



CRP(MD).No.1392 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 22.02.2024

Delivered on : 18.04.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P(MD).No.1392 of 2019

and

C.M.P.(MD)No.7408 of 2019

1.A.Ramesh Kumar

2.Santhalakshmi

3.Damodharan

4.Narayanasamy Reddiar

: Petitioners/Respondents 1, 2, 3 & 5/  
Defendants 1, 2, 3 & 5

Vs.

1.C.Thavasumani

2.Chellappa

: Respondents 1 & 2/ Petitioners/  
Plaintiffs

3.R.Krishnamurthy

: 3<sup>rd</sup> Respondent/4<sup>th</sup> Respondent/  
4<sup>th</sup> Defendant

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 06.02.2019 passed by the Principal District Judge, Trichy in I.A.No.584 of 2017 in O.S.SR.No.14187/11.12.2017.



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For Petitioner : Mr.T.Lenin Kumar  
For Respondents : Mr.K.Prabhakar, for R1 and R2.  
: No Appearance, for R3.

## **ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.584 of 2017 in O.S.SR.No.14187/11.12.2017 dated 06.02.2019 on the file of the Principal District Judge, Trichy, granting leave to file the suit under Section 92 of the Code of Civil Procedure.

2. The revision petitioners are the defendants 1 to 3 and 5. The respondents 1 and 2 as plaintiffs have filed the suit to declare that the defendants 2 to 6 are not entitled to lease out the suit property, as it is against the object of the trust and for consequential relief of mandatory injunction, directing the defendants 2 to 6 to evict the tenants and for permanent injunction restraining the defendants 2 to 6 from alienating or encumbering the suit property as it is in violation of the settlement deed, dated 28.03.1915 executed by the founders of the first defendant trust.



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3. The plaintiffs along with plaintiff have filed the above application under Section 92 of C.P.C., seeking leave to file the suit. The fifth defendant has filed the counter statement, which was adopted by the respondents 1, 2 and 3, raising objections.

4. The learned District Judge, after enquiry, has passed the impugned order, dated 06.02.2019 allowing the petition and thereby granting leave to the plaintiffs to file the suit under Section 92 of C.P.C. Aggrieved by the impugned order, the present revision came to be filed.

5. The case of the respondents 1 and 2/plaintiffs is that the first defendant trust/Sri Vedantha Desika Vilasam Ramanuja Koodam Charities, is a public religious charity and was founded by A.Venkatakrishnan Naidu, Rengasamy Naidu, Gurusamy Naidu, Perumal Reddiar, Krishnasamy Reddiar, Nallappa Reddiar, Papu Reddiar vide settlement deed, dated 28.03.1915; that the said trust was formed with an object to do religious and charitable work in the month of Tamil Margazhi every year, Vaigunda Ekadasi festival and then to feed Desanthri Bhargave in the Mandapam to be constructed and named as Srivedantha Desika Vilasam; that in pursuance of the trust created under the



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settlement deed a building was constructed in the suit property several decades ago and the said building is used for the Desanthri Agraharam viz., Tourister devotees, who throng Lord Renganathasamy Temple at Srirangam; that the first defendant trust now is represented by its Executive Trustee A.Ramesh Kumar/second defendant; that the defendants 2 to 6 are the trustees of the first defendant trust; that the plaintiffs are the residents of Srirangam and are ardent devotees of Lord Renganatha and are interested in the welfare of the said trust; that the suit property shall be used for, the devotees to stay temporarily and also to feed them during the festival days; that the defendants are not performing their obligations as contemplated under the settlement deed, dated 28.03.1915, but the defendants have been violating the trust deed indiscriminatingly; that they have rented out the building and some 10 people are squatting on the suit property as tenants illegally; that the defendants 2 to 6 are also making hectic attempts to sell the property and to realize the proceeds which is also again in violation of the trust deed; that a scheme was framed in respect of the first defendant trust, which was specifically challenged in the suit in O.S.No.48 of 1964 on the file of the Sub Court and the High Court confirmed the scheme framed by HR & CE Department; that the appeal filed before the High Court has been dismissed confirming the decision of the trial Court in O.S.No.48 of 1964, dated 03.08.1966 and that



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therefore, the plaintiffs have no other option, but to approach this Court to declare that the defendants 2 to 6 are not entitled to lease out the property and for evicting the tenants and for restraining the said defendants from alienating the suit property.

6. The defence of the revision petitioners/defendants is that the plaintiffs are belonging to Saiva creed of Hindu Muthuraja Community; that the first plaintiff is the wife of the second plaintiff and both of them are having absolutely no connection whatever with the first defendant trust; that the trust is connected with Hindu Naidu-Reddiar Community; that the second plaintiff was helping the previous trustees and since he was indulged in misappropriation and other irregularities, he was sent out of the suit property; that the first defendant trust is coming under the HR & CE Act; that any person if aggrieved by the acts of the trustees, ought to have approached the authority contemplated under HR & CE Act; that the plaintiffs have no *locus standi* to invoke Section 92 of C.P.C., and that therefore, the petition is liable to be dismissed.

7. Recently, I had an occasion to deal with similar matter in the case of ***S.Thiruvengatam Vs.Srimathy Renganatha and Sri Ramalu Educational***



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**Charitable Trust rep. by its Managing Trustee Madanagopal** reported in

**2024 2 L.W. 304** and the relevant passages are extracted hereunder :

*“5. A suit under Section 92 C.P.C., is a suit of special nature. Generally the Court is considered as the guardian of the Public Charitable Trust / Institution. The Courts have a general parens patriae jurisdiction over the trusts of charitable and religious nature and the Courts are bound to guard the interest of the trust, since it involves the question of public interest. In the case of **Chairman Madappa vs M. N. Mahanthadevaru and Others** reported in **1966 AIR 878**, the Constitution Bench of the Hon'ble supreme Court has held that the main purpose of Section 92 C.P.C., is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. The Hon'ble Supreme Court, while considering the scope of Section 92(1) C.P.C., has specifically observed that the said section provides for two class of cases, namely, (i) where there is a breach of trust in a trust created for public purposes of a charitable or religious nature, and (ii) where the direction of the court is deemed necessary for the administration of any such trust.*



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*In order to invoke Section 92 C.P.C., the following conditions have to be satisfied:*

*(1) the suit related to a trust created for public purpose of a charitable or religious nature;*

*(2) it must be proceed on an allegation either of breach of trust or of the necessity of having directions from the Court for the administration of the trust;*

*(3) reliefs claimed must be one or other of the reliefs specified in the section;*

*7. It is settled law that while considering the application under Section 92 C.P.C., for granting leave to file the suit, the Court has to be satisfied about the existence of a prima facie case in favour of the plaintiff for granting the relief. In case, if the Court grants leave without issuing any notice to the defendants or without hearing them, then it is always open to the other side to file an application to recall the leave already granted. Moreover, the defendant can canvass in their written statement questioning the maintainability of the suit on the ground that Section 92 C.P.C., has no application to that case.*

*8. The Hon'ble Apex Court in **Swami Paramananda Saraswati and Others Vs. Ramji Tripathi and Others** reported in **AIR (1974) SC 2141**, has held that if after evidence is taken, it is*



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*found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in fact or reason but is made only with a view to bringing the suit under the section, then suit purporting to be brought under section 92 must be dismissed.*

*9. In the case of **S.Guhan and Others Vs. Rukmini Devi Arundale and Others** reported in 1987(100) LW 187, this Court has held that any decision arrived at in an order granting leave would not prevent the court while disposing of the suit or appeal to go into the merits of the case and that maintainability of the suit or appeal itself could be agitated.*

*10. Considering the above legal position, it is very much clear that just because a petition under Section 92 C.P.C., was allowed and permitted the plaintiffs to institute the suit, it cannot be stated that the defendant cannot raise the maintainability of the suit on the ground that Section 92 has no application to that case.”*

8. In the case on hand, the revision petitioners have filed the revision petition as if they are challenging the order passed in I.A.No.584/2017 in O.S.SR.No.14187/11/12/17 i.e., an unnumbered suit. But, the learned counsel



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on either side would submit that after allowing the petition in I.A.No. 584/2017, dated 06.02.2019, the suit was taken on file in O.S.No.33 of 2019 and the same is pending on the file of the Principal District Court, Tiruchirappalli.

9. Rightly or wrongly, the trial Court has granted leave to the plaintiffs to file the suit and on that basis, the suit was taken on file. Since the suit is pending from 2019 onwards, it would not be proper for this Court to go into the allegations and counter allegations raised in the pleadings by both the parties to arrive at a decision as to whether the leave granted is liable to be sustained or liable to be revoked.

10. Without entering into the merits of the case and without deciding the validity and legality of the impugned order, this Court is of the view that the trial Court should be directed to decide the issue as to the applicability of Section 92 of C.P.C., along with other issues framed. Considering the above, this Court is not inclined to interfere with the impugned order. Consequently, this Court concludes that the revision is liable to be dismissed.



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11. In the result, the Civil Revision Petition is dismissed. The revision petitioners/defendants 1, 2 , 3 & 5 are at liberty to raise the maintainability of the suit on the ground that Section 92 of C.P.C., has no application and the trial Court is directed to consider the same along with other issues. Consequently, connected Miscellaneous Petition is closed. No costs.

**18.04.2024**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
das

To

- 1.The Principal District Judge, Trichy.
- 2.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR, J.**

DAS

Pre-delivery order made in  
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