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S.A.NO.182 OF 2017**IN THE HIGH COURT OF JUDICATURE AT MADRAS****JUDGMENT RESERVED ON : 11 / 09 / 2024****JUDGMENT PRONOUNCED ON : 12 / 12 / 2024****CORAM****THE HONOURABLE MR. JUSTICE R.SAKTHIVEL****S.A.NO.182 OF 2017****AND****CMP NOS.3840 OF 2017 AND 27365 OF 2019**

N.Ranganathan	...	Appellant / Respondent / Plaintiff
Vs.		
1.N.Loganathan	...	1 st Respondent / 1 st Appellant / 2 nd Defendant
2.N.Subramanian	...	2 nd Respondent / 2 nd Appellant / 4 th Defendant
3.P.Santhosh Kumar	...	3 rd Respondent / 3 rd Appellant / 7 th Defendant
4.M/s.B.M.Nanjayan Trust Rep. by its Managing Trustee N.Subramanian	...	4 th Respondent / 4 th Appellant / 10 th Defendant
5.L.Srichand	...	5 th Respondent / 5 th Appellant / 11 th Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil



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Procedure, 1908, praying to set aside the Judgment and Decree dated December 16, 2016 made in A.S.No.1 of 2016 on the file of the II Additional Sub Court, Coimbatore reversing the Judgment and Decree dated September 30, 2015 made in O.S.No.624 of 2002 on the file of the III Additional District Munsif, Coimbatore.

For Appellant : Mr.N.Ranganathan,
Party – in – Person.

For Respondents : Mr.K.K.Sivashanmugam
1 to 5 for Mr.K.S.Sri Giri Prasath

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated December 16, 2016 passed in A.S.No.1 of 2016 by the 'Second Additional Sub Court, Coimbatore' [henceforth 'First Appellate Court' for brevity], whereby the Judgment and Decree dated September 30, 2015 passed in O.S.No.624 of 2002 by the 'III Additional District Munsif, Coimbatore' [henceforth 'Trial Court' for brevity] was reversed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

Plaintiff's Case



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3. The B.M.Nanjian Trust was founded on September 10, 1981 and the Trust Deed was registered on September 17, 1981.

According to the Trust Deed, the 1st defendant is the Founder as well as the Managing Trustee of the Trust while the plaintiff and defendants 2 to 4 are its Life Trustees.

3.1. The land in the Suit Property was purchased on behalf of B.M.Nanjian Trust and a *Kalyana Mandapam* was constructed thereon in furtherance of the objects of the Charitable Trust. The 1st defendant contributed a sum of Rs.5,001/- as corpus of the Trust. Apart from the funds raised from the public, the plaintiff and the defendants 1 to 4 jointly and individually made contributions for the construction of Suit *Kalyana Mandapam*. The construction was completed and it began functioning from August 21, 1989.

3.2. Then the 5th defendant was inducted as a Trustee of the Trust by the unanimous resolution of the Trust Committee on August 18, 1996, post which, the Trust became untrust. The 1st defendant against the objects of Charitable Trust utilized one portion of the Suit Property as his own business premises.



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3.3. Since the plaintiff raised objection to such acts, the defendants passed a Resolution illegally against the By-laws and the Memorandum of the Trust, removing the plaintiff from the Life Trusteeship and forbidding the plaintiff from entering the Suit Property and attending the day-to-day affairs of the Trust. Nobody is empowered by the Deed of Trust or the Memorandum of Association dated September 10, 1981 to remove any of the Life Trustees. Further, the plaintiff was attacked by the defendants and he was obstructed from entering into the Suit Property. The defendants refused to allow the plaintiff from attending the day-to-day affairs of the Trust. Hence, the plaintiff filed the Suit for the relief of permanent injunction and declaration.

Defendants' Case

4. The defendants filed written statement stating that the first defendant founded the B.M.Nanjian Trust on September 10, 1981. He was the Managing Trustee and appointed his sons as Trustees. B.M.N.Kalyana Mandapam was constructed by the 1st defendant in his own property with his own income, to fund the various noble objects of the Trust covered in the Trust Deed. The Trust with a view to fulfil its objectives, also received donations from close relatives.



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4.1. During the year 2000-2001, the plaintiff had incurred huge loss in his various personal businesses and begged for funds from the B.M.Nanjian Trust to recover from the same. But the Managing Trustee / first defendant refused to give any amount from the Trust fund since it was meant only for charitable purposes. The plaintiff in vengeance sent various false and frivolous letters to various concerned Government Departments. Due to the defendant's nefarious activities, the Board of Trustees passed a Resolution on July 5, 2001 to remove the plaintiff from the Board of Trustees.

4.2. The 1st defendant is entitled to use his own property for any purpose and the plaintiff has no legal right to question the same. The plaintiff was not appointed as a life trustee and as such, his removal is valid and legal, and the plaintiff has no right to question his removal from the Trusteeship. Accordingly, the defendants prayed to dismiss the Suit.

Trial Court

5. At trial, plaintiff – Ranganathan was examined as P.W.1 and one A.Krishnaveni was examined as Court Witness and Ex-A.1 to Ex-A.7 were marked on the side of the plaintiff. On the side of the defendants,



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the 7th defendant – P.Santhoshkumar was examined as D.W.1 and Ex-B.1 to Ex-B.10 were marked. Summon served by the Court witness was marked as Ex-C.1.

5.1. After full-fledged trial and hearing both sides, the Trial Court held that the plaintiff being the Life Trustee, until he remains so, cannot be restrained from attending the day-to-day affairs of Trust and the defendants are not entitled to act detrimental to the legal rights of the plaintiff in the Suit Property. The Trial Court further held that the Resolution passed by the defendants 1 to 5 removing the plaintiff from the Board of Trustees is null and void. Accordingly, the Trial Court decreed the Suit and restrained the defendants 1 to 12 from interfering with the plaintiff attending day-to-day affairs of 10th defendant – Trust as Trustee, by way of an injunction.

First Appellate Court

6. Feeling aggrieved by the Trial Court's Judgment and Decree, the defendants preferred an appeal in A.S.No.1 of 2016 before the First Appellate Court. The First Appellate Court after hearing both sides



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and perusing the documents available on record, concluded that the plaintiff has been re-appointed on September 5, 2008 and therefore, he cannot continue the Suit. Accordingly, it allowed the Appeal Suit by setting aside the Judgment and Decree of the Trial Court and dismissed the Suit.

Second Appeal

7. Feeling aggrieved by the Judgment and Decree passed by the First Appellate Court, the plaintiff has preferred this Second Appeal, which was admitted on August 20, 2024 on the following substantial questions of law:

- "(a) Whether the Suit in O.S.No.624 of 2002 is maintainable in view of Section 92 of the Code of Civil Procedure, 1908?*
- (b) Whether the findings of the Trial Court and the First Appellate Court are sustainable in law in view of Section 92 of the Code of Civil Procedure, 1908?*
- (c) Whether the Judgment and Decree of the First Appellate Court is barred by principles of res judicata?"*

Arguments



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8. The appellant / plaintiff appeared before this Court as party-in-person and made his submissions. He brought to the notice of this Court the Memo dated September 3, 2024 filed by him praying to appoint an *Amicus Curiae* for assisting in this appeal. In the Memo, he had *inter-alia* prayed this Court to decide as to whether the 10th defendant - Trust viz., M/s.B.M.Nanjiyan Trust is a Public Charitable Trust or Private Trust.

8.1. The appellant / plaintiff argued that his father - B.M.Nanjaiyan (first defendant) was the founder of the 10th defendant - Trust. The appellant's brothers and sister, namely D1 to D5 are the Trustees. The Object of the Trust has been specified in the Trust Deed. The Trust is a Public Charitable Trust and the Trustees were mismanaging the affairs of the Trust and therefore, he raised objection to the same. Feeling aggrieved, D1 to D5 without adhering the principles of natural justice, passed a Resolution on July 5, 2001 removing the plaintiff from the Trusteeship of 10th defendant - Trust. They prevented him from attending the day-to-day affairs of the Trust. Hence, the plaintiff filed the Suit for permanent injunction restraining the defendants in any manner from interfering with his peaceful possession and enjoyment by attending the day-to-day affairs of the 10th defendant - Trust and restrain the defendants



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from doing any other act detrimental to the rights and interest of the plaintiff in the Trust property.

8.2. Further, the appellant / plaintiff drew attention of this Court to the fact that the defendant Nos.1 to 5 and 10 filed the Suit in O.S.No.1352 of 2001 against him and the said Suit was dismissed for default. Subsequently, the defendant Nos.2, 4, 7, 8, 10, 11 and 12 filed another Suit in O.S.No.379 of 2009 seeking injunction against the plaintiff and after contest, the same was also dismissed.

8.3. He further argued that his subsequent induction as a Trustee is a stage-managed drama and the defendants have no intention of appointing the plaintiff as a Trustee. He further argued that the prayer sought for in the Suit is not relating to the day-to-day affairs of the D-10 - Trust. On the other hand, the plaintiff sought to establish his office as a Trustee by restraining the defendants from hindering him in discharging his duties as a Trustee. Hence, the Suit is maintainable even without leave of the Court under Section 92 of the 'Code of Civil Procedure, 1908' ['CPC' for short].

8.4. Further he submitted that the Trial Court after



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considering the facts and circumstances of the case, decreed the present Suit in favour of the plaintiff. Aggrieved, the defendants preferred an appeal. The First Appellate Court without appreciating the facts and circumstances, erroneously allowed the appeal, set aside the Judgment and Decree passed by the Trial Court and dismissed the Suit. The Judgment and Decree of the First Appellate Court is liable to be set aside. Accordingly, he prayed to allow the appeal.

9. Per contra, Mr.K.K.Sivashanmugam, learned Counsel for the respondents / defendants contended that the Suit is barred under Section 92 of CPC. Without leave under Section 92 of CPC, the Suit is not maintainable. He further contended that the plaintiff caused much trouble by sending complaints to various statutory authorities. He acted against the interest and welfare of the D-10 - Trust. Hence, the Board of Trustees unanimously decided to remove the plaintiff from the D-10 – Trust as a Trustee. Subsequently, with a view to bring peace, the plaintiff was inducted back to Trusteeship. The plaintiff agreed to withdrew the Suit. Thereafter, for the reasons best known to him, he refused to withdraw the Suit. The First Appellate Court, after considering the entire facts and circumstances of the case and the relationship between the Trustees, came to the conclusion that to achieve the Object of the Trust without any



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hindrance, the Trust decided to remove the plaintiff from the Trusteeship and there is no infirmity in the same. Accordingly, it rightly allowed the appeal and set aside the Trial Court's Judgment and Decree and therefore, there is no warrant to interfere with the same. Accordingly, he prayed to dismiss the Second Appeal.

Discussion:

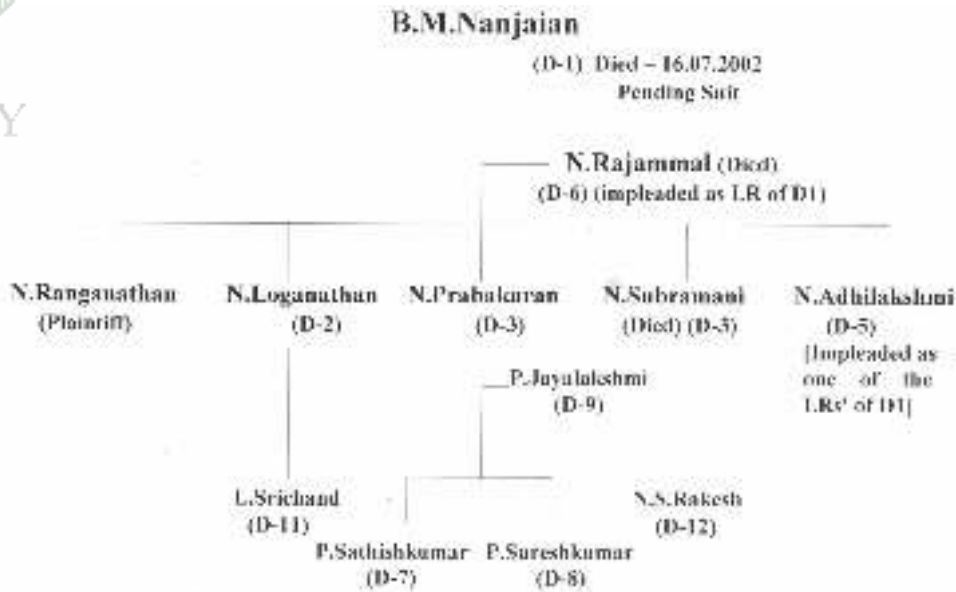
10. This Court has heard the submissions made on either side and perused the materials available on record.

11. D-1 is the Founder of the Trust. The following Genealogy chart drawn based on the available pleadings and evidence, helps better appreciation of the facts of the case:



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12. Ex-A.1 is the Trust Deed. On perusal of the Trust Deed, it is seen that D10-Trust is a Public Charitable Trust. Further, the plaintiff herein is one of the sons of the Trust's Founder *i.e.*, Son of D-1 and one of the Trustees in the D10-Trust as well. It is further evident from Ex-A.1 that the main object of D10-Trust is to construct a *Kalyana Mandapam* to help the poor for performing their children's marriage. For the said purpose, the Trust constructed a *Kalyana Mandapam* in a prime location at Coimbatore. The evidence available on record would show that *Kalyana Mandapam* was constructed by obtaining donations and contributions from the close relatives of the plaintiff and the defendants. It is further evident that there is no express provision in the Trust Deed as well as in



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the by-laws in respect of the removal of Trustees.

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13. As regards leave under Section 92 of CPC, a bare reading of Section 92 would show that to comply with the same, three conditions must be satisfied. They are:

- (i) Breach of any express or constructive trust created for public purposes of a charitable or religious nature;
- (ii) Interference of the Court is deemed necessary for the administration of any such trust; and
- (iii) The relief sought for is one or other adumbrated under Section 92 of CPC.

14. In this case, admittedly, D10 – Trust is a Public Charitable Trust. The prayer sought for in the plaint is that the defendants passed a Resolution dated July 5, 2001 removing the plaintiff from the Trusteeship of the D10- Trust. It does not fall under the reliefs set out under Section 92 of CPC. Further, the right to hold office as a Trustee is a private right. The plaintiff is entitled to enforce his private right by way of filing ordinary Original Suit. Further, on a lighter vein, the defendants had filed Suits against the plaintiff in O.S.Nos.379 of 2009 and 1352 of 2011 and the same were eventually dismissed. To be noted, the said Suits were not filed under Section 92 of CPC. Hence, this Court is of the considered view that



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leave under Section 92 CPC is not necessary for the instant Suit.

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15. The Trial Court arrived at the conclusion that leave under Section 92 of CPC is not required by relying on the text in respect of Section 92 of CPC from the Mulla's The Code of Civil Procedure (18th Edition, 2011, Page No.917, Lexis Nexis], which reads as under:

'The suit contemplated by this Section is a representative suit. Suits brought, not to vindicate or establish the right of the public in respect of a public trust, but to remedy an infringement of an individual right or to vindicate a private right, do not fall within this section. The mere fact that a suit claims relief specified in section does not bring the suit under it. It must be brought by individuals as representatives of the public for vindication of public rights. In deciding whether a suit falls within this section, the court must have regard to the capacity in which the plaintiffs are suing and the purpose for which it is brought. Where the right to the office of a trustee is asserted or denied the suit is outside the section. Such suits are instituted in the ordinary manner and not under this section.'

16. Considering the facts and circumstances of this case, this Court is of the view that there is no reason to deviate from the findings recorded by the Trial Court. Accordingly, this Court concurs with the findings of the Trial Court. Further, the Trial Court did not grant an



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absolute injunction against removing the plaintiff from the Trusteeship.

The Trial Court, in Paragraph No.10 of its Judgment, has observed that if need be, the defendants can remove the plaintiff from the Trusteeship by following due process of law. This Court does not find any irregularity or illegality in the Judgment passed by the Trial Court.

17. Further, subsequent to the filing of the Suit, on September 10, 2008, the plaintiff was re-appointed as Trustee and the plaintiff has also accepted the same. On this observation, the First Appellate Court held that the plaintiff is precluded from continuing the Suit. The said view, in the opinion of this Court, is incorrect. The plaintiff's cause of action to file the instant Suit arose when the Resolution dated July 5, 2001 removing him from the Trusteeship was passed. The prayer is to declare the same as illegal and invalid. Further the plaintiff has contended that his re-appointment is a mere facade. Be that as it may, the Suit concerns only about the Resolution dated July 5, 2001. Hence, the First Appellate Court is not right in concluding that the plaintiff is estopped from proceeding with the Suit. Therefore, this Court comes to the conclusion that the findings of the First Appellate Court are not in accordance with law. The substantial questions of law are answered accordingly in favour of the



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appellant / plaintiff and against the respondents / defendants.

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18. Considering the facts and circumstances of this case, this Court is of the view that there is no need to appoint an *Amicus Curiae* in this matter. Further, Ex-A.1 – Trust Deed clearly stipulates that D-10 - Trust is Public Charitable Trust. Hence, the prayer sought for by the appellant / plaintiff in the Memo dated September 3, 2024 is to be rejected and accordingly, stands rejected.

Conclusion

19. In the result, the Second Appeal is allowed. The Judgment and Decree passed by the First Appellate Court is set aside and the Judgment and Decree passed by the Trial Court is restored. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

12 / 12 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

1.The II Additional Sub Court
Coimbatore.

2.The III Additional District Munsif
Coimbatore.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.182 OF 2017

12 / 12 / 2024