



C.R.P.(MD)No.1583 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.12.2023

PRONOUNCED ON: 15.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1583 of 2023

and

C.M.P.(MD)No.7754 of 2023

S.Thiruvengadam : Petitioner/1st Respondent /
1st Defendant

Vs.

1.Srimathi Ranganayaki and
Sri Sriramulu Educational and
Public Charitable Trust
represented by its Managing Trustee
Mathanagopal,
No.28, Agraharam, Ayyampettai,
Papanasam Taluk, Thanjavur District.

: 1st Respondent/1st petitioner/1st Plaintiff

2.G.Mathanagopal : 2nd Respondent/2nd petitioner/2nd Plaintiff

3.S.Kaliyamurthy : 3rd Respondent/3rd petitioner/3rd Plaintiff

4.G.Srinivasan : 4th Respondent / 2nd Respondent /
2nd Defendant

5.N.Selvaraj : 5th Respondent / 3rd Respondent /3rd Defendant



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- 6.G.Venkatesan : 6th Respondent / 4th Respondent/
4th Defendant
- 7.The Chief Educational Officer,
Panagal Building,
Market Road,
Thanjavur Town. : 7th Respondent/5th Respondent/
5th Defendant
- 8.The District Educational Officer,
Mutt Street, Kumbakonam Town,
Thanjavur District. : 8th Respondent /6th Respondent/
6th Defendant
- 9.The Indian Overseas Bank,
represented by its Manager,
Chakrapalli Branch,
Chackarapalli, Papanasam Taluk,
Thanjavur District. : 9th Respondent/7th Respondent /
7th Defendant
- 10.The Indian Overseas Bank,
represented by its Regional Manager,
Medical College Road,
Thanjavur Town. : 10th Respondent/8th Respondent/
8th Defendant
- 11.The City Union Bank,
represented by its Manager,
Ayyampettai Branch,
Ayyampettai, Papanasam Taluk,
Thanjavur District. : 11th Respondent / 9th Respondent /
9th Defendant
- 12.The State of Tamil Nadu,
represented by its District Collector,
Collectorate, Thanjavur Road,
Thanjavur Town. : 12th Respondent/10th Respondent /
10th Defendant



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PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the impugned order and decretal order passed by the Principal District Judge, Thanjavur in I.A.No.131 of 2022 in UF OS dated 05.09.2022 granting leave to the second and third respondents to institute the suit in the name of the first respondent Trust under Section 92 of the Civil Procedure Code, 1908.

For Petitioner : Mr.Issac Mohanlal
Senior Counsel
for M/s Isaac Chambers

For Respondents : Mr.H.Lakshmi Shankar
for Mr.A.Senthilkumar
for R.1 to R.5

: Mr.H.Thayumasamy
for R.6

: Mr.D.S.Neduchezhian
for R.7 and R.8

: Mr.A.Baskaran
Additional Government Pleader
for R.12

: No Appearance for R.9 and R.11

: R.10 – dispensed with.



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.131 of 2022 in unnumbered suit dated 05.09.2022, on the file of the Principal District Court, Thanjavur, granting leave to file the suit under Section 92 C.P.C.

2. Originally, the said suit was filed before the Principal Subordinate Court, Thanjavur and the petition filed under Section 92 C.P.C., was taken on file in I.A.No.54 of 2021 in unnumbered suit, that the revision petitioner / first defendant along with the fourth defendant has filed a Tr.O.P., in Tr.O.P.No.29 of 2021, on the file of the Principal District Court, Thanjavur seeking transfer of the petition in I.A.No.54 of 2021 in unnumbered suit on the file of the Principal Subordinate Court, Thanjavur to the file of the Principal District Court to try along with the suit in O.S.NO.42 of 2020, pending on the file of the Principal District Court, Thanjavur and that the learned Principal District Judge, vide order dated 10.06.2022 allowed the transfer petition and ordered to withdraw the petition in I.A.No.54 of 2022 in unnumbered O.S., pending on the



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file of the Principal Subordinat Court, Thanjavur and transfer the same to the Principal District Court, Thanjavur. After transfer, the petition filed under Section 92 C.P.C., was taken on file in I.A.No.131 of 2022 and the learned Principal District Judge, upon considering the pleadings of the parties and arguments of both sides, has passed the impugned order allowing the petition filed under Section 92 C.P.C. Aggrieved by the order granting leave, the first defendant has preferred the present Civil Revision Petition.

3. No doubt, as rightly pointed out by the learned Senior Counsel for the revision petitioner, the learned Principal District Judge, by observing that there is no bar for filing the petition under Section 92 C.P.C., by the Trustees as against Co-Trustees, that the relief to be granted under Section 92 C.P.C., for leave to file the suit is only an administrative action and the merits of the suit claim need not be adjudicated, passed a brief order allowing the petition.

4. It is pertinent to note that the plaintiffs have filed a lengthy affidavit running to 22 paragraphs in 17 pages in support of the petition filed under Section 92 C.P.C., and whereas the revision petitioner/first



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defendant and the fourth defendant have filed a lengthy counter statement running to 23 paragraphs in 12 pages.

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



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(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;

6. It is not in dispute that between the plaintiff Trust and the defendants, several litigations are pending. It is not in dispute that the revision petitioner/first defendant has earlier filed Arbitration O.P., and thereafter he filed two suits in 2019 and two suit suits in 2020 and are pending. The plaintiff has filed a writ petition in W.P.(MD)No.9985 of 2021 challenging the order of the District Educational Officer, Kumbakonam and the learned Judge of this Court, while dismissing the writ petition, taking note of the fact that four suits are pending concerning the affairs of the educational Institutions, directed the learned Principal District Judge, Thanjavur to club all the four suits and conduct a joint trial and dispose them of on merits and in accordance with law within a period of five months from the date of receipt of a copy of the



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said order. Since the suits were not disposed of, the revision petitioner has filed an application in W.M.P.(MD)No.21707 of 2022 in W.P.(MD)No.9985 of 2021 seeking extension of time for disposal of the suits and the learned Judge of this Court by granting six months further time, has directed the learned Principal District Judge to dispose of the suit in O.S.No.195 of 2022 along with four other suits pending. It is admitted by both parties that in pursuance of the orders of this Court, all the five suits were taken up for joint trial and that the first defendant has filed a consolidated chief examination proof affidavit and was cross-examined.

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.



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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 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.



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11. As already pointed out, in the case on hand, the trial has already been commenced and the suit is in part heard stage. If that be the situation, it would not be proper for this Court to go into the allegations and counter allegations raised in the pleadings and the documents produced to arrive at a decision as to whether leave granted is liable to be sustained or liable to be revoked.

12. Considering the above, this Court is of the clear view that the trial Court should be directed to decide the issue as to the applicability of Section 92 C.P.C., along with other issues framed, considering the evidence adduced by both sides. Hence, this Court is not inclined to interfere with the impugned order. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

13. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs. The revision petitioner / first defendant is at liberty to raise the maintainability of the suit on the



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ground that Section 92 C.P.C., has no application and the trial Court is directed to consider the same along with other issues.

15.03.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL

To

1.The Principal District Court, Thanjavur.

2.The Chief Educational Officer,
Panagal Building,
Market Road,
Thanjavur Town.

3.The District Educational Officer,
Mutt Street, Kumbakonam Town,
Thanjavur District.

4.The District Collector,
Collectorate, Thanjavur Road,
Thanjavur Town.

5.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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15.03.2024