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CRP Nos.3738 and 3740 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2024

DELIVERED ON:25.10.2024

CORAM:

**THE HONOURABLE Mr. JUSTICE P.B.BALAJI**

**CRP Nos.3738 and 3740 of 2022**

**CRP No.3738 of 2022**

1.Arulmurugan  
2.Jaganathan  
3.Senthilvel

... Petitioners

Vs

1.Kalaimagal Educational Trust Represented by  
its Managing Trustee  
N.Palanivelu  
North Thottam,  
Belukurichi Village and Post,  
Namakkal Taluk,  
Namakkal-637 402.

2.N.Palanivelu  
3.P.Duraimurugan  
4.M.A.Selvarajan  
5.Shanthi Anbalagan  
6.T.P.Duraisamy,  
7.Geethababy Malaramani  
8.V.S.Murugesan



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9.D.Punitha Duraimurugan  
10.Suresh  
11.Ravichandran

... Respondents

**CRP No.3740 of 2022**

Senthilvel

.... Petitioner

VS

1. Kalaimagal Educational Trust Represented by  
its Managing Trustee  
N.Palanivelu  
North Thottam,  
Belukurichi Village and Post,  
Namakkal Taluk,  
Namakkal-637 402.

2. N.Palanivelu  
3. P.Duraimurugan  
4.M.A.Selvarajan  
5.Shanthi Anbalagan  
6.T.P.Duraisamy  
7.Geethababy Malarmani  
8.V.S.Murugesan  
9.D.Punitha Duraimurugan  
10.Suresh  
11.Ravichandran

... Respondents

**PRAYER in CRP No.3738 of 2022:** Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.2 of 2022 in O.S.No.103 of 2012 on the file of Principal Subordinate Court, Namakkal dated 08.03.2022.



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**PRAYER in CRP No.3740 of 2022:** Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.348 of 2012 in O.S.No.103 of 2012 on the file of Principal Subordinate Court, Namakkal dated 08.03.2022.

**CRP No.3738 of 2022**

For Petitioners : Ms.J.Prithivi  
For Mr.S.Kaithamalai Kumaran

For Respondents : Mr.S.Ramesh  
For Mr.M.Guruprasad  
For R.1 to R.9  
R.10 & R.11 – Given up

**CRP No.3740 of 2022**

For Petitioner : Ms.J.Prithivi  
For Mr.S.Kaithamalai Kumaran

For Respondents : Mr.S.Ramesh  
For Mr.M.Guruprasad  
For R.1 to R.9  
R.10 & R.11 – Given up

**COMMON ORDER**

In a suit in O.S.No.103 of 2012 filed under Section 92 of Civil Procedure Code, an interlocutory application in I.A.No.2 of 2022 has been taken out under Order 1 Rule 8(3) r/w 10(2) and Section 151 of Civil



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Procedure Code to implead the petitioners 1 and 2 in the present revision, as plaintiffs 4 and 5 in the main suit and the trial Court dismissed the said application. Aggrieved by the same, the proposed parties have chosen to prefer the present Civil Revision Petition in **CRP No.3738 of 2022**.

2. **CRP No.3740 of 2022** has been filed against the order in I.A.No.348 of 2012, revoking the leave granted to sue under Section 92 of Code of Civil Procedure.

3. I have heard Ms.J.Prithvi, learned counsel for the petitioners and Mr.Ramesh, for Mr.M.Guruprasad, learned counsel for the respondents 1 to 9 and the respondents 10 and 11 have been given up by the revision petitioners already.

4. Learned counsel for the revision petitioners would take me through the plaint filed in O.S.No.103 of 2012 and also the application and the supporting affidavits filed in I.A.No.2 of 2022. According to the learned counsel for the revision petitioners, the suit was taken on file after leave was



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granted by the Court. However, pending the suit, two of the plaintiffs viz., plaintiffs 2 and 3 have not pressed the suit, leaving the sole plaintiff to prosecute the suit. Learned counsel for the petitioners would also invite my attention to the order passed by this Court in CRP (NPD)No.2302 of 2018. It is pursuant to the liberty granted by this Court in CRP No,2302 of 2018, I.A.No.2 of 2022 came to be filed by the revision petitioners, where, the petitioners, claiming to be the interested plaintiffs, sought to join the sole plaintiff and continue the suit in O.S.No.103 of 2012.

5. The respondents have filed their objections to the said request of the proposed plaintiffs and after due enquiry, the trial Court, proceeded to dismiss the application in I.A.No.2 of 2022. Aggrieved by the same, the present revision in CRP No.3738 of 2022 has been filed.

6. Learned counsel for the petitioners would state that the suit itself came to be numbered in the year 2012 after obtaining leave from the Court and only because of subsequent circumstances in and whereby two of the plaintiffs did not choose to proceed with the suit, the sole plaintiff was left



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alone and could not prosecute the suit, which has been filed, noticing serious irregularities in the administration of the first respondent Trust. Learned counsel would further submit that in the light of the order passed by this Court in CRP No.2302 of 2018, the trial Court ought to have allowed the application and tested whether the proposed plaintiffs were interested parties or not during trial and after evidence was recorded instead of summarily rejecting their affidavits, as not being satisfactory and therefore, the learned counsel prays that the revisions may be allowed.

7. Learned counsel for the petitioners relied on the Division Bench decision of this Court in the case of ***C.Kalahasti vs R.Sukhantharaj*** reported in **88 LW 578**, where the Division Bench of this Court held that old students of a College would be interested in the proper administration of the entire trust and as old students, they stand distinguished from the generality of the community and that association gives them a particular direct and distinctive interest in the public charitable trust.

8. Learned counsel for the petitioners also relied on the decision of the



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Division Bench of this Court in the case of ***Thatha Sampath Kumar and another vs Sri Vupputur Alwar Chetty's Charities rep by its Hereditary Trustees*** reported in ***(2019) (5) CTC 212***, wherein, the Division Bench has held that since the suit under Section 92 of Code of Civil Procedure is filed to protect public Trust and to ventilate public rights, leave should be granted. Further, the Division Bench has held that at the stage of considering the grant of leave, there should be very strong evidence to come to a conclusion that the suit is vexatious in nature and further held that if there are allegations of breach of trust, then, leave should be granted.

9. Learned counsel for the revision petitioners further relied on the decision of this Court in the case of ***G.V.Selvam vs G.V.Sampath and others*** reported in ***2015(6) CTC 515***, where this Court has held that the Court cannot conduct a roving enquiry while hearing the application for revocation of leave on the allegations made by the respective parties.

10. Learned counsel for the petitioners would further rely on the decision of this Court in the case of ***Kumudavalli and another vs***



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**Purushotham** reported in **AIR 1978 Madras 205**, where the Division Bench of this Court has held that the resident of the locality, in which the school is situated, during a particular period, for which, there is no contra evidence, would bring such person within the ambit of “person interested”.

11. Per contra, learned counsel for the respondents 1 to 9, referring to the affidavits filed by the proposed plaintiffs, submitted that the fundamental requirement of Section 92 of Code of Civil Procedure has not been made out in the affidavits and learned counsel would also compare both the affidavits and submitted that they are verbatim same and they do not make out even a prima facie case that the said proposed plaintiffs are interested in the affair of the Trust. Learned counsel for the respondents would rely on the decision of the Hon'ble Supreme Court in the case of **Mahant Harnam Singh vs Gurdial Singh and another** reported in **AIR 1967 SC 1415**, wherein, the Hon'ble Supreme Court, referring to the decision of this Court in the case of **T.R.Ramachandra Aiyar vs Parameswaran Unni** reported in **ILR 42 Madras 360** held that a person who sues as plaintiff under Section 92 of Code of Civil Procedure, must have clear interest in the particular trust even



though the word “direct” was omitted in Section 92 of Code of Civil Procedure.

12. Learned counsel also relied on the Division Bench judgment of this Court in the case of *L.M.Menezes and Others vs Rt.Rev.Dr.Lawrence Plus and Others* reported in *2004 (1) CTC 321*, wherein, this Court has held that the words “persons interested” are incorporated with object of preventing people from interfering with administration of Charitable Trust without any real interest and further held that the interest required must be clear and substantive interest in particular Trust and not merely a remote, fictitious and contingent interest.

13. Testing the facts of the present case in the light of the settled position discussed above, I proceeded to examine the affidavits filed by the proposed plaintiffs, who are the revision petitioners herein. As rightly pointed out by the learned counsel for the respondents, the affidavits are verbatim the same. On reading of the same, there is absolutely no material available even to consider as to how the petitioners are persons interested in the Trust. Both



the affidavits do not disclose that the deponents have interest in the Trust and therefore, their request for impleading themselves as plaintiffs cannot be considered. Section 92 of Code of Civil Procedure, 1908 is extracted for ready reference:-

**Public charities.**

*(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 <sup>1</sup>[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 Aectee,—*

*(a) removing any trustee;*

*(b) appointing a new trustee;*



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*(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 inquires;*

*(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 (20 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*



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*except in conformity with provisions of that sub-section.*

<sup>2</sup>*[(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 cy pres in one or more 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;*

*(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*



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*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*

*(ii) ceased, as being useless or harmful to the community, or*

*(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.]*

14. As could be seen from the above section, even when there is alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, a direction of this Court is necessary for proper administration of the Trust, it is primarily necessary for



two or more persons having interest in the Trust and to obtain the leave of the Court to institute a suit. The affidavits do not even disclose that the petitioners are having any interest in the Trust and they have merely set out what have transpired in the earlier suit and at the request of the sole plaintiff, they are seeking to implead themselves. The affidavits are silent with regard to the interest of the petitioners in the Trust which is fundamental to the very impleadment of the petitioners as plaintiffs to enable them to prosecute the suit.

15. Thus, I do not find an infirmity in the order passed by the trial Court, dismissing the application filed by the proposed plaintiffs and consequently, revoking the leave to file a suit under Section 92 of Code of Civil Procedure. However, considering the fact that the application has been dismissed merely on the ground that the affidavits do not disclose that the proposed plaintiffs are having any interest in the Trust, I deem it necessary not to foreclose the rights of the proposed plaintiffs and consequently by granting liberty to the plaintiff as well as the proposed plaintiffs to file a fresh application for leave to sue under Section 92 of Code of Civil Procedure and



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make out a case for grant of leave to prosecute a fresh suit under Section 92 of Code of Civil Procedure and in the event of such application being filed by the revision petitioners with or without the sole plaintiff in the present suit, the trial court shall entertain the same and deal with the said application in accordance with law and on its merits, without rejecting the same on the ground that earlier attempts to seek leave to file a suit under Section 92 of Code of Civil Procedure and for impleading themselves as plaintiffs have been rejected by this Court in these revisions.

16. With this liberty, both the Civil Revision Petitions are dismissed.

No costs.

**25.10.2024**

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

To

The Principal Subordinate Court, Namakkal

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**P.B.BALAJI,J.,**

SR

Pre-Delivery Common Order in  
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