



C.R.P.No.424 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	21.03.2024
PRONOUNCED ON :	02.04.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.424 of 2022
and C.M.P.No.10050 of 2023

1) M/s. G.V.Govindaswami Naidu Charities,
Rep. By its Managing Trustee Sumathi Krishna Prasad,
Having Office at No.133, Palani Road, Venkatanilayam,
S.V.Mills Post, Udumalpet 642 128

2) Sumathi Krishna Prasad

3) Swetha Venkatalakshmi

4) GVG Vishalakshi College for Women,
Rep. By its Secretary Sumathi Krishna Prasad

.. Petitioners

Versus

1) M/s.Rajalakshmi Gengusamy Charities,
Rep. by its trustees G.Rajalakshmi,

2) G.Rajalakshmi

3) G.Raveendran

4) R. Vishnuvardhan

5) R.Nandhini

6) M.Amarnath

.. Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal Order dated 17.09.2021 made in I.A.No.115/2021 in O.S.CFR No.932/2021 on the file of Principal Sessions Court, Tirupur.

For Petitioners : Mr.Anirudh Krishnan
For M/s.Sarvabhauman Associates

For RR 1 & 2 : Mr.T.R.Rajagopalan

For RR 3 to 5 : Mr.R.Vidhya Shankar

For R-6 : No Appearance

ORDER

This Revision is filed by the plaintiffs in O.S C.F.R. No. 932 of 2021 challenging the fair and decretal order dated 17.09.2021 passed by the learned Principal Sessions Judge, Tiruppur, in IA No 115/2021 in the said suit. The said IA was filed seeking the leave of the court to institute a suit under Sec 92 of the Code of Civil Procedure(CPC), 1908.

2. The proposed suit O.S.CFR No.932 of 2021, for which leave of the Court was sought, intended to seek the following reliefs.

a) Framing a scheme for administration of G. V. Govindaswami Naidu Charities in modification of the Trust Deed dated



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11.02.1956 registered as Doc No. 853 of 1956 and Supplemental Deed of Trust dated 07.03.2011 registered as Doc. No. 3 of 201 on the file of Sub Registrar, Udumalpet.

b) To remove Defendant 3 & 4 as Trustees of G.V. Govindaswami Naidu Charity and to appoint new trustees in their place.

c) Appoint any other new trustees who are competent and who have experience in administration of educational institutions.

d) Directing enquiry into the mismanagement of the Trust allegedly by the Plaintiff and pass consequential orders vesting the property owned by the Trust and its restoration from Defendants 1 to 5 or any other person having control of the properties of G.V. Govindaswami Naidu Charities.

e) Declaring the first plaintiff's title to the suit property and to order and direct the defendants to deliver possession thereof to the first plaintiff and to declare that all the instruments consisting of lease deeds dated 09.12.1999 and registered as Doc. No. 3045 and 3046 of 1999 and the sale deed dated 21.06.1993 registered as Doc. No. 1668 of 1993 and the Transfer Deeds dated 20.12.2005 registered as Doc. No. 3523 and 3524 of 2006 and cancellation of Settlement Deed dated 11.04.2008 registered as Doc. No. 2661 of 2008 and Rectification Ded dated 13.09.2017 registered as Document No. 6923 of 2017 are al as sham, nominal, void and illegal documents executed by the second defendant by which no right or title has been transferred to the first defendant Trust and further holding that these instruments



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are not for the benefit or in the interest of the first plaintiff Trust and its beneficiaries.

f) Appoint a Receiver to take charge of GVG Auditorium and maintain and preserve the same till the termination of the legal proceedings and entrust the same to the lawful owners thereof.

g) Granting permanent injunction to restrain the defendants, their men, servants and agents from encumbering or alienating the suit property and any part thereof.

h) Declare that the Lok Adalath award in OS No.125 of 2018 dated 19.09.2018 on the file of Sub Court Udumalpet, is vitiated by fraud and collusion and consequently void, illegal and does not affect the title of the Sri GVG Visalakshmi College for women established by G.V. Govindaswami Naidu Charities to the said property, and to set aside the same.

3. The learned District Judge after hearing both sides in I.A.No.115/2021 had passed a detailed order dated 17.09.2021 rejecting the leave sought for under Sec 92 of CPC, which is now challenged before this Court in this Civil Revision Petition.

4. The order dated 17.09.2021 passed in I.A.No.115 of 2021 concluded that a Trust as Plaintiff filing a suit, is not maintainable; no cause of action arose for framing a scheme, removal of trustees and induction of new trustees;



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Mrs.Sumathi Krishna Prasad was herself Managing Trustee since 2011 and she, questioning the transactions in 2020, is to espouse personal cause and it is a dispute between two Trusts and its trustees and not for the well-being of the Trust; there is nothing wrong in seeing the averments in plaint without going deep into the contentious issues; the suit is nothing but ventilating private dispute between the parties under Section 92, which is not permissible;the Plaintiffs can work out its remedy only under normal suit by paying appropriate court fees; only when public interest is involved; suit under Section 92 is maintainable and private interest or difference of opinion cannot be agitated under Section 92 CPC.

5. I have perused the impugned order dated 17.09.2021 passed by the learned Judge and heard the counsels for both sides.

6. In order to decide the issue on hand, it is necessary to look into the facts of the case;-

6.1. Mr. G.V. Govindaswami Naidu, along with his two daughters (1) Mrs G Ruthraveni Thayarammal and (2) Mrs G. Rajalakshmi Ammal, established M/s Govindaswami Naidu Charities (1st Petitioner Trust) vide a Trust deed dated 11.02.1956.



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6.2. The object of the trust is to impart education, develop schools, colleges and other education institutions, establish hospitals, establish and maintain medical hospitals and dispensaries, medical schools and maternity homes and other allied objects.

6.3. Initially, at the time of founding of the Trust, a land extent of Acre 5.85 cents in SF No 32/A1-A2 in Kanakkampalayam Village, Udumalpet was set apart to establish M/s GVG Visalakshi College for Women. Thereafter the following properties were added to the Trust of which the 9.00 Acres of land in SF No 201/A mentioned in table 1 below was conveyed by Mrs G Rajalakshmi Ammal (2nd Respondent) by way of a settlement deed during 1970 and the rest were purchased from unconnected parties.

<i>Sl.No.</i>	<i>Title Document</i>	<i>Land Details</i>
1	Settlement Deed in doc no.913 of 1970 dated 3.04.1970	9.00 Acres in SF No 201/A
2	Sale deed in doc no.3770 of 1974 dated 21.11.1974	1.97 Acres in SF No 202/A (eastern side)
3	Sale deed in doc no.3771 of 1974 dated 21.11.1974	1.97 Acres in SF No 202/A (western side)
4	Sale deed in doc no 4069 of 1974 dated 16.12.1974	0.84 Acres in SF No 202/B1
5	Sale deed in doc no.903 of 1971 dated 17.04.1971	11.68 cents in SF No 202/B1



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7. According to the Trust Deed dated 11.02.1956, Mr.G.V. Govindaswami Naidu shall be the Managing Trustee of the Trust for life and after his life, Mrs. G. Rajalakshmi shall be the Managing Trustee for life and subsequent managing trustees shall be one of the trustees elected by them, provided always, that after the life of Mr. G.V.Govindaswami Naidu, the managing trustee shall be an educated female residing in Udumalpet.

8. Mrs G.Rajalakshmi Ammal was the Managing Trustee from 1969 until 2011. Mrs G Ruthraveni Thayarammal was a trustee from 1956 to 2011. Both of them are daughters of Mr.G.V.Govindaswami, the author of the Trust.

9. During 2011, a Supplementary Trust Deed was executed on 07.03.2011 reckoning Mrs G Ruthraveni Thayarammal and Mrs G.Rajalakshmi Ammal as Founder Trustees and Mr. Amarnath (Son of Mrs G Ruthraveni Thayarammal) and Mr. G.Raveendran (Son of Mrs Rajalakshmi Ammal) as trustees.

9.1. The deed resolved that Mrs. G.Rajalakshmi Ammal shall continue as Managing Trustee for her lifetime or until her resignation. Thereafter, it was further agreed that, the Managing Trustee will be on rotational basis and hold tenure of 5 years and the first succeeding Managing Trustee was to be



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Mrs.Sumathi Krishna Prasad (Granddaughter of Mrs. G. Ruthraveni Thayarammal), and next Managing Trustee was to be Mr. R. Vishnuvardhan (Son of Mr.G Raveendran). This arrangement was necessitated and agreed as Mrs G. Rajalakshmi Ammal and her son Mr. G Raveendran had no daughters.

10. After the execution of the Supplemental Trust deed in the year 2011, Mrs G. Ruthraveni Thayarammal and Mrs. G.Rajalakshmi Ammal stepped down from the Board. Mrs. Sumathi Krishna Prasad and her daughter Ms.Shwetha Venkatalakshmi (who replaced Mr. Amarath during 2020) representing Mrs G Ruthraveni Thayarammal branch and Mr. G Raveendran and his son Mr. R Vishnuvardhan representing Mrs.G Rajalakshmi Ammal branch, became Trustees and Mrs Sumathi Krishna Prasad became the Managing Trustee.

11. As such, Mrs. G.Rajalakshmi Ammal was the Managing Trustee from 1969 to 2011 until she stepped down. From 2011 to 2017, Mrs. Sumathi Krishna Prasad was the Managing Trustee. From 2017 to 2020, Mr. R Vishnuvardhan was the Managing Trustee. Mrs. Sumathi Krishna Prasad again became the Managing Trustee in the year 2021 and her tenure is slated to end in 2026.

12. The Suit is filed by the Trust itself as Plaintiff with legal heirs of Mrs.G. Ruthraveni Thayarammal viz Mrs. Sumathi Krishna Prasad and



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Ms.Swetha Venkatalakshmi as 2nd and 3rd Plaintiff against Defendants 2, 3, 4 and 5, who represent Mrs.G.Rajalakshmi Ammal branch. 1st defendant is an independent Trust, in which 3rd defendant is the Managing Trustee. M/s GVG Visalakshi College for women run by the 1st plaintiff trust is arraigned as the 4th plaintiff.

13. The plaint mentions that the TSLR for the 9.00 Acre settlement property registered by settlement deed dated 30.04.1970 shows the actual extent of land as 13.68 acres and as such there was some discrepancy in the settlement documentation with respect to the actual extent of land.

14. The plaint alleges that the above said settlement deed in Doc no 913 of 1970 dated 30.04.1970 was cancelled by a deed of cancellation registered as document no 2661 of 2008 dated 11.04.2008 which is mala-fide.

15. It is further alleged in the plaint that even though the settlement of the 9 acres of land to the trust was made by the 2nd respondent during 1970 in her personal capacity, the conflicting interests of the 2nd defendant as managing trustee of the 1st petitioner Trust and Secretary of 4th petitioner College at the time of cancellation of the deed makes the transaction illegal and void.



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16. In the plaint, it is also alleged that the trust property in serial no 4 & 5 of the table above admeasuring 95 cents and 68 sqft were illegally transferred by an alleged sale deed dated 21.06.1993.

17. It is further alleged that another part measuring 4.89 acres belonging to the trust was illegally transferred to Rajammal Gengusamy Charities (1st defendant Trust) on 20.12.2005.

18. The further averments in the plaint is that the Minutes book of the trust for the year 1984 to 2011 and the title documents for the properties of the Trust were not handed over to her by the previous management trustee at the time of her assuming charge as Managing Trustee. It is alleged that the 2nd to 4th respondents have retained the Minute Book and falsely represented that they were searching for the records. It is averred that since the Minute Book was not presented to her, a new Minute Book had to be opened during 2011 upon her taking charge as Managing Trustee and the same Minute book is continued since then. It is alleged that the registered office of both the trusts where the documents are maintained is Venkata Nilayam which is also the residence of defendant 2 & 3.



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19. The plaint averments is that during the tenure of the 4th defendant as Managing Trustee in 2018, the 2nd defendant filed a collusive suit in OS No 125 of 2018 before Sub Court, Udumalpet to declare the settlement dated 30.04.1970 as invalid, non implementable and non est which got immediately referred to Lok Adalat. It also alleges mala-fide on the rectification deed dated 13.09.2017 registered as document No 6903 of 2017.

20. The plaint averments is that only during the second tenure in 2020, while looking for the title documents and encumbrance details for the purpose of availing loan during covid period, she came to know of the misdeeds of defendants 2 to 4. It was alleged that the same are done in breach of trust.

21. It is the allegation of the plaintiffs that the defendants 2 to 4 have parted with the land belonging to the trust for the benefit of their family and the family-run Trust viz M/s Rajalakshmi Gengusamy Charities that run the RG Matriculation School. The suit was proposed under Sec 92 of CPC seeking several reliefs on the charge of mala-fide against the respondents.

22. The plaintiffs relied on the following case laws to press their arguments that ingredients to satisfy the contours Section 92 of CPC for grant of



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leave of the court is present in their case.

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(i) L.M.Menezes & Ors vs. Lawrence Pius and Ors OSA

No.83 of 2003 dated 22.12.2003; and

(ii) Christopher Karkada & Ors vs. Church of South

India ILR, 2012 Kar 725.

23. The learned counsel for the Revision Petitioners would submit that the impugned order proceeded primarily on the basis of the case set up by the respondents through the counter affidavit filed before the trial court and not on the basis of plaint. In this regard, the learned counsel relied on the following case laws.

(i) The New College & Ors vs Basheer Mohammed & Ors

(1979) 1 MLJ 145;

(ii) Regeena & Ors vs Jeppiar Sheela & Ors (2020) 3 CTC 10.

24. The learned counsel for the revision petitioners would contend that the Trial court failed to appreciate the plaint as a whole, while arriving at the conclusion that the plaintiffs are agitating a personal cause and ignoring the mismanagement of Trust. The learned counsel relied on the case of **GV Selvam vs GV Sampath & Ors (2015) 6 CTC 515** to drive home the point that the learned Judge, Trial court had erred in conducting a roving enquiry in the



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proposed plaint by conducting a mini-trial by putting it against the allegations made by the respondents in the counter affidavit which is impermissible at the stage of granting of leave.

25. Per contra, the learned counsel for the respondents would submit that the learned Judge, trial court, rejected the plaint on the ground that it is motivated with an intention to take control of the trust by the Mrs G Ruthraveni Thayarammal Branch. They resisted the proposed suit on both law and facts. They pointed out that the Suit is filed by arraigning the Trust itself as Plaintiff with legal heirs of Mrs G Ruthraveni Thayarammal as 2nd and 3rd Plaintiff against Defendants 1, 2, 3, 4 and 5, that represent the M/s G Rajalakshmi Ammal branch and the trust floated by them.

26. On question of law, it was submitted by the learned counsel for the respondents/defendants that the Suit filed by the Trust is not maintainable under Section 92. Section 92 deals only with Suit against a Public Charitable Trust and not vice versa; Suit for a declaratory decree in relation to immovable properties is not within the scope of Section 92; Title suit for declaration of title is enforcement of a personal right of the Trust and is alien to Section 92 proceedings; the suit if read as a whole is only filed for declaration of title;

Through clever drafting, the suit is made to look like one filed for framing a



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scheme; The allegations of mismanagement are only founded on claim for declaration as to title as regards immovable properties, and not on administration or irregularities in running the Trust and such a suit will not lie u/s. 92 CPC.

27. It is submitted by the learned counsel for the respondents/defendants that it is an admitted fact that Mrs G Ruthraveni Thayarammal held office from 1956 till 2011. The transfer of suit Properties by the Trust took place during her tenure. She approved the transactions; Her legal heirs/successors who assumed office as representing her branch, much later are seeking to impugn the transactions. The vexatious nature of the suit will be self-evident.

28. It is also submitted that Mrs. Sumathi Krishna Prasad has served as the Managing Trustee and has been in active management since 2011 for 6 years and even thereafter continued as a Trustee and again assumed office as Managing Trustee in 2020. As Managing Trustee, she could not have been unaware as to what properties the trust owns, what income the trust generates, what assets are reflected in the books of accounts of the trust, what IT returns are filed by the Trust etc; That a Managing Trustee for 6 years claims much later that she did not even know that the suit properties had been parted with by the Trust and income was being booked by 1st defendant Trust and she was unaware all those years, doubts the bona-fide nature of her claim.



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29. In respect of non-availability of Minutes Book, the defendants would submit that it was also never questioned by Mrs.Sumathi Krishna Prasad until 2020. Not a single piece of paper exists, even during her tenure as Managing Trustee, when such assertion was made and Plaint also does not plead existence of any such a communication; the suit Properties were not reflected in the Books of account of the 1st Plaintiff Trust since the cancellation/ transfer. The revenue accrued from the Auditorium/ Kalyanamandapam was also never reflected in the Books of account of the 1st Plaintiff Trust.

30. The Order in WP 28017/2010 dated 27.04.2012 relating to stamp duty adjudication of the Transfer Deeds pertaining to a part of suit Properties, records that the transfer was pursuant to resolution passed by the Trustees and that the transfer was made only after a consensus decision; That time, Mrs. Sumathi Krishna Prasad was the Managing Trustee.

31. The Writ Appeal in W.A.43 and 44 of 2015 vide Order dated 23.03.2018 also records that Board of Trustees of GVG Trust resolved to transfer the ownership without consideration and that decision was taken to transfer the land to lessee without consideration.



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32. The learned counsel for the defendants contended that Plaintiffs have come up with a false case. It was argued that the Cancellation of settlement in respect of property conveyed in settlement deed was a personal decision of 2nd Defendant since it was not utilized for intended purpose. However, she offered to settle the same to Trust, vide letter dated 09.12.2020 on a condition of proper utilization. Even in the face of such an offer, it is not accepted, but is brushed aside as half-hearted and a suit is rushed; It was pointed out that the refusal to accept the above offer shows that the intent of the Plaintiffs is not the "interest" of the Trust, but is motivated only by personal agenda. It averred that the plaint is a vindictive action with personal agenda by Mrs G Ruthraveni Thayarammal branch to exclude Mrs. Rajalakshmi Ammal's branch from the Board and to gain complete control. Such a motivated action initiated in a colourable legitimacy is against the interest of trust and requires to be dismissed in limine; The Plaintiff's conduct reeks of mala-fides and does not fall within the meaning of "Interested persons" under Section 92; 1st Defendant is arrayed as a party only because it is the present owner of suit properties and has nothing to do with the management of the Petitioner Trust. It was argued that in as much as the transfer between two trusts with similar objects is permissible under law and that appropriate Board resolutions has been passed for effecting such transfers, there is no cause of



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action against the 1st Defendant in a Section 92 Suit.

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33. The learned counsel for the defendants/respondents relied on the following case laws in support of their contentions:-

(i) Ghat Talab Kaulan Wala vs Gopal Dass Chela Surti Dass (2020 13

SCC 50): It is held that Section 92 of the Code contemplates suit against a Trust and not vice versa and therefore the procedure prescribed in Section 92 would not be applicable.

(ii) Sopan Sukhdea Sable vs Assistant Charity Commissioner (2004 3

SCC137): In support of their argument that the Plaint is to be read in substance and as a whole to ascertain the nature of the suit and the intention of the party concerned is to be gathered from the tenor and pleadings as a whole. The substratum of the suit itself will be gone if the prayer for declaration is bifurcated and other prayers are looked at. It was argued that the suit under consideration, if read as a whole is clearly an action for declaration of title to a certain property against a third party.

(iii) Swami Paramatanand Saraswathi vs Ramji Tripathi (AIR 1974 SC

2141). It is held that a Suit for vindication of private right is not maintainable U/S. 92. A suit whose primary object or purpose is to remedy an individual right or private right does not fall under the Section



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92. It is not every suit claiming relief specified under Section 92 that can be brought under the Section but only the suits for vindication of public rights can be brought.

(iv) Rajasekaran vs M.Rajendran (2007 1 MLJ 683) in support of their contention that the conduct of the plaintiff is relevant while considering the grant of leave. At the stage of grant of leave, the Court is required to consider the bonafides of the Plaintiffs.

(v) Vidyodaya Trust vs Mohan Prasad (2008 3 CTC 868). It is argued that Court, at the time of grant of leave, has to see the object and purpose of the suit to find out whether the real purpose of the suit is vindication of a public right or vindication of private right or whether purely private or personal disputes are sought to be given colourable legitimacy.

(vi) L.M.Menezes VS Rev.Dr. Lawrence Plus and others (2004) MIJ 258

. If the trustees are able to satisfy the Court that there is no evidence to support the allegations or evidence is not sufficient or the intention is not bona-fide or action is being initiated for selfish personal ends, the leave ought to be revoked.

(vii) Clement Selvaraj va John De Monto Trust 2021 SCC Online Mad

5842. The Court has to necessarily and incisively examine the bonafides of the persons who are laying the suit, whether they are truly vindicating



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public interest or have they any personal or vested interest against the trust.

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(viii) Abdur Rahim vs Mahommed Bakrat Ali (1928 30 Bom LR 774). It

is held that in a suit for declaration, certain property belongs to the Trust is outside the scope of Section 92 of CPC

(ix) Mahant Pragdasji Guru Bhagwandasji v. Patle Ishwarlal Bhai Narsi

Bhai & Ors (1952) 1 SCC 323. that upholds the Bombay High Court decision and held that a suit for declaration that certain property appertains to a religious trust may lie under the general law but is outside the scope of S 92 of CPC.

(x) Bishwanath vs Sri Thalur Radha Ballabhij (1967 2 SCR 618)

holding that suit for declaration of title of Trust is a private Right of Trust and is not within the scope of Section 92.

It was also pointed out that the above decision is followed in **PS Subramanian vs KL Lakshmanan (1997 3 LW463).**

34. Upon perusing the impugned order dated 17.09.2021 and the written submissions of the counsels, this court finds that the conclusion drawn by the learned District Judge, Tiruppur, was based on cogent reasoning and correct analysis of the judicial precedents.



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35. On the question of law, the Hon'ble Supreme Court in **Ghat Talab Kaulan Wala vs Gopal Dass Chela Surti Dass (2020 13 SCC 50)** has settled the interpretation that a section 92 suit can only be filed against a Trust and not by the Trust itself as plaintiff.

36. The Hon'ble Supreme Court had time and again held that a section 92 suit can be filed for asking relief enumerated under the said section and suits of declaration of title is not an enumerated relief under Section 92 CPC.

37. This Court in the case of **P.S.Subramanian vs KL Lakshmanan & 2 others reported in 1997 (3) LW 463** has unambiguously asserted that a suit of declaration of title and recovery of possession of property by Trust against 3rd party is espousing personal cause and therefore Section 92 CPC suit will not lie. It is now a settled principle that a section 92 suit espousing vexatious claim or personal cause cannot be maintained.

38. While agitating the question of facts, it is advanced on behalf of the respondents that the 2nd petitioner's grandmother had approved the transactions



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in her capacity as a founder Trustee. This court takes note of the fact that the said founder trustee had served the Trust for 55 years in the Trust Board until she stepped down during 2011 and thereafter her branch was sufficiently represented in the Trust Board. In such a scenario, it is inconceivable that the alleged transactions can be carried out by one set of trustees keeping the other trustees in the dark, much less in a mala-fide exercise of power and trusteeship.

39. Regarding the sale of property from M/s GV Govindaswami Charities to M/s Rajalakshi Gengusamy Charities, this Court in WP No 28017/2010 had recorded the unanimous approval of the transaction by the Trust Board through a resolution as confirmed again in Writ Appeal No 43/2015. Interestingly, when both the orders were passed, the 2nd plaintiff was at the helm of affairs managing the 1st Plaintiff Trust. Scrutiny of the affairs of the trust indicates that a supplemental trust deed executed during the year 2011 carried wider amplitude to accommodate the competing interests of the Mrs Ruthraveni Thayarammal and Mrs Rajalakshmi Ammal branches. Immediately thereafter, two of the earliest trustees representing each of the branches stepped down to relinquish office to give way to the next generations to lead the Trust. It is transpired that one of them at the receiving end now of this suit is entitled to be a lifetime



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Managing Trustee. The 2nd petitioner was anointed managing Trustee and 5 years of her first tenure went by without a murmur of discord, at the least in actions. All of the above point to cordial and unanimous running of the day to day affairs of the Trust post 2011. Some of the facts propounded in the Suit fail to stand scrutiny in the light of evidences available to the contrary. For example, the Order in WP No 28017 of 2010 and the averments in the plaint are notoriously inconsistent as highlighted by the respondents herein above. In the background, the argument of the respondents that it is a colorable exercise of discretion to keep the respondent branch out of the affairs of the Trust gains more credence.

40. I am in agreement with the contentions raised by the respondent counsel that the 2nd plaintiff, who was at the helm of affairs from 2011 to 2017 and again thereafter, cannot turn around in 2021 to impugn the transactions entered prior to 2011 by the Trust. A diligent trustee, who is entrusted to lead the affairs of the Trust, cannot take a plea that the Minutes Book and Title documents were denied to her on one ground or other at the time of taking charge, least to suggest she kept quiet for a decade. This is not likely believable for an ordinary man of prudence. The consensual and unanimous nature of the



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sale transactions including its minute details as sale consideration, that are now arraigned in the suit as evidences against the respondents, are already part of adjudicated proceedings before this Court in the Writ Petition and Writ appeals.

It is not open for the 2nd plaintiff, being the Managing Trustee at the material time, to feign ignorance of the discussions in the orders of this court. As rightly pointed out by the respondent counsel, such an assertion by and before this court post 2011 would not have been possible without the minute book prior to 2011 being available to the plaintiffs and respondents after 2011. On the one hand the plaintiffs allege that the respondents have lend the auditorium for a socially overt use as kalyana mandapam for many years while on the other it is claimed that they are unaware it was transferred from the books of the Trust until 2020 and its proceeds not vested with the Trust. This stand of the plaintiffs doesn't evoke any confidence or help them. Therefore, this court has no hesitation to hold that the allegations of the plaintiffs are feeble, and the prayer in the proposed suit intend to separate members of the Mrs Rajalakshmi Ammal branch from the affairs of the Trust. More so, when the property comprised in the cancellation deed was proposed to be given back to the Trust on the condition that it is used for objective purpose vide their letter during 2018, the plaintiffs have not responded to take back the property to serve the interest of the trust.

Instead, they chose to file the suit and the prayers in the suit overtly indicating

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that the Mrs G Ruthraveni Thayarammal branch was more interested in excluding the Mrs Rajalakshmi Ammal branch from the affairs of the Trust than to further the interest of the Trust. This act of the 2nd plaintiff to recklessly allege fraud of transferring property, once gifted by the 2nd defendant herself, and again offered to give back the land to the trust on condition of objective use, doesn't appeal to this court. Therefore, the plaint should fail both on law and facts. In the circumstances, none of the case laws relied by the plaintiff comes to their help as the point of reliance advanced by the plaint side are subjective and matters of trial.

41. In view of the above, I find no infirmity in the impugned order dated 17.09.2021 passed by the learned District Judge rejecting the application in I.A. 115 or 2021 filed under Section 92 of CPC. Therefore, this court is not inclined to interfere with the impugned order. As rightly pointed out by the learned District Judge, the plaintiff can work out their remedy available under common law by way of instituting the normal suit before the Civil Court by paying necessary court fee, after convincing the court as to the cause of action and limitation.



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42. While hearing the case, a fresh affidavit was filed by the 2nd plaintiff on 20.03.2024 admitting that the relief sought for under prayers (e) (g) (h) and (d) in so far as it pertains to vesting of property would not fall under the purview of Sec 92 of CPC and therefore not pressing the same. Consequently it was submitted that they propose to drop the 1st and 5th respondents and the 4th plaintiff from the proposed suit. Accordingly it was prayed before this court to permit the petitioners to re-present the plaint and application in OS CFR No 932 of 2021 and IA No 115 of 2021 respectively with necessary amendments to reflect the deletion of prayers and parties as set out in the affidavit.

43. In the facts and circumstances of the case as discussed above, this court is not inclined to allow the prayer of the plaintiffs in the affidavit dated 20.03.2024 that may vest unintended rights or create prejudices to the parties in this Civil Revision Petition.

44. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.04.2024



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Index : Yes / No

Internet : Yes

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To:

- 1) The Principal Sessions Court, Tirupur.
- 2) The Section Officer, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.,

nvsri

Order made in
C.R.P.No.424 of 2022

Dated:
02.04.2023