, the seal of validity to the compromise decree cannot now be re-agitated and it has a direct bearing on the



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construction of the temple and in effect, defers speedy restoration. The learned counsel further submitted that the 8<sup>th</sup> respondent herein is primarily concerned only with the smooth construction of temple and not with inter-se dispute between the sects.

6. Mr.Prithvi Chopda, learned counsel appearing for the ninth respondent submitted that there is a specific clause in the bye-laws that the trustees elected by a sect cannot assume office unless the trustees from other sect are elected; and the delay in formation of new Trust Board is non-election of 11 trustees by Tapa Gachh members. It is also submitted that notice was properly sent to the contesting respondents, but they had chosen not to attend, but decided not to conduct the elections for their sect. Stating that the dispute is only with respect to internal administration of the trust and the same is in no way affect the interest of the trust, the learned counsel submitted that the order of the learned Judge granting leave to the respondents 1 to 7 herein, is liable to be interfered with by this court.

7. Heard the submissions made by the learned counsel appearing for all the parties and also perused the materials available on record.

8. The facts remain that the respondents 1 to 7 are the members of the



appellant Trust. Due to a dispute arising between the appellant Trust and the 8th respondent Trust, in connection of construction of Shree Sumathinath Baghwan Jain Swethambar Temple, the appellant trust had preferred a suit in C.S.440 of 2007, which was subsequently transferred to the City Civil Court, Chennai and re-numbered as O.S.No.14434 of 2010. In the said suit, one J.Rajesh Samdaria, who is a member of the appellant trust, impleaded himself as the second defendant. During the pendency of the suit, the dispute was resolved between the appellant-Trust and the eighth respondent-Trust by entering into a Memorandum of Understanding on 13.12.2021. Consequently, they filed a joint memo and requested to pass a judgment and decree in the said suit, in terms of the compromise entered into between the parties. However, by order dated 10.01.2022, the learned VII Additional Judge, City Civil Court, Chennai, rejected the said memo for want of leave from the court, as provided under Order XXIII Rule 3-B of the CPC. The said order was put to challenge, by both the parties, by filing C.R.P.(PD)No.570 of 2022, which was allowed, *vide* order dated 10.03.2022, by observing thus:

*"4. This Court carefully perused the pleadings and also the compromise now arrived at. Nowhere it is seen that the character of the property is intended to be changed, nor any restriction is imposed on the devotees who may offer prayers in the temple. It appears to be a convenient internal arrangement between the parties as to who should construct the temple and how the temple must be managed and no more. Therefore, this Court does not consider that a leave under Order XXIII Rule 3(B) CPC is required.*

*5. With the above observations, this revision is allowed and the order dated 10.01.2022 passed by the learned VII Additional Judge, City Civil Court*



*is set aside. Now, the counsel for the parties are required to present the compromise / MoU before the trial Court along with their parties to enable the trial Court to pass a decree in terms thereof. No costs. Consequently, connected miscellaneous petition is closed."*

8.1. Pursuant to the order so passed by the learned Judge in the civil revision petition, the suit in OS No.14334 of 2010 came to be decreed in terms of the MoU, *vide* order dated 04.04.2022. Aggrieved by the same, the second defendant in the said suit, by name, J. Rajesh Samdaria / respondent in the revision petition, filed a Special Leave to Appeal (C) No.6146 of 2022 before the Hon'ble Supreme Court stating that no notice was served on him before passing the order in C.R.P (PD) No. 570 of 2022. The Hon'ble Supreme Court, *vide* order dated 08.04.2022, disposed of the appeal with liberty to the said J.Rajesh Samdaria to file a review. In the light of the same, the said J. Rajesh Samdaria filed Review Application No.88 of 2022, which came to be dismissed, by order dated 27.05.2022, the relevant portion of which is usefully extracted as under:

*"7. Turning to the present application for review is concerned, after carefully weighing the rival submissions, this Court finds:*

- *That the prayer (b) in the counter claim of the second defendant is the same as the principal prayer in the suit. Now in terms of the compromise, only the plaintiff will be constructing the temple and not the Dadabadi Trust, the first defendant.*
- *Secondly, the Review-petitioner/the second defendant is only a member, and this Court may not know his locus standi to disturb the compromise which the plaintiff and the first defendant had entered into. And, it is too premature to presume his right to interfere in the compromise now made.*



- *Thirdly, he has no grievance that the plaintiff trust has no right or status of its own to protect the interest of the temple in question, and his ire is directed only against the first defendant. And, it is this plaintiff trust which has chosen to compromise its dispute with the first defendant trust.*
- *Fourthly, it is imperative that the interest of both the trusts viz-a viz the construction of the proposed temple cannot be ignored. This larger interest of the Jain community cannot be allowed to be disturbed at the instance of an individual.*
- *So far as the counter-claim of the review-petitioner goes, this Court doubts the very maintainability of the counter claim, since under Order VIII Rule 6 CPC, the defendant can make a counter claim only against the claim of the plaintiff, and not against the co-defendant.*
- *At any rate there is no error apparent on the face of the record for this Court to review its order dated 10.03.2022.*

*8. In view of the above, this Court does not find any merit in the review application, and it necessarily has to be dismissed. Having stated thus, the trial Court having entertained the counter claim of the second defendant / review petitioner, it may have to proceed with that. It is also now required to decide on its maintainability in terms of Order VIII Rule 6 CPC before it proceeds further with that."*

After dismissal of the Review Application, the respondents 1 to 7 have filed the present application seeking leave to institute a suit under Section 92 of the CPC, which was allowed by the learned Judge, by the order impugned herein.

9. Now, the issue to be decided herein is, whether the leave granted by the learned Judge to the respondents 1 to 7 herein for institution of the suit under section 92 of the CPC is sustainable in law.



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10. At the outset, it would be necessary to refer to the reliefs sought in the suit, for which, the respondents 1 to 7 herein have obtained leave from the learned Judge, which read as under:

*"(i) to pass an order for the conduct of elections as provided in the trust deed dated 13.08.1987 of the appellant trust for purpose of removing previous trust board and electing new trust board;*

*(ii) to declare that the MoU dated 13.12.2021 entered into between the appellant and 8th respondent is illegal, null and void;*

*Consequently, to grant permanent injunction restraining Dr.Gyan Jain from performing any action in the capacity of the President of the appellant trust;*

*(iii) Mandatory injunction directing the appellant to conduct its affairs, management and operation of bank accounts strictly in accordance with its Trust Deed dated 13.08.1987; and*

*(iv) costs."*

11. According to the appellant, the validity of the Memorandum of Understanding (MoU) dated 13.12.2021 has already been upheld by this Court in C.R.P.(PD)No.570 of 2022, which was also confirmed in Review Application No.88 of 2022, and therefore, the suit which is sought to be filed by the respondents 1 to 7 is nothing but an attempt to re-agitate the issue already settled. If at all the respondents are aggrieved by the MoU and the consequent disposal of the suit, the only remedy available to them is to approach the court, which passed the consent



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decree and not by way of a separate suit. It is further stated that there is no allegation of mis-management or maladministration on the part of the appellant trust; and that, the respondents 1 to 7 have intended to file the suit only with respect to the inter-se dispute between the members of Khartar Gachh sect and Tapa Gachh sect and hence, the suit under section 92 of the CPC is not maintainable.

12. On the other hand, it is the stand of the respondents 1 to 7 that in the civil revision petition, the learned Judge has not examined the validity of MoU, but only held that leave under Order XXIII Rule 3-B of the CPC was not required for entering into a MoU and therefore, it cannot be said that the validity of the MoU has attained finality. They also stated that the appellant trust without conducting election for 11 trustees from Khartar Gachh members, has proceeded to conduct election for 11 trustees from Tapa Gachh members alone, contrary to clause 13 of the deed of trust, which stipulates that all the 22 trustees should be elected and induced simultaneously and the period of five year has to be reckoned from the date of constitution of new trust board. Therefore, the respondents 1 to 7 have sought leave of this court to institute the suit under section 92 of the CPC.

13. As already stated above, the appellant trust is a registered trust and is carrying on its activities in accordance with the deed of trust dated 13.08.1987. As



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per clause 13 of the Trust Deed, the entire management, control and administration of all the affairs of the Trust and all its branches and activities shall be vested with the Trust Board. The Trust Board consists of 22 trustees, 11 each from Khartar Gachh and Tapa Gachh members. The Tapa Gachh and the Khartar Gachh members of the Trust shall independently elect eleven Trustees from among themselves. The 22 trustees so elected, shall form the Trust Board and they shall retire from office after 5 years and the members of the Trust shall elect new Trustees eleven from Tapa Gachh and eleven from Khartar Gachh on the same lines as stated above at all times. Therefore, it is clear that the election for all the 22 trustees shall have to be conducted simultaneously. It is an admitted fact that after completion of 5 year term on 31.03.2018, elections have not been conducted in terms of the trust deed and hence, the earlier trustees continue to hold trust board, till date.

14. On a perusal of the records, it could be seen that with respect to conduct of election for all 22 trustees to the trust board of the appellant trust, a member of the Khartar Gachh viz., Navarathan Chand Bothra, had already filed two suits, namely, (i) O.S.No.2230 of 2021 on the file of the XV Assistant City Civil Court, Chennai for declaring that the appellant trust shall be entitled to function only with the participation of 22 Trustees consisting of 11 Trustees each from the Khartar Gachh and Tapa Gachh members and for permanent injunction restraining the



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appellant from conducting election for 11 trustees from the Tapa Gachh members without conducting election for 11 trustees from Khartar Gachh members and for appointment of an advocate commissioner to conduct election simultaneously electing 22 Trustees for the appellant Trust; and (ii) O.S.No.2898 of 2021 on the file of the XI Assistant City Civil Court, Chennai, seeking permanent injunction restraining the appellant trust from taking decision in respect of immovable properties, gold and silver ornaments including financial matters of the appellant trust, till the election for 22 Trustees *i.e.*, 11 each from Tapa Gachh members and Khartar Gachh members is conducted. Both the suits are pending.

15. It is settled law that a suit under Section 92 of the CPC is of a special nature pre-supposing the existence of a public trust of a religious or charitable character. The main grievance of the respondents 1 to 7 to institute a suit is that after the completion of tenure of office from 31.03.2018, the election of trustees to the Trust Board of the appellant Trust has not been conducted in accordance with the provisions of the Deed of Trust. Hence, there is no requirement to file a separate suit for similar reliefs as sought in the aforesaid two suits.

16. With respect to construction of temple in dispute, the appellant and the eighth respondent had already entered into a Memorandum of Understanding on



13.12.2021, which was already upheld in C.R.P.(PD) No.570 of 2022 as also affirmed by the learned Judge in Review Application No.88 of 2022. Further, the Civil Court gave a seal of approval to the compromise and disposed of the suit in terms of the compromise. In such circumstances, the proper remedy for the respondents 1 to 7, if they are aggrieved by MoU entered into between the parties, is to approach the same Court which recorded the compromise and a separate suit challenging it, is barred under Order XXIII Rule 3A of the CPC. For better appreciation, the said provision is extracted below:

**"3. *Compromise of suit***—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

*Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.*

*Explanation.— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.*

**3A. *Bar to suit*** — No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

16.1. It is also useful to refer to the judgment of the Hon'ble Supreme Court



in **M/s.Sree Surya Developers and promoters Vs. N.Sailesh Prasad and Ors.**

**WEB [Civil Appeal No.439 of 2022]**, in which, it was held as follows:

"8. Therefore, on plain reading of Order XXIII Rule 3A CPC, no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. Identical question came to be considered by this Court in the case of R. Janakiammal (supra). It is observed and held by this Court that Rule 3A of Order XXIII bars the suit to set aside the decree on the ground that the compromise on which decree was passed was not lawful. It is further observed and held that an agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3A shall be attracted if compromise on the basis of which the decree was passed was void or voidable. In this case, this Court had occasion to consider in detail Order XXIII Rule 3 as well as Rule 3A. The earlier decisions of this Court have also been dealt with by this Court in paragraphs 53 to 57 as under:-

"53. Order 23 Rule 3 as well as Rule 3-A came for consideration before this Court in large number of cases and we need to refer to a few of them to find out the ratio of judgments of this Court in context of Rule 3 and Rule 3- A. In Banwari Lal v. Chando Devi, (1993) 1 SCC 581, this Court considered Rule 3 as well as Rule 3-A of Order 23. This Court held that the object of the Amendment Act, 1976 is to compel the party challenging the compromise to question the court which has recorded the compromise.

*In paras 6 and 7, the following was laid down: (SCC pp. 584-85)*

"6. The experience of the courts has been that on many occasions parties having filed petitions of compromise on basis of which decrees are prepared, later for one reason or other challenge the validity of such compromise. For setting aside such decrees suits used to be filed which dragged on for years including appeals to different courts. Keeping in view the predicament of the courts and the public, several amendments have been introduced in Order 23 of the Code which contain provisions relating to withdrawal and adjustment of suit by the Civil Procedure Code (Amendment) Act, 1976. Rule 1 Order 23 of the Code prescribes that at any time after the institution of the suit, the plaintiff may abandon his suit or abandon a part of his claim. Rule 1(3) provides that where the Court is satisfied: (a) that a suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw such suit with liberty to institute a fresh suit. In view of Rule 1(4) if the plaintiff abandons his suit or withdraws such suit without permission referred to above, he shall be precluded from instituting any such suit in respect of such subject-matter. Rule 3 Order 23 which



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*contained the procedure regarding compromise of the suit was also amended to curtail vexatious and tiring litigation while challenging a compromise decree. Not only in Rule 3 some special requirements were introduced before a compromise is recorded by the court including that the lawful agreement or a compromise must be in writing and signed by the parties, a proviso with an Explanation was also added which is as follows:*

*'Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.*

*Explanation. — An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this Rule.'*

*7. By adding the proviso along with an Explanation the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the court which had recorded the compromise in question. That court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The Explanation made it clear that an agreement or a compromise which is void or voidable under the Contract Act shall not be deemed to be lawful within the meaning of the said Rule. Having introduced the proviso along with the Explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by Rule 3-A in respect of institution of a separate suit for setting aside a decree on the basis of a compromise saying:*

*'3-A. Bar to suit. — No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.'*

*54. The next judgment to be noted is Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566, R.V. Raveendran, J. speaking for the Court noted the provisions of Order 23 Rule 3 and Rule 3-A and recorded his conclusions in para 17 in the following words: (SCC p.576)*

*"17. The position that emerges from the amended provisions of Order 23 can be summed up thus:*

*(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.*

*(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order*



(iii) *No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.*

(iv) *A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.*

*Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code."*

55. The next judgment is *R. Rajanna v. S.R.Venkataswamy*, (2014) 15 SCC 471 in which the provisions of Order 23 Rule 3 and Rule 3-A were again considered. After extracting the aforesaid provisions, the following was held by this Court in para 11: (SCC p. 474)

*"11. It is manifest from a plain reading of the above that in terms of the proviso to Order 23 Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order 23 Rule 3, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule if the same is void or voidable under the Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order 23 Rule 3-A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such*



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agreement or compromise, it is that court and that court alone who can examine and determine that question. The court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order 23 Rule 3-A CPC. That is precisely what has happened in the case at hand. When the appellant filed OS No. 5326 of 2005 to challenge the validity of the compromise decree, the court before whom the suit came up rejected the plaint under Order 7 Rule 11 CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order 23 Rule 3-A CPC. Having thus got the plaint rejected, the defendants (the respondents herein) could hardly be heard to argue that the plaintiff (the appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS No. 5326 of 2005 and if the plaint in the suit has been rejected to pursue his remedy against such rejection before a higher court."

56. The judgments of Pushpa Devi [Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566] as well as Banwari Lal [Banwari Lal v. Chando Devi, (1993) 1 SCC 581] were referred to and relied on by this Court. This Court held that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone which can examine and determine that question.

57. In subsequent judgment, Triloki Nath Singh v. Anirudh Singh, (2020) 6 SCC 629, this Court again referring to earlier judgments reiterated the same proposition i.e. the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and separate suit is not maintainable. In paras 17 and 18, the following has been laid down: (SCC p. 638)

"17. By introducing the amendment to the Civil Procedure Code (Amendment) Act, 1976 w.e.f. 1-2-1977, the legislature has brought into force Order 23 Rule 3-A, which creates bar to institute the suit to set aside a decree on the ground that the compromise on which decree is based was not lawful. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the court of competent jurisdiction once and for all.

18. Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Rule 3-A Order 23 CPC put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The scheme of Order 23 Rule 3 CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. The court can be instrumental in having an agreed compromise effected and finality attached to the same. The court should never be party to imposition of a compromise upon an unwilling party, still open to be



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*questioned on an application under the proviso to Order 23 Rule 3 CPC before the court." That thereafter it is specifically observed and held that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.*

*9. In view of the above decisions of this Court, the Trial Court was absolutely justified in rejecting the plaint on the ground that the suit for the reliefs sought challenging the Compromise Decree would not be maintainable."*

16.2. In the light of the aforesaid legal position, this court is of the opinion that the validity of the MoU cannot be re-agitated or challenged by filing a fresh/separate suit. Thus, the attempt so made by the respondents 1 to 7 in the capacity of members of the appellant Trust to invalidate the compromise duly recorded by the Civil Court before wrong forum, would only hamper the activities of the Trust, especially impede the construction of the temple and lead to further disputes. In view of the same, the order of the learned Judge granting leave to the respondents 1 to 7 to file separate/fresh suit seeking the reliefs which were already settled / for which, suits are already pending, is liable to be set aside and is accordingly set aside.

17. Considering the factual matrix as outlined above, it is imperative to address the current deadlock revolved around the appellant trust and that, immediate action in the form of conducting elections afresh would be necessary to resolve all the problems arisen between the members of the two sects by



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establishing a newly constituted trust board and achieve the task of construction of new temple for Shree Sumathinath Bhagwan Jain Swethambar, in terms of the Trust deed. The delay in constitution of new trust board would further affect the affairs as well as the management of the properties attached to the appellant trust. Therefore, in order to give quietus to all and also as agreed by both sides, this court issues the following directions:

(i) The appellant trust shall initiate the process of election of all 22 Trustees immediately and conduct the same in accordance with the trust deed.

(ii) The entire election process shall be completed within a period of three months from the date of receipt of a copy of this judgment;

(iii) After the newly elected trustees assumes office, if any dispute arises regarding the management of the trust / construction of the temple in question, the parties are at liberty to approach the civil court for appropriate relief, in the manner known to law.

18. Accordingly, this Original Side Appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**[R.M.D., J.] [M.S.Q., J.]**  
**20.11.2023**

Index: Yes / No.  
Speaking order/ Non-speaking order



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