



C.R.P.(MD)No.2261 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2261 of 2024

and

C.M.P.(MD)No.12974 of 2024

1.Thulir Trust,
No.31/1-A, A.K.M.Nagar,
Rathnapuri, Kayalpattinam,
Through its Board of Trustees,
H.M.Ahamed Abdul Cadar,
M.I.Mohammed Theebi Shaikna Lebbai,
Raifudeen, Seyad Raliya, VSA Aysha.

2.H.M.Ahamed Abdul Cadar ... Petitioners / Respondents 1 & 2 /
Defendants 1 & 2

Vs.

1.Sadakuathullah

2.M.A.Mohammed Omer ... Respondents 1 & 2 / Petitioners/
Plaintiffs

3.M.I.Moahmmed Theebi

4.M.L.Shaikna Lebbai

5.H.M.Raifudeen

6.Seyad Raliya

7.V.S.A.Aysha

8.Z.Sithi Ramzan

9.A.Waheeda ... Respondents 3 to 9/Respondents 3 to 9 /
Defendants 3 to 9



C.R.P.(MD)No.2261 of 2024

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the fair and decreetal order passed in I.A.No.1 of 2021 in unnumbered O.S.S.R.No.854 of 2021, on the file of the Principal District Court, Thoothukudi dated 15.12.2023.

For Petitioners : Mr.H.Arumugam

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ORDER

Heard the learned counsel for the revision petitioners.

2.The revision petitioners are aggrieved by the grant of leave under Section 92(1) of Civil Procedure Code. The revision petitioners herein were set as *ex parte* in I.A.No.1 of 2021 filed by the respondents 1 and 2 herein before the Principal District Court, Thoothukudi. The learned counsel for the revision petitioners points out that without satisfying himself about the fulfilment of the statutory requirements, leave has been mechanically granted. The learned counsel for the revision petitioners would further point out that the learned Judge in the impugned order dated 15.12.2023 has nowhere indicated that the three conditions that are required to be satisfied in order to invoke Section 92 of the Civil Procedure Code and to maintain an action under the said section are present in this case. The learned counsel for the revision petitioners drew my



attention to the decision reported in **(2020) 4 SCC 321 (Ashok Kumar Gupta v. M/s.Sitalaxmi Sahuwala Medical Trust)**. Paragraph Nos.11 and 12 of the said decision read as follows:

“11. The statement of law so laid down was reiterated:-

11.1. In Bishwanath vs. Shri Thakur Radhaballabhji:

“7.It is settled law that to invoke [Section 92](#) of the Code of Civil Procedure, 3 conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable or religious nature; (ii) there was a breach of trust or a direction of court is necessary in the administration of such a trust; and (iii) the relief claimed is one or other of the reliefs enumerated therein. If any of the 3 conditions is not satisfied, the suit falls outside the scope of the said section”

11.2.In [Sugra Bibi vs. Hazi Kummu Mia](#):

“5.It is evident that this section has no application unless three conditions are fulfilled: (1) the suit must relate to a public charitable or religious trust, (2) the suit must be founded on an allegation of breach of trust or the direction of the Court is required for administration of the trust, and (3) the reliefs claimed are those which are mentioned in the section.”

12. Three conditions are, therefore, required to be satisfied in order to invoke Section 92 of the Code and to maintain an action under said Section, namely, that



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C.R.P.(MD)No.2261 of 2024

(i) the Trust in question is created for public purposes of a charitable or religious nature;

(ii) there is a breach of trust or a direction of Court is necessary in the administration of such a Trust; and

(iii) the relief claimed is one or other of the reliefs as enumerated in said Section.

Consequently, if any of these three conditions is not satisfied, the matter would be outside the scope of said Section 92.”

The learned counsel for the revision petitioners called upon this Court to set aside the impugned order and allow the civil revision petition.

3.I am not swayed by the said submissions. It is true that the impugned order is rather cryptic and has not recorded the satisfaction of the Court below that the three conditions mentioned above are present in this case. But I do not want to interfere on that score.

4.It is not in dispute that the trust in question was created for public purposes of a charitable nature. Thus, the first condition is fulfilled.

5.There is allegation in the plaint that there is breach of trust. Whether the allegation is true or not cannot be examined at this stage. Thus, the second condition is also fulfilled.



C.R.P.(MD)No.2261 of 2024

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6.The relief sought for in the plaint falls within the scope of Section 92 of Civil Procedure Code. Even though the learned counsel for the revision petitioners is right in contention that the Court below has failed to record its satisfaction about the fulfilment of the conditions laid down in Section 92 of Civil Procedure Code, on an independent examination, I am satisfied that the conditions are very much present.

7.In this view of the matter, I decline to interfere.

8.The petitioners herein need not have any real cause for worry. They do have the right to seek revocation of leave granted under Section 92 of Civil Procedure Code. The petitioners can very well pursue that remedy. As and when, the petitioners file any such application for revocation, it deserves to be considered independently and on its own merits. I grant such liberty to the revision petitioners because they were set *ex parte* during enquiry in I.A.No.1 of 2021.

9.The learned counsel for the revision petitioners states that second petitioner herein met with a serious accident on 25.10.2023. Secondly, grant of



C.R.P.(MD)No.2261 of 2024

leave does not indicate anything adverse to the defendants. The plaintiffs are obliged to establish their case before they can obtain relief under Section 92 of Civil Procedure Code. The defendants will have to be given full opportunity to controvert the plaint allegations. These are matters for the future.

10. Granting such liberty to the revision petitioners and with the aforesaid observations, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The Principal District Court,
Thoothukudi.



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C.R.P.(MD)No.2261 of 2024



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C.R.P.(MD)No.2261 of 2024

G.R.SWAMINATHAN, J.

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C.R.P.(MD)No.2261 of 2024

19.09.2024