



A.No.5309 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
25.02.2025

PRONOUNCED ON
01.04.2025

CORAM

THE HONOURABLE MR JUSTICE K.KUMARESH BABU

A.Nos.5309 of 2024
in C.S.No.218 of 2024

1.V.Krishnaswami Iyer Charitable Trust,
Old No.137, New No.150, Kutchery Road,
Mylapore, Chennai – 600 004.

2.R.Ragunandan

Vs

Applicant(s)

1.A.R.Santhanakrishnan

2.V.Srikanth

3.N.Alagarswami

Respondent(s)

For Applicant(s) : Mr.G.Rajagopalan
Senior Counsel
For Mr.L.Jagadish

For Respondent(s): Mr.Kuberan for RR1 & 2
for M/s.Rank Associates

Mr.Krishna Ravindran for R3
for Mr.L.K.Dibeeshwar

ORDER

The first and second defendants in the suit have taken out the present



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application seeking to revoke the *ex-parte* leave granted by this Court in its order dated 05.09.2024.

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2. Heard Mr.G.Rajagopalan, learned Senior Counsel for Mr.L.Jagadish, learned counsel for the applicants, Mr.Kuberan, learned counsel for M/s.Rank Associates appearing on behalf of the first and second respondents and Mr.Krishna Ravindran, learned counsel for Mr.L.K.Dibeeswar, learned counsel appearing on behalf of third respondent.

3. Mr.G.Rajagopalan, learned Senior Counsel appearing for the applicants, at the outset submit that the leave granted by this Court without notice is bad. In that context, he would rely upon the judgments of this Court reported in **1997 LW 420**. He had also relied upon a judgment of the Hon'ble Apex Court reported in **1991 Volume 1 SCC 48** and would contend that the Court as a Rule of caution should normally give notice to the defendants before instituting a suit. He had also further relied upon a judgment of the Hon'ble Apex Court in the case of **Bhupinder Singh Vs Joginder Singh (dead) By Legal Representative and Other** reported in **2020 (18) SCC 243** and contended that in a leave to sue application normally a notice should be issued to the other side before passing order upon the same.



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4. He would vehemently contend that there are no circumstances made out in the pleadings for grant of an *ex-parte* leave. Hence, the leave should be revoked. He would further contend that as a matter of right, leave cannot be granted to anyone unless and until the applicant shows his interest over the Trust. Since, the applicants have not been heard, it amounts to violation of principles of *audi alteram partem* and violation of principles of natural justice. In support of the said contention, he had relied upon the judgment of the Hon'ble Apex Court in the case of ***National Textile Workers' Union etc., Vs P.R.Ramakrishnan and others*** reported in ***AIR 1983 SC 75, AIR 1978 SC 597*** and in the case of ***Swadeshi Cotton Mills etc., Vs. Union of India, etc., AIR 1981 SC 818***. Relying upon the judgment of the Division Bench of this Court in the case of ***L.M.Menezes and others Vs Rt.Tev.Dr.Lawrence Pius and others*** reported in ***2004 (1) CTC 321***, he would contend that the purpose of Section 92 is to give protection to a public charitable trust and that the maintainability of the suit under the said Section depends upon the allegation in the plaint. In the present case there has been no allegations of mismanagement and misappropriation of the trust properties. He would further submit that even though there is a prayer for removal of trustees, all



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the trustees of the defendant/ Trust has not been impleaded as parties. The plaintiffs are the family members who for the best known to wreck vengeance of the other disputes in the family had taken out the present application. He would submit that the object of the trust are being fully carried out and there can be no reason to maintain the suit.

5. Countering his arguments, Mr.Kuberan, the learned counsel for the respondents 1 and 2, at the first would submit that there has been no misrepresentation by the respondents/ plaintiff. He would contend that the Hon'ble Apex Court judgments relied upon by the learned Senior Counsel for the applicants for the proposition that a notice should be given in an application for leave to sue itself had given the power to the Court to grant leave in certain circumstances. Such circumstances are flagrant mismanagement and misappropriation amounting to the breach of trust. He would submit that the plaintiffs have alleged the following breach of trust:-

(a) Closing down the Ayurvedic College for which purpose the trust was created.

(b) Having got the permission to sell the property particularly for investing the same for establishment of a hospital and acted in violation of the judgment of this Court and leased out the premises to a third party for a



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meager amount which is not beneficial to the trust.

(c) The lease rental that is sought to be paid cannot at any stretch of imagination used for achieving the object of the Trust.

(d) The trust does not have a coram.

6. That apart he would submit that the plaintiffs being the great grandsons of the propounder of the trust has interest in the trust to see that the object of the said trust is being fulfilled by the trust. He would further submit that the leave had been granted by this Court by considering the conduct of the defendants in contradiction with the judgment made in A.No.1763 of 2002 in C.S.No.159 of 2002 which have been specifically made in the plaint. Hence, he would submit that there is no necessity to interfere with the grant of leave.

7. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

8. The trust had been formed for establishing and running a dispensary and a school. Pursuant to the creation of the trust, it is an admitted fact that in the property belonging to the trust a dispensary as well as an ayurvedic



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college was established. The Central Council for Indian Medicine had also suspended admission to the said college (which is evident from the order made in A.No.1763 of 2002 dated 31.08.2008) upon which the first defendant/ trust represented by the second defendant and another had approached the same to be sold to a Society. This Court considering the claim to be bonafide had permitted the sale of the said property to the said Society in its order dated 31.01.2008. By a further order dated 20.03.2008, the time for sale was also extended till 20.05.2008. It is to be noted that the sale pursuant to the said judgment and decree had not been made. Now it is the allegation that the trust has not been maintained by the quorum indicated in the trust deed and that the acting trustees have also leased out the property to a third party and the second defendant alone is acting as a trustee to the trust and that he had unilaterally leased out the trust property to the third defendant for a very meagre amount. The rents which are realizable from the said lease would also not be sufficient enough to meet the reason upon which this Court had granted the permission. This Court in its decree made in A.No.1763 of 2002 had categorically held that such sale proceeds should be used for establishment of a hospital. When that be so, the lease rentals would not fulfill the object of the trust or direction issued by this Court.



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9. The learned Senior Counsel for the applicant had vehemently contend that a leave to sue without notice is bad in law and he had also placed reliance upon the various judgments. A thorough reading of the judgment of the Hon'ble Apex Court relied upon by the learned Senior Counsel reported in **1991 (1) SCC 48** would itself indicate that the Court can even without notice can grant leave.

10. In such view of the matter, the reliance placed upon by the learned Senior Counsel on the judgment of the learned Single Judge reported in **1997 LW 420** cannot be said to be a good law. Further the allegations have been made in the plaint alleging that the second defendant alone is acting as trustee of the trust and also that there has been a mismanagement of the trust and the object of the trust has been obliterated. Such allegations can only be gone into when the suit is put to trial. Admittedly, the trust is a public charitable trust and any two member of the public can approach this Court when the object of the trust is sought to be obliterated and that there is a mismanagement and misappropriation of the trust.

11. In such view of the matter, I do not find any reasons to revoke the leave that had been granted by this Court based on the averments in the



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plaint. It is a trite law that the maintainability of the suit under Section 92 depends upon the allegations made in the plaint alone.

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12. In fine, the application is dismissed. However, there shall be no order as to costs.

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Index:Yes/No

Internet:Yes/No



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K.KUMARESH BABU., J

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Pre-Delivery Order in
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