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OSA.No.235/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 20.08.2024

DELIVERED ON 06.01.2025

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

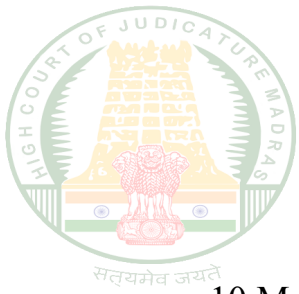
OSA.No.235/2022

The Honorary Secretary
Samyukta Gowda Saraswata Sabha
A Society registered under the provisions
of the Societies Registration Act,
having its registered office at
No.55, Habibullah Road, T.Nagar
Chennai 600 017.

.. Appellant

Versus

1.Mr.N.S.Balachandar
2.Mr.R.Suresh Mallya
3.Mr.A.Arjuna Pai
4.Dr.K.R.Shanbogue
5.Mr.C.J.Nayak
6.Mr.Vasant M.Shanbhog
7.Mr.K.P.Lakshmana Rao
8.Mrs.Vijayalaksmi R.Pai
9.Mrs.Vijayalakshmi R.Prabhu



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- 10.Mr.V.Muralidhara Rao
11.Mr.H.Mohandas Pai
12.Mr.Suresh A.Pai
13.Mr.B.Balakrishna Rao
14.Dr.S.Dinesh Nayak
15.Mr.Suresh Shanbogue
16.Mrs.K.P.Kiran Rao
17.Mr.Praveen Kamath
18.Mr.R.Sathyanarayana Shenoy
19.Mr.M.Udhay Kamath

.. Respondents

Prayer:- Original Side Appeal filed under Order 36 Rule 9 of Original Side Rules read with 15 of Letters Patent Act, against order dated 24.03.2022 made in A.No.6408/2019 in CS.SR.No.112222/2019.

For Petitioner	:	Mr.Krishna Srinivasan Senior counsel for Mr.S.Ramasubramaniam
For R1 & R2	:	Mr.V.Raghavachari Senior counsel for Mrs.V.Srimathi
For R3 to R19	:	No Appearance

JUDGMENT



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S.S.SUNDAR, J.,

- (1)The above appeal is directed against the order of the learned Single Judge dated 24.03.2022 granting leave to institute a suit under Section 92 of CPC for framing a scheme and for the proper management and administration of the affairs of a public Trust known as "Samyuktha Gowda Saraswatha Sabha" [hereinafter referred to as "Sabha"] which is also registered as a Society under the Tamil Nadu Societies Registration Act, 1860, [hereinafter referred to as "the Act"] in Application No.6408/2019 in the unnumbered suit filed by respondents 1 and 2 herein.
- (2)The appellant is the Honorary Secretary of the Sabha. Respondents 1 and 2 herein as plaintiffs, filed the suit which is yet to be numbered against 12 defendants including the appellant herein who is the 1st defendant in the said suit. The appellant is shown as Honorary Secretary of Sabha which is registered as a Society under the Act.
- (3)The suit is for the following reliefs: -

a) Framing a scheme for the proper management



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and administration of the affairs of the Samyukta Gowda Saraswata Sabha, 1st defendant as to effecutate the objects set out in bye-law 1 of the Sabha.

- b) Removing the defendants 2 to 12 as the Trustees of the 1st defendant and consequently appoint a Board of Trustees comprising of eminent persons drawn from the United Gowda Saraswat Community ;*
- c) Directing defendants 2 to 12 to deliver up the inventory and other properties belonging to the 1st defendant which are in their powers and possession and direct that the same be vested in the Board of Trustees constituted supra ;*
- d) Directing defendants 2 to 12 to submit accounts for the incomes received by them for the 1st defendant and the amounts expended by them, and to cause the same to be inspected and audited ;*
- e) To grant such other reliefs as are just and necessary for the purposes of effectively administering and managing the 1st defendant to ensure that its objectives of the charity are not*



frustrated or defeated ;

f) In the event that this Hon'ble Court finds malversation of funds, to direct defendants 2 to 12 to personally make good all such losses caused to the 1st defendant.

g) To award the costs of this suit.

(4) Even though the status of Sabha is shown as a Society registered under the Act, it is the specific case of respondents 1 and 2/plaintiffs that Sabha represented by the 1st defendant, came into existence in the year 1912 and it was registered as a Society under the Central Act in the year 1925. The object of the Sabha as stated in the plaint is to provide intellectual, physical, social and moral advancement of the United Gowda Sarawatha community and undertaking other activities. It is the case of the plaintiffs that the Sabha is a public Trust and a charitable institution as it is found with an avowed objective to provide financial and other assistance to an infinite class of persons, i.e., economically weaker sections of United Gowda Saraswatha Community who are the beneficiaries of the Sabha.

(5) Some of the plaint averments as seen from the plaint which is relevant in the context, are reproduced hereunder:-



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*"9.The plaintiffs submit that the construction of the Sabha buildings was completed sometime in 1967 from the funds collected by donations from the members of community and loans availed from the Banks. It is relevant to state that tenders were invited and examined by the Managing, Building and Finance Committees constituted for the said purpose before issuing work orders for the construction of the Sabha. The property being land and buildings is now situated at No.55, Habibullah Road, T.Nagar, Chennai 600 017, which is also the registered office of the Sabha, which is from now on referred to as **"the property"**. The market value of the property as on date is more than Rs.100 Crores generating on average an income of approximately Rs.1 Crore per annum, for achieving the cause of the Sabha.*

...

11.The plaintiffs submit that after the Income Tax Act, 1961,came into force, the Sabha applied and registered itself under Section 12AA of the Income Tax Act, 1961, as a Public Charitable Institution for claiming the exemption under Section 11 of the Income Tax Act, 1961, which fortifies the contention of the



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*plaintiffs that the Sabha is a **Public Trust and a Charitable Institution....***

....

15.The plaintiffs submit that the defendants 2 to 12 are the present Trustees of the Sabha. The plaintiffs further submit that some of the office bearers have got re-elected for more than 4 terms without any contest as no election worth its name is ever being conducted in the Sabha. The ruling group have used to their money, muscle power and have had exclusive access to the full database of the members to ensure that there is never a contest. It is further submitted that there was one more committee member namely, Mrs.Jyothi Baliga, who resigned from her office as a committee member after her husband Mr.Prashant Baliga was surreptitiously appointed as the Manager of the Sabha as no advertisement was circulated amongst the members calling for the deserving candidates to apply for the post. It is pertinent to state that Mrs.Jyothi Baliga's father Mr.Radhakrishna Shenoy, was the previous manager of the Sabha, and the appointment of Mr.Prashant Baliga appears to be a clear case of dynastic appointment."

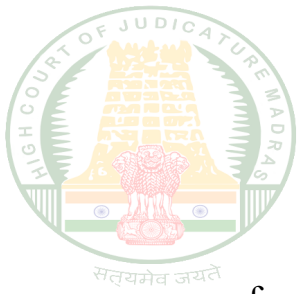


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(6) Apart from the averments above shown, in paragraph No.21, the plaintiffs have made several allegations, how the Trustees have arrogated themselves with absolute powers and how the Trustees have prioritised their commercial interest over the charitable interest of the Sabha. Apart from violating Rules and Bye-Laws, it is alleged by the plaintiffs that transparency and accountability have become casualties due to abuse of power, corruption and nepotism. Several allegations were made about the conduct of the Trustees in clear breach of trust. Misuse of power by Trustees in respect of income generated by Sabha was enumerated. It is also contended by the plaintiffs that the members of the Managing Committee is treating the Sabha as an extended form of their estate and had misused their office for their personal and business gains. In short, allegations of mismanagement, misappropriation and irregularities in the administration and affairs of the Sabha/Trust have been elaborated in the plaint.

(7) Along with the suit, an application in Appln.No.6408/2019 was filed by the plaintiffs for grant of leave to file a suit under Section 92 of CPC for



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framing of a scheme and for proper management and administration of the affairs of the sabha. In the meanwhile, Application No.158/2020 was filed by the Office Bearers of the Sabha to implead themselves as respondents 13 to 18 in Appln.No.6408/2019. The learned Judge, allowed Appln.No.158/2020 by impleading them as respondents 13 to 18 in Appln.No.6408/2019 vide order dated 20.01.2022. By the impugned order in the present Appeal, the learned Single Judge of this Court allowed Application No.6408/2019 granting leave to institute the suit under Section 92 of CPC. Aggrieved by the same, the above Original Side Appeal is filed by the 1st defendant in the suit.

(8)It is to be seen that the application for grant of leave was heard after due notice to the appellant and other defendants. Even though the appellant along with other defendants contended that the 1st defendant is not a public charitable Trust and that the suit is not maintainable as the suit is aimed to vindicate the personal interest, the learned Single Judge after referring to the plaint averments, accepted the contentions that the 1st defendant-Sabha is a charitable society which had registered under the Societies Registration Act. The learned Judge also observed that the



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object of the Trust clearly shows that it has been established for charitable purpose and therefore, the plaintiffs are entitled to file a suit under Section 92 of CPC. The learned Judge expressed his satisfaction that the Trust is a public charitable Trust and therefore, the suit alleging mismanagement contrary to the object of the Trust can be entertained under Section 92 of CPC.

(9)The appellant has raised the following grounds in the appeal:-

- (a)By the order impugned, the learned Single Judge treated the application as one under Order 7 Rule 11 of CPC and stated that the averments in the plaint alone are to be considered by Court. Since Order 7 Rule 11 of CPC pertains to rejection of plaint, the principles that are to be applied for considering an application under Order 7 Rule 11 of CPC cannot be applied to a case where the Court examines whether leave should be granted or not under Section 92 of CPC.
- (b)The learned Judge failed to consider the *bona fides* of the applicants in filing the suit and seeking leave under Section 92 of CPC.



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- (c) The learned Judge has failed to consider the maintainability of the suit and the Application for grant of leave under Section 92 of CPC.
- (d) Since the 1st respondent is a registered Society under the Central Act and deemed to be registered under the Tamil Nadu Societies Registration Act, 1975, Section 92 of CPC is not attracted.
- (e) The remedy of the plaintiffs who raise allegations of mismanagement or other misfeasance or malfeasance against of the Managing Committee can be raised only before the authorities under the Tamil Nadu Societies Registration Act who have power to deal with complaints against mismanagement.
- (f) Merely because a Society has some charitable objects, that alone will not change the constitution of the Society so as to consider the same as a public Trust to attract Section 92 of CPC.
- (g) The Learned Judge allowed the Application merely by stating that issues relating to the character of the Trust and other aspects should be decided only after trial, but erred in holding that the



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Court is satisfied that the Sabha is a public charitable Trust as the suit is filed by two interested persons.

(10)Mr.V.Raghavachari, learned Senior Counsel appearing for respondents 1 and 2 / plaintiffs submitted that appeal itself is not maintainable as against the order granting leave and submitted that an order under Section 92 of CPC granting leave after hearing the parties is not liable to be challenged by way of an appeal under Clause 15 of Letters Patent Act. He further submitted that this Court while exercising power under Clause 15, cannot interfere with the order of the learned Single Judge granting leave which is just an administrative order, that can be passed without going into the merits of the averments contained in the plaint. The learned Senior Counsel also submitted that merely because the public Trust is registered as a Society under the Tamil Nadu Societies Registration Act, the same cannot be excluded from the purview of Section 92 of CPC.

(11)Learned Senior Counsel relied upon a judgment of the Hon'ble Supreme Court in *Shah Babulal Khimji v. Jayaben D.Kania and others* reported in (1981) 4 SCC 8, wherein, the Hon'ble Supreme Court has held as follows :



“115.Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the Trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.

...

120.Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the Trial Judge amounts to a judgment within the meaning of the Letters Patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:

- (1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant*
- (2) An order rejecting the plaint.*
- (3) An order refusing leave to defend the suit in an action*



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under Order 37, Code of Civil Procedure.

(4) An order rescinding leave of the Trial Judge granted by him under clause 12 of the Letters Patent.

(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under s. 80, bar against competency of the suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit under s. 92 of the Code of Civil Procedure.

(8) An order varying or amending a decree.

(9) An order refusing leave to sue in forma pauperis.

(10) An order granting review.

(11) An order allowing withdrawal of the suit with liberty to file a fresh one.

(12) An order holding that the defendants are not agriculturists within the meaning of the special law.

(13) An order staying or refusing to stay a suit under s. 10 of the Code of Civil Procedure.

(14) An order granting or refusing to stay execution of the decree.

(15) An order deciding payment of court fees against the



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plaintiff."

(12)The question whether grant of leave under Section 92 of CPC can be challenged under Clause 15 of Letters Patent, is not answered by the Hon'ble Supreme Court in the above judgment. The Court is empowered to grant leave under Section 92 of CPC without even issuing notice to the respondents. However, when leave is granted without notice to the defendants, it is open to any of the defendants in the suit to seek revocation of leave granted to the plaintiff under Section 92 of CPC. Even though Courts have held that order granting leave is an administrative order, when the defendant is permitted to seek revocation, the Court is expected to pass judicial order. In order to maintain a suit, the plaintiff must disclose the existence of a trust, created for public purposes of a charitable or religious nature. There must be specific averments regarding breach of trust or circumstances warranting a direction of Court for the administration of such trust. The suit must be for any of the reliefs enumerated in Section 92 of CPC and unless the plaintiff satisfy the above conditions, the suit under Section 92 is not maintainable. A decision either granting leave or revoking leave or dismissing the application for



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grant of leave, can always be a subject matter of appeal under Clause 15 of Letter Patent. This has been dealt with in a few judgments and right to appeal as against the order granting leave has been acknowledged by Courts in several judgments.

(13) In ***B.S.Adityan v. B.Ramachandran Adityan*** reported in (2004) 9 SCC 720, the Hon'ble Supreme Court confirmed the judgment of Division Bench of this Court in ***R.Kannan Adityan and 4 others v. B.S.Adityan and 6 others*** reported in (1996) 2 L.W. 364. The Division Bench of this Court, in ***Kannan Adityan's case***, has extensively considered the scope of Section 92 and Para No.19 of the said judgment is relevant and hence, extracted hereunder :

“19.Before considering the validity of the respective contentions, it is necessary for us to advert to the general principles governing an application for leave u/s 92. C.P.C.

A. (i). A proceeding u/s 92, C.P.C. is administrative in character and neither judicial nor quasi-judicial. An order granting leave does not affect the rights of any party, though an order refusing to grant leave may affect the rights of the persons who seek such leave. In any event, the nature of the proceedings is only administrative. In Mulla's Code of Civil Procedure, 15th



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Edition Volume I. at pages 634 and 635, the following passage occurs:-

"10.Nature of the order granting leave by the Court. Under the section as it stood before its recent amendment and when what was required was the consent of the Advocate-General, there was some divergence of opinion on the question whether the proceedings for consent before the Advocate-General were quasi-judicial in character, and if they were whether they were open to challenge in writ proceedings under Art. 226 of the Constitution. In Abu Backer v. Advocate General (AIR 1954 Travancore-Cochin 331) the High Court of Travancore-Cochin held that such proceedings were quasi-judicial and that view was shared by the Pepsu High Court in Sadhu Singh v Mangal Gir Mohatmin (AIR 1956 Pepsu 65). But a contrary view was taken by the High Court of Rajasthan in Srimali v. Advocate-General (AIR 1955 Raj 166), Allahabad in Shanthanand v. Advocate-General (AIR 1955 Allahabad 372), Madras in Raju v Advocate-General (AIR 1962 Madras 320 = 75 L.W. 240), and in Abdul Kasim v. Mohd. Dawood (AIR 1961 Madras 244 (1960) 73 L.W. 649), and Jammu and Kashmir in Desraj v. Dy. Commissioner, Jammu and Kashmir, AIR 1962 J & K 86 A Full Bench of the Kerala High Court later on reconsidered the position and held reversing Abu Backer's case (supra) that the proceedings before the Advocate-General were only administrative (A.K. Bhaskar v. Advocate-General (AIR 1962 Kerala 90 F.B.). Further, it has also been held that the function of the Advocate-General not being a judicial one, notice by him to the trust or its trustees was not obligatory and that the absence of such notice did not invalidate the consent given by him. All that was required of him at that stage was to satisfy himself that it was worthwhile to institute the suit. Shavax A. Lal and Others Vs. Syed Masood Hosain and Others, Notice to the



defendants before granting leave is not mandatory. The Supreme Court now so held. Although as a rule of caution, such notice should be given, leave granted without notice is not bad in law. The proposed defendants can always apply for revocation of leave already granted. R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others. The mere fact that the amended section now requires leave of the Court in place of consent by the Advocate-General does not seem to change the nature of the order of leave made by the Court. In making such an order the Court, like the Advocate-General earlier, would no doubt have to apply its mind but that is only to satisfy itself whether the persons asking leave have interest in the trust, whether the trust is a public trust specified in the section and whether there are prima facie grounds for thinking that there has been a breach of the trust. At that stage the Court would not have before it all the parties to the proposed suit nor the evidence from which it would be called upon to adjudicate any issue. All that it would have to see is whether it is in the interest of the trust to file the suit for which leave is sought."

We are entirely in agreement with the view expressed by the learned author that the amendment of the Code in 1976 requiring leave of the Court in place of consent by the Advocate-General does not change the nature of the order.

(ii). In *K.M. Abdul Kasim and Others Vs. P.M.N. Mohamed Dawood and Others*, a learned single Judge of this Court had to consider a similar provision in Section 55(1) and (2) of Muslim Wakfs Act (1954). After referring to the earlier ruling u/s 92, C.P.C., the learned Judge held that the decision of the Board to file or not to file a suit itself, or to sanction or withhold sanction



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to another person to file a suit is not equivalent to a judicial or quasi judicial decision affecting the rights of parties and the decision to permit another to file a suit is an administrative act and is outside the purview of correction by the issue of a writ of certiorari.

(iii). Another learned Judge of this Court in Raju v. Advocate-General, H.C. Buildings (AIR 1962 Madras 320 = 75 L.W.240) held that a writ of certiorari under Article 226 of the Constitution to quash the order of the Advocate-General on a sanction application is not maintainable. He dissented from the view expressed in Abu Backer v. Advocate-General (AIR 1954 Travancore-Cochin 331). The learned Judge held that the nature of the proceeding was only administrative.

(iv). A Full Bench of Kerala High Court in A.K. Bhaskar v. Advocate-General (AIR 1962 Kerala 90) over-ruled the above decision of the Travancore Cochin High Court in Abu Backer's case (AIR 1954 Travancore-Cochin 331) and held that when the Advocate-General acts u/s 92, C.P.C. it is neither judicial nor a quasi-judicial order as it does not decide anybody's right, though it may be proper for him to issue notice to the proposed defendants and hear their view-point also. It was held that the order passed by the Advocate General giving or refusing sanction



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cannot be judicially reviewed under Article 226 of the Constitution of India.

(v). *In Mayer Simon Parur v. Advocate General (AIR 1975 Kerala 57)*, a larger Bench considered the question once again and overruled the decision of the earlier Full Bench in *A.K. Bhaskar's case (AIR 1962 Kerala 90)*, in so far as it negated the maintainability of a proceeding under Article 226 of the Constitution of India. However, the Full Bench accepted the view that the proceeding before the Advocate-General was administrative in character. After considering all the relevant rulings on the question, the Full Bench negated the contention that the Advocate-General was performing a judicial or quasi judicial act. But, even as an administrative order, the Full Bench held that it was liable to be questioned under Article 226 of the Constitution, when it declined to grant leave.

(vi). *In New College v. Basheer Mohammed ((1979) 1 M.L.J. 145)*, a Division Bench of this Court held that an order granting leave u/s 92 of the CPC is a judgment within the meaning of Clause 15 of the Letters Patent. The Bench took the view that the order, though preliminary" or interlocutory in nature, definitely determines some right or liability of the parties to the suit and once for all decides the right of the plaintiffs to get the leave u/s 92, CPC and negatives the contention of the



opposite party that leave should not be granted and, therefore, it is a judgment. The Bench did not consider the question whether the order u/s 92, Civil Procedure Code, is administrative in nature. In our view, the decision of the Bench runs counter to the dictum of the Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, wherein the Supreme Court held that for the purpose of clause 15 of the Letters Patent, only those orders will be judgments which decides matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. If the test prescribed by the Supreme Court is applied, the ruling of the Division Bench in New College v. Basheer Mohammed ((1979) 1 M.L.J. 145) cannot be considered to be good law.

(vii). In *Prithipal Singh v. Mah Singh* (AIR 1982 Punjab and Haryana 137), a learned single Judge of that Court held that order granting leave is administrative in nature and reasons need not be given in that order. The same proposition was reiterated by a Division Bench of that Court in *Lachman Dass v. Ranjit Singh* (AIR 1987 Punjab and Haryana 108). The Division Bench also held that no notice was necessary to the defendants before granting leave.

(viii). In *T.M. Shanmugam and Others Vs. The Periyar Self Respect Propaganda Institution and Others*, a learned single



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Judge of this Court relying upon the judgment of the Division Bench in The New College and Others Vs. Basheer Mohammed and Others, held that if leave is granted u/s 92, Civil Procedure Code, without ordering notice to the defendants, the same is void in law and further action in pursuance of such order, namely, entertaining and numbering of suit, is unsustainable in law. This judgment is considered to have been impliedly overruled by the Supreme Court in R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others,), to which we are going to refer in detail a little later.

(ix). In Ambrish Kumar Singh v. Rajaram hushan Bran Bramhishah (AIR 1989 Allahabad 194), it was held that giving notice to proposed defendants before granting leaver u/s 92, C.P.C. is not contemplated, as the Court is not deciding the rights of parties but merely scoop whether prima facie case for grating leave is made out.

(x). While upholding the principle that notice to defendants before granting leave is not necessary as a rule of law. the Supreme Court held in R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others, that as a rule of caution, the Court should normally give notice to the defendants before granting leave under the said section to institute a stall The Court observed that the defendants could bring to the notice of the



Court, for instance that the allegations made in the plaint are frivolous or reckless and that in a given case, they could point out that the persons who are applying for leave he doing so merely with a view to harass the trust or have such antecedents that it would be updatable to grant leave to such persons. The Court hastened to add that the desirability of the issue of such notice being given to the defendants cannot be regarded as a statutory requirement to be complied with before leave u/s 92 can be granted, as that would lead to unnecessary doily and, in a given case, cause considerable loss to the public trust.

Thus, it is clear that the application u/s 92, C.P.C. for grant of leave is administrative in nature.

B. (i). *Section 141, C.P.C is not applicable to a proceeding which is administrative. It applies only to matters which are to be considered judicially by a Court.*

(ii). In Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another, the Court said:-

"Bearing in mind that the term "proceeding" advocates something in which business is conducted according to a prescribed mode it would be only right to give it, as used in the aforesaid provision, a comprehends meaning so as to include within it all matters coming of for judicial



adjudication and not to confine it to a civil proceeding alone."

(iii). The trial Judge has placed reliance on the judgment in Samar Singh v. Kedar Nath (AIR 1987 SC 1926 ,100 L.W.146 S.N.). That was a case of Election petition, which had to be judicially adjudicated. In fact the question before the Court was whether the provisions of Order 7, Rule 11, C.P.C., could be invoked at a stage subsequent to the framing of issues and it was answered in the affirmative. The ruling has no relevance in this case.

(iv). As Section 141, C.P.C. will not apply to an application u/s 92, C.P.C, the provisions of Order 7, Rule 11, C.P.C. or Order 23, Rule 1, C.P.C. cannot be invoked at this stage. They may be available after the suit is taken on file. If the contention of the respondents' counsel is accepted, it will lead to a trial in a truncated manner before a suit is registered and such a course is not contemplated at all by the framers of the Code. Hence, Order 7, Rule 11, C.P.C. and Order 23, Rule 1 C.P.C. are not applicable to an application u/s 92, C.P.C. for leave to institute a suit.

C. It is well settled that to invoke Section 92, C.P.C., three conditions have to be satisfied, namely,

(i). the trust is a public trust;



(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 relief's enumerated in the Section (See : Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, .*

D. It has also been held that the suit must be in a representative character instituted in the interests of the public and not merely for vindication of individual or personal rights of the plaintiff. (See Sugra Bibi Vs. Hazi Kummua Mia (AIR 1969 SC. 884).

E. At the stage of granting of leave, the Court has to look into the allegations in the proposed plaint and the documents produced by the plaintiff only. (See; Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, and Charan Singh and Another Vs. Darshan Singh and Others.)

F. (i) The main purpose of the provision u/s 92, Civil Procedure Code, is to give protection to public trust of a charitable or religious nature, from being subjected to



harassment by suits being filed against them. That is why it provides that suits under that Section can only be filed by the Advocate-General or two or more persons having an interest in the Trust and having obtained leave of the Court. The object is that before the Advocate-General files the suit, he would satisfy himself that there is a prima facie case, either of breach of trust or of the necessity for obtaining directions of the Court on the basis of the allegations made in the proposed plaint and the documents produced along with the plaint. So also, the Court is expected to satisfy itself that there is a prima facie case either of breach of trust or of necessity for obtaining directions of Court on the basis of allegations made in the plaint and the documents played before it along with the plaint. Vide: Pitchayya v. Venktakrishnamacharlu (AIR 1930 Madras 129) and Madappa v. Mahanthadevaru (AIR 1966 SC. 878).

(ii) It is in that view, the Section provides that the plaintiffs in a suit u/s 92, Code of Civil Procedure, must be persons having an interest in the Trust. Before 1887 the corresponding provision of law prevailing at that time required a direct interest in the Trust. The word "direct" was dropped in 1887 and thereafter the requirement was to have an interest. The words "having an interest" have been subject matter of judicial consideration in several judgments. In T.R. Ramachadra Aiyar v. Parameswaran



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Unni (I.L.R.42 Madras 360), a Full Bench of this Court held that "interest" in Section 92, C.P.C. denotes an interest which is present and substantial and not sentimental or remote or fictitious or purely illusory interest. In that case, a Hindu residing in Madras and another residing in Tellicherry instituted a suit in the District Court of North Malabar u/s 92, Civil Procedure Code, in respect of a Hindu temple situated in Tellicherry. It was found that the former had gone to worship in the temple on one or two occasions in the past and might go there to worship in the future if business took him to Tellicherry and he relied on his right as a Hindu to worship in the temple as entitling him to institute the suit. The majority held that though as a Hindu he might have the right to worship in the temple, he had not on that ground alone the "interest" required by Section 92 of the Code to maintain the suit.

(iii). In Vaithinatha Aiyar and Another Vs. S. Tyagaraja Aiyar and Another, a Division Bench of this Court held that where the two plaintiffs instituting a suit u/s 92 of the CPC are the descendants of the founder of the charity, they have an interest within the meaning of the said Section. The Bench observed that the fact that the plaintiffs belong to the family of the founder would naturally give them an interest in the family charity so as to enable them to bring a suit u/s 92 of the Civil



Procedure Code. The Bench distinguished the judgment of the Full Bench in T.R. Ramachandra Ayyar's case (I.L.R.42 Madras 360 = (1919) 9 L.W.492). The judgment of this Court was affirmed on appeal by the Privy Council in Vaidyanatha Ayar v. Swaminathyya Ayyar, AIR 1924 PC. 221. The Judicial Committee held that the descendants in the female line from the founder of the charity have an "interest" therein within the meaning of Section 92; Civil Procedure Code, although they may not directly obtain any benefit from it.

(iv). In Ramaswami v. Karumuthu (AIR 1957 Madras 597), a learned single Judge of this Court held that a person who was a Hindu and was residing only three miles away, and had saved the trust properties from being sold away by a decree-holder and had got the attachment released, and was a lessee in respect of the trust to be by being the highest bidder at an auction held by a Commissioner of Court, is a person vitally interested in the trust and its proper management.

(v). In Mahant Harnam Singh, Chela of Bhai Narain Singh Vs. Gurdial Singh and Another, the residents of a village, where free food is served to visitors by an institution running a free kitchen, do not have any interest con-titling them to file a suit u/s 92. CPC On the facts it was found by the Court that the institution was meant for Nirmala Sadhus and the plaintiffs as



lambardars and followers of Sikh religion cannot be said to have an interest entitling them to file a suit as Nirmala Sadhus are not Sikhs.

(vi) In C. Kalahasti v. R. Sukhantharaj (1975 T.L.N.J. 155 = (1975) 88 L.W.57). a Division Bench of this Court held that old students of a College are persons having an interest in the trust which is in management of the College

(vii) In Kumudavalli v. P.N. Purushotham (AIR 1978 Madras 205 = 91 L.W.205), another Division Bench of this Court held that a resident of the locality, who has some nexus or connection with the trust in the sense that he has interest in its well-being and prosperity can under certain circumstances be taken to be a person having an interest in the trust and in the cause of a public School, such presumption could also be raised if he is an old student of the school. The Bench said that if a fair inference could be drawn that a resident in the locality is subjectively interested in the well-being of the school and, therefore, the trust then such an interest would come within the meaning of the expression "having an interest and cannot be held to be illusory or hypothetical In that case, the Bench also held that a remote relationship through the female line by itself cannot be such an interest sufficient to lay an action u/s 92, C.P.C.



G. (i) *In Jugul Kishore v. Shamlal (AIR 1944 Allahabad 231)*, a Division Bench of that Court held that in cases of alleged mismanagement of public trust, the Advocate-General should go into the question not only of the condition of the trust but also into the question of the bona fides of the would-be plaintiffs and of their capacity properly to represent the public on whose behalf they are purporting to sue.

(ii) *In Mayer Simon v. Advocate General, Kerala (AIR 1975 Kerala 57)*, to which we have made a reference earlier, the Court held that a consent u/s 92, Code of Civil Procedure, could be refused by the Advocate-General for all or one of the following reasons:-

- (1). the persons approaching the Advocate-General may not have sufficient interest;*
- (2). their motives may not be pure;*
- (3). they may not be solvent;*
- (4). there may be no breach of trust, and*
- (5). direction of the Court may not be deemed necessary*

With respect, we are unable to agree with the Full Bench as regards the third reason set out above."

(14) Even though several judgments were cited across the Bar, this Court, on principles, has held in few cases that appeal lies as against the order granting leave. In ***Vidyodaya Trust Vs. Mohan Prasad.R and Others***



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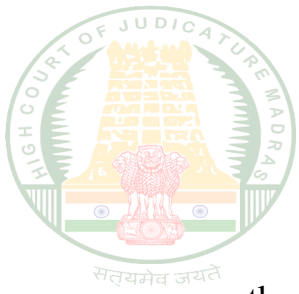
reported in **2008 [4] SCC 115**, Hon'ble Supreme Court, set aside the order passed by a learned Single Judge of Kerala High Court in a Civil Revision petition, holding that leave had been rightly granted in terms of Section 92 of CPC. The Hon'ble Supreme Court observed that Courts have to be careful to eliminate the possibility of a suit being laid against public trust under Section 92 of CPC by persons whose activities were not for protection of the interests of the public trusts. It has been repeatedly held by various Courts that a suit under Section 92 of CPC is a suit of special nature which is maintainable only if the three ingredients are satisfied from the averments in the plaint. The Court is also expected to go into the bona fides of the plaintiffs and their capacity or locus to represent the public. Though no notice is mandatory to the defendants before grant of leave, after appearance of defendants, the defendants can seek revocation of leave. Division Bench in ***B.S.Adityan Vs. B.Ramachandran Adityan*** reported in **2004 [9] SCC 720**, has observed that the judgment of Division Bench of this Court in ***New College Vs. Basheer Mohammed [1979 [1] MLJ 145]*** cannot be considered to be good law in view of dictum of the Hon'ble Supreme Court in ***Shah Babulal Khimji s. Jayaben***



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D.Kania and Another [cited supra], wherein the Hon'ble Supreme Court held that for the purpose of Clause 15 of Letters Patent, only those orders, which decides matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned, will be judgments. The judgment of Hon'ble Supreme Court in **Babulal Khimji** [cited supra] is not an authority for the proposition that no appeal would lie as against the order granting leave. Having regard to the scope of enquiry as indicated in many judgments, this Court holds that an order refusing to revoke leave is a judgment for the purpose of Clause 15 of the Letters Patent. However, this Court is unable to agree with the learned counsel for the appellant on the merits of this appeal.

(15) Mr. Krishnan Srinivasan, learned Senior counsel appearing for the appellant referring to the order of the learned Single Judge contended that the Application under Section 92 of CPC for grant of leave is different from the prayer to reject the plaint under Order 7 Rule 11 of CPC and hence the impugned order is unsustainable. The learned Senior counsel then submitted that the Sabha is only a Society registered under the Societies Registration Act and hence, it is governed by the provisions of

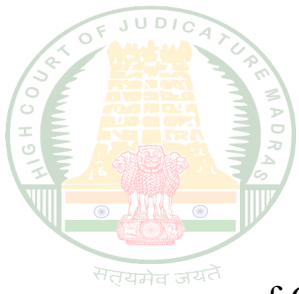


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the Tamil Nadu Societies Registration Act, 1975. When the Society is deemed to be registered under the Tamil Nadu Societies Registration Act, the same can never be treated as a public charitable Trust so as to confer jurisdiction of Civil Court to entertain a suit for framing a scheme.

(16)The learned Senior counsel appearing for the appellant relied upon a judgment of a Division Bench of this Court in ***S.Guhan and Others Vs. Rukmani Devi Arundale and Others [AIR 1988 Mad 1 : 1987 [100] LW 182]***. The Division Bench considered the appeal against the judgment and decree in a suit in CS.No.716/1985 framing a scheme on the Original Side of this Court under Section 92 of CPC. The Division Bench considered whether Section 92 of CPC can be invoked in respect of the Educational Institution known as "Kalakshetra" which is registered under the Societies Registration Act. The Division Bench considered the issue whether the plaintiffs have proved the existence of a public charitable Trust. The issue before the Division Bench was slightly different from the facts in the present case and the main issue whether the Society is a public Trust or not came to be decided after trial of suit. The Division Bench observed that it is a primary duty cast upon the plaintiff in a suit under Section 92



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of CPC to satisfy the Court that the properties mentioned in the schedule to plaint belong to a public Trust. The Division Bench however in the above judgment, also held as follows:-

"55. In both the appeals, a point is taken that, unless the procedure prescribed under Act 27 of 1975 is followed, first defendant Society cannot be extinguished. As the properties belong to the society, a suit under S.92, C.P.C. was not maintainable at all. The existence of the Society is not disputed by respondents. They themselves state that Society is a separate legal entity. There is no dispute that the Society was registered under S.3(1) of the Act. Its membership is 112. As required under S.15, an executive committee had been formed consisting of 12 members. S. 18 deals with vesting of the properties in the trustees, and if not so vested, then they will have to vest in the committee. Respondents in their counter have admitted that R.24 onwards of the Rules were amended in 1979. The Act came into force on 25-8-1975. Hence, to prevent the Registrar from having control over the properties, if they are to be vested in the Committee, R.24 was incorporated so that the properties belonging to the



Society could be vested in the Trust. Mr. Muthanna, learned counsel for the appellants rightly points out that this is the prevalent practice obtaining in Societies registered under this Act and to keep away the scrutiny of superintendence by the Registrar over the properties, this method is adopted and which is permissible under the Act. The income derived from the properties is being made part of the statement filed to the Registrar. Hence, this is not a case wherein an amazing method has been adopted. If a Society is to be dissolved, S.41 prescribes the procedure. A special resolution as defined in S.2(j) will have to be passed by a majority of not less than three-fourths of such members of the registered Society entitled to vote in the general meeting, and thereafter, the procedure prescribed therein will have to be followed. This is what precisely 7th respondent points out to the court when leave to sue application was filed in the suit, Admittedly no such procedure had been followed. Once it is held that the Society owns plaint schedule properties, a suit under S.92, C.P.C. is not maintainable, 7th respondent is a statutory authority under the Act. Hence he could not have been treated as a formal party. Without following.



a statutory procedure, lawful existence of a body created under a statute cannot be brought to an end by any court. The prescribed procedure will have to be first and cannot be made as a follow up step. Clause 19 of the scheme decree states that 'on the adoption of the scheme settled by this Honourable Court, the Society registered under the Tamil Nadu Societies Registration Act 1975 shall cease to exist.' It does not even state that the scheme decree will come into force after the necessary or required steps are taken as prescribed under the statute. A patent illegality had come into existence by such a scheme decree being passed, because of non-compliance with the requirements of Tamil Nadu Act 27 of 1975."

(17)The Division Bench in the above said judgment, also considered the question whether the properties are the properties of Society or independent Trust. Though the Trial Court therein after full-fledged trial held that the properties are the properties of Trust, on appeal as against the judgment and decree in the suit, the Division Bench held that there is no proof to show that the properties which are the subject matter of the suit



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are the properties of Trust. It is also held that the claim made by the plaintiff therein cannot be sustained as alleged Trust even as per the plaintiff's averments is a creation under the Society and not independent of the Society. In paragraph No.63, the Division Bench held as follows:-

"63.It is contended that in the interests of the institution, if the scheme decree, could be allowed to be in existence after rectifying the omissions under Act 27 of 1975, it would benefit the institution. It was the first respondent, who conceived the idea of starting this institution. In 1936, she started an Art Academy and she gave the name Kalakshetra only in 1939. After taking the legal assistance of Mr. P.V. Rajamannar, the former Chief Justice of this Court and who was then an Advocate, she got it registered under the Central Act 21 of 1960. He continued to be associated all through in one capacity or other as Executive Committee member, Joint President etc. A careful reading of the rules as framed, provides for sufficient safeguards to preserve, promote and effectively carry out the objects of the Society. She was the President of the Society for 46 years. When Tamil Nadu Act 27 of 1975 came into force, she has stated in her affidavit that in 1976 to manage the properties, rules were amended to include R.24 onwards. In the event of her death, she had provided for a Chairman to be elected. R. 26 states that what is contained in R.24 cannot be changed by a resolution of the Society. She has by R.28 taken care to, see that if for any reason, the Society ceases to exist, then the properties of Society will go to the fifth respondent. This is a sufficient safeguard taken even for a calamity and is destructive of claims of respondents 1



to 3, 6 and 8 to 12 and Sundaram that a scheme is necessary and should continue. The onus is therefore heavy on respondents to show that in spite of all these safeguards existing, that time had come necessitating extinction of society and for a scheme to be framed. Based on the rules, along with the other members of the Executive Committee and with the co-opted trustees, who have come into office only under rules of the Society, she had been managing the affairs of Kalakshetra. No resolution passed at any point of time had been produced by respondents to show that based on the existing Memorandum of Association and Rules of the Society, the affairs of Kalakshetra could not be effectively and efficiently managed. Minutes of meeting of Trustees constituted by Society, dated 13-4-1985, is the only one, which states that the idea of re-constitution of Trust and of a Scheme to be approved by court was being contemplated. Hence, no final decision was ever taken. Mr. R. Venkataraman has asked for proposals to be sent to him. The other meeting relied upon is dated 11-5-1985 which states that Mr. K. Veeraswami had met him in Delhi and that both of them had agreed as envisaged and that finalisation of scheme would be made when Mr. Veeraswami would be visiting Delhi to meet him next week. Meeting was then held on 24-5-1985 and on 6-8-1985, 31-8-1985, meetings were called and on 5-11-1985, the last meeting was held. Hence, no final unanimous resolution was passed approving the plaint, as claimed in para 8 of counter dated 16-2-1986. Further, she had never made any grievance that the method and the system of management which was obtaining for five decades and the institution which she headed was functioning inefficiently. A close reading of the rules now obtaining would show that it has got an excellent democratic set



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up providing for elections to be periodically held. Even though under Tamil Nadu Act 27 of 1975, a member of a Committee under S.15 could be in office only for three years, according to Additional Government Pleader, she had been seeking for exemption and had continued to be its President till she died pending the appeal. Being fully aware that she had formed a Society for the better management of Kalakshetra, it was unfortunate that, when as claimed by her, her health was failing, this sort of action had been taken. Whatever be the brilliance or greatness or capability or achievement of a human being during the best part of life; during the last days when health, memory etc., are in the declining course, it is not uncommon for such persons to act at the behest of those who are close, but who by taking undue advantage of that situation, scheme to get at what the dying soul had achieved during its life time. Therefore, when there had been a total failure to show as to how the arrangement conceived of by her and time tested for five decades is not in the interests of the institution any longer; there is no warrant existing to interfere, when under R.24, the Board of trustees, as constituted by her, would subserve the interests of the Society. It has been already found that the Society continues to exist because it had been dissolved in the manner known to law. Respondents themselves have pleaded that it is a separate legal entity. Therefore, the Board of Trustees appointed by Court are not concerned nor interested in the functioning of the Society. They have come to office on the basis that a separate trust exists, and it is only its affairs they are taking over, and consequentially, it would result in the Society being superseded. Hence, hitherto as the Society, had not ceased to exist in the manner known to law, it has the lawful right to carry on the affairs of



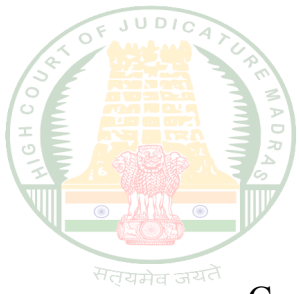
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Kalakshetra, and as provided in R.24, its properties would be vested in the trustees. No prejudice could be caused to the institution by the Board of Trustees appointed under the scheme decree being relieved. Out of 9 of them, five will continue under R.24. The scheme decree was passed on 20-11-1985 and a copy application was filed on that day. It was made ready on 28-11-1985. Respondents have sworn before Court that on 21-11-1985 itself, they have taken charge of the institution; How, and who was authorised by Board to take charge, is not explained. Without newly constituted Board meeting, how it took over on the next day without a decree copy, are baffling. Therefore, on being held that the suit was not maintainable and that the Society had not ceased to exist as known to law, the Board of Trustees constituted by this Court cannot hold on to the properties or the affairs of the institution called Kalakshetra, any longer."

(18)Learned Senior counsel for respondents however relied upon a judgment of Hon'ble Supreme Court in ***All India Women's Conference and Others Vs. Sarla Shah and Others*** reported in **2004 [13] SCC 402**, wherein AIWC, the appellant therein, was founded in the year 1930 for general progress, upliftment and welfare of women and children. The appellant was a Society registered under the Societies Registration Act. A suit was filed under Section 92 of CPC satisfying the ingredients against the Society. Though the Trial Court refused to grant leave on the ground that the suit did not fall under Section 92 of CPC, the Division Bench of High

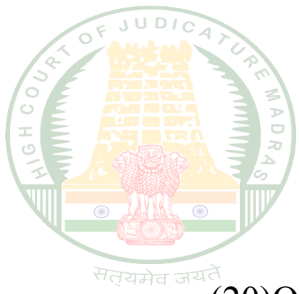


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Court of Delhi, set aside the order of Trial Court and the Hon'ble Supreme Court confirmed the judgment of Division Bench, on satisfying that all the ingredients of Section 92 of CPC are available. However, the question of maintainability of suit under Section 92 of CPC against a Society registered under Societies Registration Act is not considered.

(19)A 'Society' is an association of individuals. A Society may be formed for various purposes and it is not necessary that it should be for a public or charitable purpose. In many cases, Societies are formed solely for the benefit of its members. A Society may also be formed in order to promote education, literature, science, religion, charity, social reforms, art, crafts, cottage industries, athletics, sports, recreation etc. There must be atleast seven persons to register an association under the Societies Registration Act [hereinafter referred to as 'the Act']. Every Society consisting of 20 or more members and has any one of the object enumerated under Section 3 of the Act with annual income not less than Rs.10,000/- has to be compulsorily registered under the Act. But a Society formed with an object of promoting religion, athletics or sports is not compulsorily registrable.



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(20) Once a Society is registered satisfying the requirements, it shall maintain a register containing the names, addresses and occupation of its members. Bye-laws of the Society shall contain provisions like objects of Society, enrolment of members, conduct of AGM, EGM etc. Under Section 15, every Society shall have a Committee to manage its affairs and the members of the Committee shall be appointed by a resolution of a majority of members present and entitled to vote. The Act prescribes several aspects for smooth functioning of Society.

(21) Under the Societies Registration Act, the power of Registrar is limited. However, the Government has power to appoint a Special Officer to manage the affairs of the Society in certain circumstances in supersession of committee for a specified period not exceeding one year. Section 34-A of the Act deals with power. The power to supersede the Committee under Section 34-A of the Act can be exercised if, in the opinion of the Government,

- i. the Society is not functioning properly.
- ii. The registered Society is mismanaged
- iii. the activities of Society is not in furtherance of the objects of the



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Society

iv. the Committee has contravened any of the provisions of the Act or Rules or willfully disobey any lawful order issued under the Act.

(22) Under Section 36 of the Act, the Registrar can hold an inquiry, into constitution, working and financial condition of a registered Society. However, as a result of enquiry if he is satisfied that a registered Society has contravened any of the provisions of Act or Rules or a Society become insolvent or the business of Society is conducted fraudulently or not in accordance with the bye-laws or the objects, the Registrar may cancel the registration. Upon cancellation of registration, the Society shall cease to carry on business and the Registrar may appoint a Liquidator to wind up the Society. On dissolution by winding up of the Society, the assets shall be given to any other Society having same or similar objects if the Society is one which was not established by contribution of shareholders.

(23) The Government under Section 54 of Registration Act has power to exempt from all or any of the provisions of the Registration Act to any Society or class of Societies registered under the Societies Registration



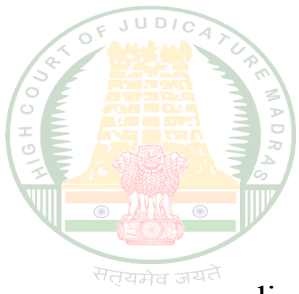
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(24)Even before the Tamil Nadu Societies Registration Act came into existence, the Societies Registration Act, 1860 was enacted in 1860 with an object for improving the legal condition of the Societies established for the promotion of literature, science or fine arts or for the diffusion of useful knowledge or for charitable purpose. By virtue of Section 53 of the Act, every Society registered under the Societies Registration Act, 1860, shall be deemed to be registered under the Tamil Nadu Societies Registration Act, 1975, and the bye-laws of Society shall, insofar as they are not inconsistent with any provision of State Act, continue in force until altered or rescinded.

(25)The power under Section 34-A of the Act is purely temporary and therefore, limited to certain circumstances. Similarly, the power to cancel registration may ultimately lead to winding up of registered Society. Upon cancellation of registration and winding up, the properties of the Society can be given to some other Society or any association of persons having same or similar objects. The entire scheme of Registration Act, does not deal with internal dispute in the administration of the Societies. Even a



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dispute regarding election for office bearers of the Society should only be decided by the Civil Court. This Court in very many cases, has ruled that recognising the office bearers of the Society by accepting Form VII is only an administrative act.

(26)Section 92 of CPC reads as follows:-

"Section 92 Public charities.—(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree :—

- (a) removing any trustee;*
- (b) appointing a new trustee;*
- (c) vesting any property in a trustee; [(cc) directing a trustee who has been removed or a person*



who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property];

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

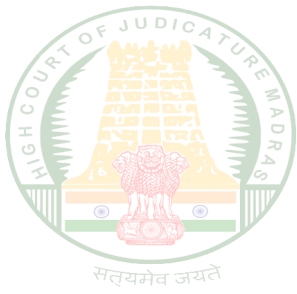
(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public



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purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely:—

(a) where the original purposes of the trust, in whole or in part:— (i) have been, as far as may be, fulfilled; or (ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or (d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in



part, have, since they were laid down:— (i) been adequately provided for by other means, or (ii) ceased, as being useless or harmful to the community, or (iii) ceased to be, in law, charitable, or (iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust."

(27)When there is breach of any trust which is created for a public purpose of charitable or religious nature and in the opinion of the Court a direction of Court is necessary for the administration of such trust, a suit can be entertained under Section 92 of CPC, [a] for removing any trustee ; [b] for appointing a new trustee ; [c] for vesting any property in a trustee ; [d] directing a trustee to deliver possession of any trust property in his possession to a person entitled to be in possession of such property ; [e]directing accounts and enquiries ; [f]declaring of one's proportion of the trust property shall be allocated to any particular object of the trust ; [g]authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged ; [h]settling a scheme or for grant of such further or other directions as the nature of the case may require. Therefore, the

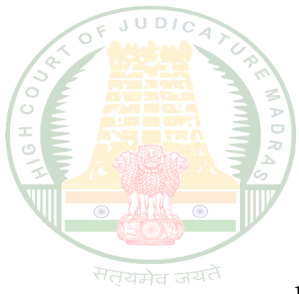


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scope of a suit under Section 92 of CPC is comprehensive and beyond the limited jurisdiction of any authority under the Societies Registration Act.

(28)The principles relating to exclusion of Civil Courts have been dealt with in several cases. In *Dhulabai Vs. State of Madhya Pradesh [1968 [3] SCR 662 : AIR 1969 SC 78]*, the Hon'ble Supreme Court has observed that an examination of a scheme of particular legislation to find out the adequacy or sufficiency of the remedies provided are relevant even where there is an express bar of the jurisdiction of Court. It has been observed further that in the absence of any express provision to exclude the jurisdiction of Civil Court, it is necessary to see that the statute provides all questions about right and liability has to be determined by the Tribunals so constituted.

(29)Where a particular statute contains no machinery for deciding every issue that may arise relating to the administration of a trust, this Court is unable to exclude the jurisdiction of Civil Court to entertain a suit under Section 92 of CPC when we examine the scheme of Tamil Nadu Societies Registration Act. The main purpose of Section 92 of CPC is to give a protection to a public trust of charitable or religious nature and such a suit



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under Section 92 can be filed when there is a breach of trust or when the administration of the trust generally requires improvement. In the instant case, the fact that trust in question is created for a public purpose of a charitable nature, is not in dispute. There is a specific allegation regarding breach of trust and the plaint specifically refers to some facts to show that a direction of Court is necessary for a better administration of the trust. All the reliefs that are prayed for in the suit, falls within the scope of Section 92 of CPC. In such circumstances, we are unable to accept the contention that the Civil Court's jurisdiction is ousted if the trust is registered as a Society under the Societies Registration Act, 1860 or under the Tamil Nadu Societies Registration Act, 1975.

(30) Though the judgment of Division Bench of this Court in ***S.Guhan and Others Vs. Rukmani Devi Arundale and Others*** [AIR 1988 Mad 1 : 1987 [100] LW 182] to some extent, support the arguments of the learned counsel for the appellant, the said judgment requires reconsideration as the Division Bench has not considered the scope and object of the Societies Registration Act and the fact that no machinery is provided under the State Act to deal with several situations. Since we are now

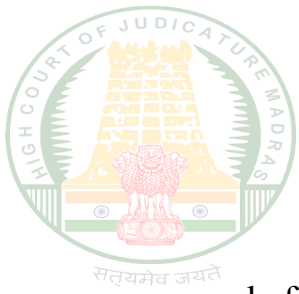


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considering the preliminary issue whether leave granted is proper and valid, we are not inclined to deal with the issue further as the same also can be gone into after trial.

(31) This Court is also unable to countenance the other submissions of the learned Senior counsel for the appellant. It is to be stated that the learned Single Judge has referred to Order 7 Rule 11 of CPC by mistake and it is also settled that quoting of wrong provision is not fatal when in substance, the point raised is dealt with. Learned Senior counsel appearing for the appellant though submitted that there is no *bona fide* in filing the suit under Section 92 of CPC, having regard to the specific averments made in the plaint, we cannot now test the *bona fides* even before trial. The plaint disclose a cause of action. When the ingredients of Section 92 of CPC are *prima facie* satisfied, there is no question of considering the maintainability of suit at this stage. Having regard to what we have observed earlier, after referring to the provisions of Tamil Nadu Societies Registration Act, 1975, the contention of the learned Senior counsel for the appellant that the allegations of mismanagement or other misfeasance or malfeasance against the Managing Committee can be raised only



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before the authorities under the Tamil Nadu Societies Registration Act, has no legal substance.

(32)In view of the conclusions we have reached, this Court is unable to entertain this appeal. Considering the fact that the appellant has successfully dragged the proceedings so long, this Court is of the view that the appeal is liable to be dismissed with exemplary cost.

(33)Accordingly, **this Original Side Appeal is dismissed with a cost of Rs.25,000/- (Rupees Twenty Five Thousand only)** payable to the **Tamil Nadu State Legal Services Authority, Chennai**, within a period of two weeks from the date of receipt of a copy of this judgment.

[SSSRJ]

[KRSJ]

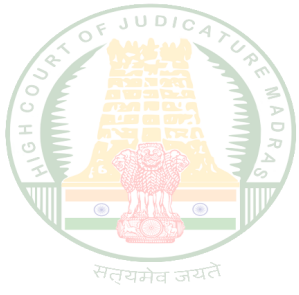
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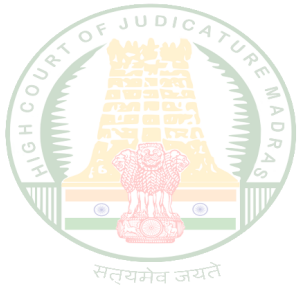
Neutral citation : Yes



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To
The Section Officer
VR Section, High Court,
Madras,



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S.S.SUNDAR, J.,
AND
K.RAJASEKAR, J.,

AP

Judgment in
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