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CMA NO. 2745 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA NO. 2745 of 2024

1.R.Murugesan
S/o.late S.Ramasamy,

2.S.R.Vijayalakshmi
W/o.G.Namachivayan

Appellant(s)

Vs

1. Avinashi Lingam Education Trust
Rep.by its Managing Trustee Mr. Meenakshisundaram,
Mettupalayam Road, Coimbatore 641 043

2. Meenakshisundaram
Managing Trustee, Avinashi Lingam Education Trust, Mettupalayam Road,
Coimbatore 641 043

3. Senior Swamy of Ramakrishna Mission Vidyala Trustee
Avinashi Lingam Education Trust, Ramakrishna Mission Vidyala,
Periyanaickenpalayam, Coimbatore 641 042

4. Dr.K.Kulandaivel
Trustee, Avvinashi Lingam Education Trust, Mettupalayam Road,
Coimbatore 641 043.

Dr.Saroja Prabhakar (Died)
Dr.Lakshmi Santha Rajagopal (Died)

5. Dr.Gowri Ramakrishnan
Trustee, Avinashi Lingam Education Trust, NO.95, Race Course Road,
Coimbatore 641 018.

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6. Suguna Lakshminarayanamsamy

Trustee, Avinashi Lingam Education Trust, 706, Avinashi Road,
Coimbatore 641 018.

7. Dr.S.Subramaniam

Trustee, Avinashi Lingam Education Trust, 23, III St, Vidya Nagar,
Aerodrome Post, Coimbatore 641 014

8. R.Somasundaram

Trustee, Avinashi Lingam Education Trust, Velumani Tottam, Thuiyalur
(PO), Coimbatore 641034.

9. S.Kamini Krishnakumari

Trustee, Avinashi Lingam Education Trust, No.278, Race Course Road,
Near Masonic Hospital, Coimbatore 641 018.

10. S.Vijaykalyan

Trustee, Avinashi Lingam Education Trust,
NO.94, Race Course Road, Coimbatore 641 018.

11. Avinashilingam Institute for Home Science and Higher Education for
Women (Deemed University) Coimbatore,
Rep.by its Registrar,
Mettupalayam Road,
Coimbatore 641043.

Respondent(s)

PRAYER: Civil Miscellaneous Appeal filed under Section 104(1)(FFA) of
Civil Procedure Code, against the fair and decretal order dated 10.09.2020
made in I.A.No.721 of 2015 in O.S.CFR.No.12280/2015, on the file of
Principal District Court, Coimbatore.



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For Appellant(s):

Mr.M.S.Krishnan, Senior Counsel
For Mr.K.Venkatasubbu
M/s.Sarvabhauman Associates

For Respondent(s):

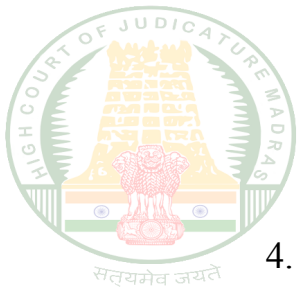
Mr. N. Sridhar For Rr1 To 6, 8 To 10
Mr. R. Bharath Kumar Fr R11

ORDER

The appellants have filed this appeal to set aside the fair and decretal order dated 10.09.2020 made in I.A.No.721 of 2015 in O.S.CFR.No.12280/2015, on the file of Principal District Court, Coimbatore.

2. For a sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. Challenging the impugned order passed in I.A. No. 721 of 2015 in OSCFR No. 12280 of 2015 on the file of the Principal District Court, Coimbatore, the appellants have preferred this appeal.

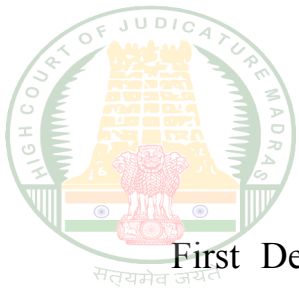


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4. Before the trial court, the appellants, as plaintiffs, filed a suit seeking a declaration that defendants 2 to 12 are the trustees of the first defendant (the Trust), and also sought to establish that there has been a violation of the terms of the trust deed dated 28.08.1986. The plaintiffs also sought consequential relief for framing a scheme to manage the institutions under the control of the said Trust, along with other related reliefs against all 13 defendants.

5. The first defendant being the Trust, the plaintiffs filed I.A. No. 721 of 2015, an application under Section 92 of the Code of Civil Procedure (CPC), seeking leave of the court to institute the suit as the matter pertains to a public trust. In this application, notice was served to the respondents. Accordingly, respondents 1 and 3 to 13 contested the application.

6. After hearing both sides, the learned trial Judge dismissed the said application, holding that the petitioners had not produced any prima facie materials to substantiate the averments stated in the affidavit and the plaint. Hence, they were not entitled to the relief of instituting the suit against the



First Defendant Trust and its trustees. Challenging the said order, the plaintiffs preferred the present appeal.

7. The learned counsel for the appellants, at the time of arguments, submitted that the learned trial Judge, without taking note of the documents submitted along with the plaint as well as the plaint averments regarding violations of trust norms, particularly those mentioned in paragraphs 19 and 24, erroneously held that the petitioners were not supported with prima facie materials. He argued that such a finding is illegal, liable to be set aside, and that the matter shall be remanded for fresh consideration.

8. The learned counsel for the appellants further submitted that while deciding a leave application under Section 92 of CPC, the court must look into the plaint averments to determine whether the plaintiffs are interested persons entitled to institute the suit. He pointed out that the plaint narrated various facts and circumstances that showed gross violations by the trustees, including misuse of their powers, which were sufficient to entitle the appellants to file a suit under Section 92 of CPC. He argued that the learned



trial Judge, despite referring to the affidavit's averments, failed to properly appreciate them and thus erroneously dismissed the application.

9. To support his arguments, the learned counsel relied on the following authorities:

(i) 2019 (3) LW 705, which held:

"42. This Court while deciding the leave application under Section 92 CPC will have to only look into the plaint averments for grant of leave to interested persons to institute a suit under Section 92 CPC. It is settled law as rightly pointed out by the learned Senior Counsel for the respondent that leave can be granted under Section 92 even without notice to the trust and its trustees. Therefore, it is sufficient if the applicants satisfies based on the plaint averments that they are interested parties in the public trust."

(ii) 2020 (2) LW 105, Which held:

A reading of Section 92 of the Code would only indicate that the plaintiff, who seeks for grant of leave to sue, must show that there was an alleged breach of any express or constructive trust created for public purpose of a charitable or religious in nature or for breach of any directions of the Court issued thereof. The word 'alleged' indicates that the averments made thereof by the plaintiff can be prima facie considered without requiring the plaintiff, at that stage, to establish the proof and relevancy of the allegations. It is needless to mention that the plaintiff may fall or rise on his own pleadings. However, the test for determining the correctness or otherwise of the allegations made in the plaint cannot be

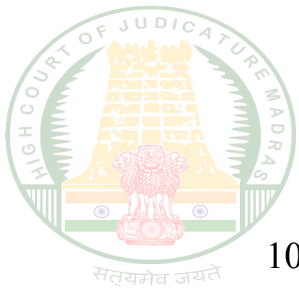


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gone into at the time of granting leave, but only during the course of trial. In other words, while granting leave, the Court is only required to prima facie satisfy itself that there exist some breach of the terms and conditions either express or constructive, in relation to affairs and management of a public trust. At this stage, the Court need not go into the validity or correctness of the averments or the documentary evidence/filed in support thereof by conducting a roving enquiry. It is suffice to arrive at a prima facie conclusion that there exist a dispute with respect to the management and affairs of the Trust and those averments are necessarily to be tried by conducting a trial. It is settled law that the plea of the defence cannot be looked into at the stage of granting of leave to file a Scheme suit and it has to be best left open to be decided after conclusion of trial. It is needless to mention that such allegations are to be proved by the plaintiffs so as to succeed in the suit. The degree of standing for interested person is limited to bring to the notice of the Scheme Court, which is vested with parens-patriae jurisdiction. Thus, prima-facie, it appears that all the plaintiffs are only interested persons to maintain and institute the suit under Section 92 CPC. Therefore, we are of the view that the learned single Judge has rightly refused to revoke the leave granted to sue the defendants and it does not call for any interference.

(iii) (2004) 9 SCC 720, which held:

“B. Constitution of India – Art.136 – Interference in other matters – Leave granted to file suit under S.92 CPC – Held, interference not warranted as order made under S.92 will not determine rights of parties but only enable a party to initiate a proceeding – Civil Procedure Code, 1908 – S.92”

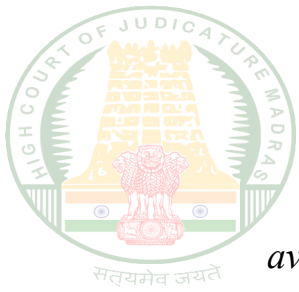


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10. By way of reply, the learned counsel for the contesting respondents argued that the petitioners are sons of one of the brothers of the original founder, T.S. Avinashi Lingam Chettiar. However, the trust deed does not contain any specific clause providing for inclusion of family members as trustees. Further, from the petitioners' branch, the petitioner's father, K.S. Thirugnanasambandam, had already served as a trustee. There was no violation of the trust norms as alleged by the plaintiffs. He submitted that the suit was filed with malicious intent to harass the trustees and disturb the smooth functioning of the Trust, and that it was not supported by any substantial material. He further submitted that the learned trial Judge had rightly dismissed the leave application and no interference was warranted. The plaintiffs acted with a personal motive, and their claim was rightly rejected.

11. In support of his submissions, the learned counsel relied on:
SLP(C) No. 3473 of 2007, which held:

" (1) Code of Civil Procedure, 1908 -Section 92--Suit in representative character--Leave to file--Clear from plaint



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averments that though colour of legitimacy sought to be given by projecting as if suit against public trust was for vindicating public rights--But emphasis was on certain pure and private personal disputes--High Court certainly wrong in holding that grant of leave was legal and proper--Impugned order of High Court set aside.

(2) Code of Civil Procedure, 1908 Section 92--Suit in representative -character--Court has to go beyond relief--And focus on purpose for which suit filed--Courts have to be careful to eliminate possibility of suit being laid against public trusts under Section 92 by persons whose activities not for protection of interests of public trusts.

Ratio Decidendi: Only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights can be brought under Section 92 of the Code of Civil Procedure, 1908."

12. On considering the submissions of both sides, it is evident that the plaintiffs filed a suit before the trial court against the First Defendant Public Trust and its trustees, hence seeking leave under Section 92 of CPC to institute the suit. Though notice is not mandatory, the trial court issued



notice to the respondents, who appeared through counsel and contested the application by filing counter objections.

13. Upon hearing both sides, the learned trial Judge dismissed the application, holding that there were no prima facie and substantial materials to support the averments in the plaint and affidavit.

14. However, the learned counsel for the appellants pointed out that both the plaint and affidavit enumerated several instances of breach and violations of trust norms and mismanagement, which were sufficient to grant leave, those materials were not properly appreciated by the learned trial Judge. The grant of leave under Section 92 of CPC primarily depends on the averments in the plaint.

15. On a bare perusal of the plaint, the appellants have narrated various allegations concerning the management and violations of trust norms. The plaint was also supported by 12 documents, but the impugned order did not discuss these materials. Moreover, prior to filing the suit in



2013, the appellants had issued a notice dated 16.08.2013 to the respondents, requesting to induct the appellants as a trustee, for that the respondents replied, and these correspondences were also mentioned in the order of the trial court.

16. Surprisingly, no documents were marked by either side. It is an admitted fact that both parties submitted sufficient records before the trial court. Though the learned trial Judge acknowledged their existence, those documents were neither marked nor referred to in the impugned order. This reflects a procedural lapse on the part of the trial court.

17. Therefore, the argument advanced on behalf of the appellants is acceptable. It is justifiable to remand the matter back to the trial court for fresh consideration, giving sufficient opportunities to both parties.

18. This Court is inclined to set aside the order passed by the learned trial Judge. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.



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19. The learned trial Judge is directed to dispose of the said application within six weeks, after giving sufficient opportunity to both parties for fresh consideration, and to dispose of the matter in accordance with law, uninfluenced by the earlier order as well as the order of this court.

02.07.2025

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To:

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



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T.V.THAMILSELVI, J.

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