



O.S.A. No.336 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2025

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THE HONOURABLE MR. JUSTICE **S.M.SUBRAMANIAM**
AND
THE HONOURABLE MR. JUSTICE **MOHAMMED SHAFFIQ**

O.S.A. No.336 of 2025
and
C.M.P. No.26149 of 2025

24 Manai Telugu Chettiar Charitable Trust
rep. By its

- 1.Chairman cum Managing Trustee
Mr.K.C.Pallanishamy and
- 2.Treasurer cum Joint Secretary
Mr.Manohar Sangilimuthu @ R.S.Manohar

Having Office at
Old No.155, New No.203, E.V.R. High Road,
Kilpauk, Chennai – 600 010.

... Appellant

Vs.

- 1.G.Paulpandian
- 2.G.Manoharan
- 3.A.Manoharan
- 4.L.Krishnan
- 5.M.Kanagarajan
- 6.P.Gajendran
- 7.V.R.Ganesan
- 8.K.Krishnamurthy
- 9.G.Rajendran
- 10.B.Sundarapandi
- 11.R.Baskaran
- 12.D.Sureshkumar
- 13.M.Chandrasekaran
- 14.R.Vijayakumar
- 15.G.Panneerselvam



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16.G.Chandramohan

17.24 Manai Telugu Chettiar Educational
and Charitable Trust rep. By its
Managing Trustee,
No.256 and 257, Mint Street,
Chennai – 600 003.

... Respondents

(plaintiffs 2 to 16/respondents 2 to 16 are
rep. By their Power Agent 1st plaintiff/1st respondent)

Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the fair and decretal order dated 19.09.2025 in Application No.2629 of 2025 in Application No.1190 of 2025 in C.S.No.54 of 2025.

For Appellant : Mr.K.V.Babu

For Respondents : Mr.Sunny Sheen
for Mr.Anish Gopi for R1 to R16
Mr.A.Raj Prince
for Mr.R.Thiagarajan for R17

JUDGMENT

(Judgment of the Court was delivered by *S.M.SUBRAMANIAM, J.*)

The present Original Side Appeal has been instituted to assail the order dated 19.09.2025 in A.No.2629 of 2025 in C.S. No.54 of 2025.

2. The second defendant in the suit is the appellant before this Court.
The appellant/second defendant filed an application to revoke the leave



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granted in A.No.1190 of 2025 dated 10.03.2025 and strike off the plaint. The learned single Judge adjudicated the issues and dismissed the application. Thus, present appeal came to be instituted.

3. Learned counsel for the appellant would mainly contend that prior notice ought to have been issued in the leave application filed by the respondents. But the trial Court, without issuing notice to defendants in the suit, granted leave, which is violative of Section 92 of Code of Civil Procedure. Secondly, appellant Trust is no way connected with the affairs of 17th respondent Trust viz., 24 Manai Telugu Chettiar Educational and Charitable Trust represented by its Managing Trustee. To substantiate the same, it is contended that the affairs of appellant Trust are independent and unconnected with the functioning and affairs of the 17th respondent Trust. Both the Trusts are distinct and independent. Institution of a suit *per se* is untenable and suit is to be construed as vexatious. That apart, three conditions laid down by the Supreme Court of India in the case of **Bishwanath and Ors. vs. Thakur Radhaballabhji and Ors.** reported in **MANU/SC/0263/1967** have not been complied with.

4. Learned counsel appearing on behalf of respondents 1 to 16/caveators would oppose by stating that appellant Trust has been formed in the year 2006 and 17th respondent Trust has been formed in the year 1977. It



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is functioning separately on account of certain disputes between the community members and on the ground that 17th respondent Trust is currently non-functional. That apart, allegation of mismanagement also has been raised.

5. Section 92(1) of Code of Civil Procedure enumerates that *'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 three persons having an interest in the trust and having obtained leave of the Court may institute a suit'*. Plain reading of procedure would indicate that prior notice to grant leave is not mandatory. While upholding the principle that notice to defendants before granting leave is not necessary, in ***R.M.Narayana Chettiar and Anr. vs. N.Lakshmanan Chettiar and Ors.*** reported in **1991 (1) SCC 48**, the Supreme Court held that, as a rule of caution, the Court should normally give notice to the defendants before granting leave under said Section to institute a suit. The Supreme 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. Apart from that, they could, in a given case, point out that the persons who are applying for leave under Section 92 of C.P.C. are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to



grant leave to such persons. **The Supreme Court hasten to add that the desirability to issue such notice to the defendants cannot be regarded as a statutory requirement to be complied with before leave under Section 92 of C.P.C. can be granted as that would lead to unnecessary delay and in a given case, cause considerable loss to the public Trust.** Since any prior notice has not been contemplated under Section 92(1) of C.P.C. and legal precedent also supports the said contention. Non-issuance of notice to respondents in an application to grant leave cannot be construed as fatal. In the present case, the second defendant filed an application to revoke the leave and the learned single Judge adjudicated the issues on merits. Therefore, considering the said ground may not arise at all.

6. Regarding three conditions laid down in the case of ***Bishwanath and Ors. vs. Thakur Radhaballabhji and Ors.*** (cited supra), learned single Judge elaborately considered the facts and formed an opinion that all three conditions have been fulfilled in the present case and the allegations levelled in the application have to be tested through trial and averments made in the plaint also have to be tested during trial.

7. Generally, all suits are to be decided on merits, unless any suit is expressly or impliedly barred under law or the Court forms an opinion that suit is vexatious. When an application to grant leave is filed under Section 92 of



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Civil Procedure Code (CPC), the Courts form an opinion whether such suit is prima facie entertainable, then leave is granted.

8. Only if the Court forms an opinion that the suit appears to be vexatious or frivolous, then notice may be issued to ascertain complete facts for the purpose of grant of leave. However, issuance of notice is neither contemplated under Section 92 of CPC nor mandatory for grant of leave.

9. If leave is granted, the opposite party is at liberty to file an application seeking revocation of leave, as done in the present case by the appellants. Therefore, even after grant of leave, the opposite party would get an opportunity to oppose the leave granted.

10. In view of the facts and circumstances, this Court does not find any infirmity or perversity in respect of the order impugned in the original side appeal. Consequently, the Original Side Appeal stands dismissed. The connected Miscellaneous Petition is closed. There shall be no order as to costs.

[S.M.S., J.]

[M.S.Q., J.]

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Index:Yes/No

Neutral Citation:Yes/No

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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.



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**S.M.SUBRAMANIAM, J.
AND
MOHAMMED SHAFFIQ, J.**

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