(2005) 05 KL CK 0031

In the High Court Of Kerala

Case No : C.R.P. No. 944 of 2003

Abhaya — APPELLANT

Vs

Raheem — RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, 92, 92(1)
Trusts Act, 1882 — Section 3

Citation : AIR 2005 Ker 233 : (2005) 2 ILR (Ker) 692 : (2005) 3 KLT 891

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : P. Goplalakrishnan Nair and A. Ahzar, for the Appellant; D. Kishore, for the Respondent

Final Decision : Allowed

Judgement

K. Padmanabhan Nair, J.—Counter petitioners 1 to 3, 5 and 7 to 9 in O.P. (Trust) No. 129 of 2003, a petition filed u/s 92 of the CPC seeking leave to file a suit in a representative capacity before the District Court, Thiruvananthapuram are the revision petitioners. This Civil Revision Petition is filed challenging an order passed by the I Additional District Judge, Thiruvananthapuram granting leave to the respondents 1 to 6, who were the petitioners therein, to institute a regular suit for the reliefs made in the petition.

2. The 1st petitioner is a Society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act (Act XII of 1955), (hereinafter referred to as "Act XII of 1955") with registration No. 71 of 1986 and having registered office at "Varada", Nandavanam, Thiruvananthapuram, 2nd petitioner is the President and the 3rd petitioner is the Secretary. Petitioners 4 to 8 are office bearers of the 1st petitioner Society. Respondents 1 to 6 filed the petition u/s 92 of the CPC seeking leave to institute a suit raising various allegations, mainly against the 3rd petitioner-Secretary. It is averred that the first petitioner organisation "Abhaya" was constituted with the objectives of serving the

mentally ill-person, improving the social and non-social environment of the mental hospitals of Kerala, providing the mentally ill persons with facilities to improve their life conditions and rehabilitating the recovered patients especially those who are unwanted by their families. It is also averred that the first petitioner had framed a Memorandum of Association and Rules and Regulations. It is also averred that the general body meeting of the Society held on 5.1.1986 decided to register the first petitioner under the Act XII of 1955. In the petition the provisions contained in Clauses 5, 6, 7, 8, 10, 11, 14, 15, 18 and 19 of the Memorandum of Association were extracted. It is averred that petitioners 2 onwards are acting against the provisions of the Rules and Regulations of Memorandum of Association and the Rules and procedure prescribed by the Act XII of 1955 and those relating to public trust. It is averred that the first petitioner Society is a Public Trust. It is averred that the petitioners and respondents 7 and 8 committed acts of mismanagement, misconduct and misappropriation. Various acts of mismanagement, misconduct and misappropriation alleged to have been committed by the petitioners were narrated in paragraphs 18 to 21 of the petition. The gist of the allegation is that the 3rd revision petitioner, who is the Founder Secretary of the Society, is misusing and mismanaging the affairs of the Society and causing loss to the Society. It is averred that interference by way of directions by the District court has become necessary for the administration of the first petitioner Trust. The reliefs which they propose to make in the suit are the following:-- (1) removal of petitioners and respondents 7 and 8 from the trusteeship and members- of the Managing Committee of the 1st petitioner Trust; (2) appointing new trustees for the management, government and control of the 1st petitioner Trust; (3) vesting the property of the said Trust with the newly appointed trustees; (4) a direction to the petitioners and respondents 7 and 8 to deliver possession of the Trust Property to the person/persons who are entitled to possess the property of the 1st petitioner; and (5) directing accounts and enquiries; settling a scheme and such other reliefs.

3. The revision petitioners contended that the petition is not maintainable. It is contended that the 1st revision petitioner is a Society registered under the provisions of Act XII of 1955 with registration No. 71 of 1986 and it is not a Trust as defined under the provisions of the Trust Act. It is also contended that since the first petitioner is not a Public Trust, the present petition filed u/s 92 of the C.P. Code seeking leave of the Court is not maintainable. It is further contended that Act XII of 1955 contains special remedies in the event of infringement of the provisions of the aforesaid Act and since remedies are provided under the Act itself, a special remedy available u/s 92 of the CPC is barred. It is also contended that the 6th respondent is not a member of the first petitioner Society and is not a person having any interest in the Society. The averments contained in paragraphs 1 to 13, which deals with the various provisions of the Memorandum of Association were admitted. The averments contained in paragraphs 14 to 21 were denied. They prayed for a dismissal for the Original Petition.

4. The learned District Judge after considering the matter found that the petitioners have not denied the fact that respondents 1 to 6 are members of the 1st petitioner organisation. It was found that the remedy provided u/s 25 of Act XII of 1955 does not create any implied bar on the right of the members of the society to institute a suit for settling the Scheme. The Court further found that if a Society registered under Act XII of 1955 is having the characteristics of a public Trust, the procedure that has to be followed is the procedure envisaged by Section 92 of the Code of Civil Procedure.

It was further found that to consider whether a petition u/s 92 C.P.C. is maintainable the Court need only look into the averments in the plaint. It was further held that since the 1st petitioner is a public charitable Trust, petition is maintainable. Challenging that order this Civil Revision Petition is filed.

5. The learned counsel appearing for the petitioners has argued that the 1st petitioner is a Society formed under Act XII of 1955 and governed by the provisions of that Act. It is further argued that the provisions of Section 92 of the CPC can not be invoked in respect of such a Society. It is argued that Section 92 C.P.C. can be invoked only if there is a Public Trust of charitable nature. It is also argued that to avail the remedy available under common law the aggrieved person has to approach the lowest competent civil court and not the District Court.

6. At the outset I may state that the view taken by the learned District Judge that the revision petitioners had admitted that the respondents 1 to 6 are members of the first petitioner Society is not correct. It was specifically contended that the 6th respondent is not a member of the Society and hence he has not locus standi to file the petition. The Court below has not considered whether respondents 1 to 6 have produced any document to prove that the 6th respondent is a member of the first petitioner Society.

7. In the 1st paragraph of the petition itself it is admitted that the first petitioner organisation "Abhaya" was constituted with the objectives of serving the mentally ill persons, improving the social and non-social environment of the mental hospitals of Kerala, providing the mentally ill persons with facilities to improve their life conditions and rehabilitating the recovered patients, especially those who are unwanted by their families. It is also admitted that in a general body meeting of the 1st petitioner held on 5.1.1986 it was decided to register the 1st petitioner organisation under the provisions of Act XII of 1955 and the same was registered with Reg.No. 71 of 1986 by the Registrar of Co-operative Societies having its registered office at "Varada", Nandavanam, Trivandrum. In paragraphs 3 to 13 the respondents 1 to 6 have extracted the various provisions of the Rules and Regulations of the Society. A copy of the Memorandum of Association is produced by respondents 1 to 6. The Memorandum of Association shows that the name of the society is "Abhaya" and its registered office is at "Varada", Nandavanam, Trivandrum. The area of activity of the Society is limited to State of Kerala. Clause 4 of the Rules and Regulations of the Memorandum of

Association deals with the main objectives of the Society, which reads as follows:--

"4. The main objectives of the Society shall be the service of the mentally ill, alcoholics and drug addicts, women in distress and children and other groups in distress. The society shall aim at,

(a) Improving the social and non-social environment of the mental hospitals of Kerala.

(b) Providing the mentally ill with facilities to improve their life conditions.

(c) Rehabilitating the recovered patients, especially those who are unwanted by their families".

Clause 5 deals with membership. It provides that the Society shall have unlimited number of members of either sex. There shall be only one class of membership. A person who wants to become a member of the 1st petitioner Society has to pay an Entrance fee of Rs. 100/- and annual subscription of Rs. 25/-. The right to admit a new member is vested in the Executive Committee. The Rules and Regulations further provides that if a member fails to pay the annual subscription within six months from the due date, he shall automatically cease to be a member. Clause 8 deals with the expulsion of a member who has acted in a manner injurious to the good name of the society. The Committee is given the power to expel such a person and such a decision taken by the Committee is to be confirmed by the general body meeting of the Society by two-third majority of the members present and voting at the meeting. Members are also free to resign from the membership. Clause 10 deals with the capital of the society, which reads as follows:--

"10. The required capital of the society shall be raised by the membership and subscription fees and donations, loans, grants and other voluntary contributions from the public, State and Central Governments and other institutions or organisations".

Clause 11 deals with the Annual General Body and its quorum. The Committee is given power to convene an Extra Ordinary General Body meeting also. Every member is having a right of one vote. Clauses 14 to 17 deals with the Government and Management of the Society. Clause 14 provides that the Committee shall consist of one President, one Secretary, two Joint Secretaries, one Treasurer and four other members. Clause 15 provides that the Committee shall be elected from among the members of the Society. Any member is free to propose another member as Committee member. But, the proposal shall be recommended by at least two other members. The members of the Committee are elected at the annual general body meeting. Clause 16 prescribes the quorum of the Committee. Clause 20 provides that all disputes between the members of the society shall be referred to the President, whose decision shall be final and binding on all members of the Society.

8. It is true that Clause 4 of the Rules and Regulations shows that the Society is constituted with the main objectives of rendering service of the mentally ill, alcoholics and drug addicts, women in distress and children and other groups in distress. But, there is absolutely nothing in the Rules and Regulations of Memorandum of Association to show that prior to the formation and registration of the society there was a trust having any property. On the other hand, a reading of the Memorandum of Association shows that there were 7 promoters and they convened a General Body meeting on 5.1.1986. The General Body held on 5.1.1986 decided to register the 1st petitioner as Society under Act XII of 1955. Clause 1.0 shows that on the date of formation of the society there was no property over which the Society had any ownership. A formation of a Society under the provisions of Act XII of 1955 to carry out any charitable or social purpose will not make the society a public Trust. The Society is empowered to acquire property also to use for its purposes. But, that property which is to be acquired will only be the property of the Society and it will not be a property in respect of which it is possible to predicate a trust. The Preamble of the Act XII of 1955 is relevant. It states as follows:--

"Whereas it is expedient that provision should be made for improving the legal condition of societies, established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge or for charitable purposes".

Section 3 of the Act provides that any seven or more persons associated for any charitable purpose may by subscribing their names to a Memorandum of Association and filing the same with the Registrar, form themselves into a society. Section 32 of the Act provides that the following Societies may be registered under the Act:

"Charitable societies, societies established for the promotion of science, literature or the fine arts, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs".

Section 8 of the Act deals with the property of the Society. It reads as follows:--

"8. Property of society how vested.-- The property, movable and immovable, belonging to a society, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title".

A reading of Section 8 makes it clear that that unless the properties had already vested separately in trustees, it shall vest in the governing body of the society. Section 9 deals with the suits by or against societies. Section 16 of Act XII of 1955 deals with the contingencies under which the members are liable to be sued as strangers. Section 19 confers power on the State Government to call for the accounts of the Society. Section 20 deals with the power of the State Government to impose fine on the members of the governing body or servant of the society. Section 23 deals with dissolution of the societies and adjustment of their affairs. Section 25 deals with application to Court for dissolution, framing schemes, etc. Section 25 reads as follows:--

"25. Application to Court for dissolution, framing a scheme, etc.-- (1) When an application is made by the State Government or ten percent of the members on the rolls of a society to the District Court within the jurisdiction of which the society is registered, the Court may, after enquiry and on being satisfied that it is just and equitable, pass any of the following orders:--

(a) removing the existing governing body and appointing a fresh governing body; or

(b) framing a scheme for the better and efficient management of the Society; or

(c) dissolving the society.

(2) Where the application under Sub-section (1) is by the members of the society, the applicant shall deposit in Court along with the application the sum of one hundred rupees in cash as security for costs".

Section 25 makes it very clear that a suit can be filed before the District Court by 10% of the members of the society against the Society for removing the existing governing body and appointing a fresh governing body or for framing a scheme for the better and efficient management of the society. The right to file the suit to frame a scheme is not confined to the State Government alone. The relief that the District Court can grant is not restricted to ordering dissolution of the society only. Section 25 confers power on the members of the Society to institute a suit for removing the governing body or for appointing a fresh governing body for framing a scheme. The only condition is that to file such suit minimum 10% of the members on the rolls of the society shall join together and the suit is to be filed before the District Court. Sub-section (2) of Section 25 provides that the plaintiff has to deposit Rs. 100/- as security for costs.

9. A reading of the various Sections of Act XII of 1955 shows that even if the object of a society formed under the provisions of Act XII of 1955 is a charitable purpose and even if it acquires property and use same for achieving the object of the society, the property is owned by the Society and it belongs to it. The property is that of the society which is a legal person by virtue of the provisions of the statute. It cannot be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. The Society has a legal obligation to use the property for purposes of the society acquired strictly in accordance with the provisions contained in the Rules and Regulations of Memorandum of Association. By no stretch of imagination it can be considered as a declaration of trust in respect of a property acquired by the Society.

10. Now I shall consider the nature of a suit contemplated u/s 92 of the Code of

Civil Procedure. Section 92(1) reads as follows:-

"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 person 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 the 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".

The provisions of Section 92 of the CPC has no application unless three conditions are fulfilled (1) The suit must relate to a public, charitable or religious trust; (2) There must be an allegation of breach of trust or the direction of the Court is required for administration of the trust; and (3) the reliefs claimed are those which are mentioned in the sections (see Ghee Varghese Koshy v. Chacko Thomas (1962 KLT 662)). It is also to be noted that Section 92 deals with those charities only in which the public are interested. Section 92 C.P.C. does not apply to a private trust. In a private trust, the beneficiaries are specific individuals. In the latter, they are general public or a class thereof. In Deoki Nandan Vs. Murlidhar, it was held as follows:-

"The distinction between a private and a public endowment is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof."

In Harendra Nath Bhattacharya and Others Vs. Kaliram Das (Dead) by his Heirs and Lrs. and Others, , it was held as follows:-

"A suit u/s 92 is of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the Court are necessary for the administration of the trust. In the suit, however, there must be a prayer for one or other of the reliefs that are specifically mentioned in the section. Only then the suit has to be filed in conformity with the provisions of Section 92".

The apex Court had followed the decision reported in Mahant Pragdasji Guru Bhagwandasji Vs. Patel Ishwarlalbhai Narsibhai and Others, . In Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, the Apex Court reiterated the principle laid down in Pragdasji''s case. It was held as follows:-

"It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights and in deciding whether a suit falls within Section 92 the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92".

A Division Bench of the Rajasthan High Court in Association of Radhaswami Dera Baba Bagga Singh and Another Vs. Gurnam Singh and Others, held as follows:-

"For the applicability of Section 92 four conditions are necessary: (1) the trust must be for public purpose of a charitable or religious nature; (2) the plaint must allege a breach of such trust or seek Court''s direction for administration of the trust; (3) the suit must be not only in the interest of the plaintiff individually but in the interest of the public or the trust itself; (4) the relief sought must be one of the reliefs mentioned in Section 92".

11. The preamble of the Indian Trusts Act, 1882 states that it was enacted to define and amend the law relating to private trusts and trustees. Section 3 of the Indian Trusts Act defines "trust". It reads as follows:-

"A "Trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner".

To constitute a trust, there must be an author of the trust, trustees, beneficiary, trust property and beneficial interest. The concept of trust involves four ingredients: a settlor or donor, a trustee or trustees, the beneficiaries and the subject matter. Of course, the beneficiaries may be a specified group or general public. Trust may be either express or constructive. But, a trust is created only when the author of the trust indicates with reasonable certainty by words or act the intention in his part to create a trust, beneficiary and the trust property. The subject matter of a trust must be a property transferable to the beneficiary. It must not be merely a beneficial interest.

12. In Kesava Panicker v. Damodara Panicker (1975 KLT 797) a Full Bench of this Court considered the effect of the subsequent registration of a Society. It was held as follows:-

"The effect of the Societies Registration Act is not to invest properties of the society with the character of a trust property. Even if the purpose for which the society was formed was charitable purpose the property acquired for this purpose will belong to the society and there is no trust and no trust can be predicated/ The facts of this case show that the entire community in the area took an active interest and contributed funds for the purpose of creating ''a trust fund'' in order that a school may be established. A committee was formed for collecting funds. The proceedings of that meeting clearly indicate that the intention was to create a trust fund. The trust fund was utilised for the construction of the school building and for the ancillary purposes for establishing and maintaining the work of the school. If there was a trust created by the public, for a public charitable purpose namely establishing, maintaining and running a school the fact of the registration of a society could not change the character of the properties which had already been constituted as trust properties and impressed with the trust and any addition to those properties must also have the same character. So, the High School building, the land, all appurtenances, furniture, equipment and all other properties are trust properties".

That principle was followed in Sukumaran v. Akamala Sree Dharma Sastha Idol (1992 (1) KLT 432). But in both those cases there were materials to show that a public trust was in existence and later that trust got registered under the provisions of Act XII of 1955. I shall consider whether there is any material in this case to show that the 1st petitioner was a trust and later it got itself registered under the provisions of Act XII of 1955.

13. The specific case put forward by the contesting respondents in paragraph 15 of the Original Petition is that counter petitioners 2 to 10 are managing the affairs of the Society against the provisions of Memorandum of Association and Rules and Regulations and the rules and procedures prescribed by Act XII of 1955 and are those relating to public Trust. In paragraph 20 of the Original Petition it is stated that the first counter petitioner is a public trust. It was further averred that the counter petitioners 2 to 10, who are the members of the committee, are trustees. There is no averment as to how and when a member of an elected committee of the 1st petitioner society becomes a trustee. It is further stated in paragraph 20 of the Original Petition as follows:

"The counter petitioners 2 to 10 who being the Trustees of the 1st counter petitioner public Trust and in the management of the 1st counter petitioner have committed breach of trust and violated the provisions of Memorandum of Association and Rules and Regulations and also the decisions taken in the duly convened meetings. Therefore, causing huge loss to the 1st counter petitioner and denying and depriving the rights and privileges of the members and beneficiaries of the 1st counter petitioner by committing mismanagement, misconduct...".

(emphasis supplied)

A reading of various averments in the Original Petition shows that though the word "Trust" is used to describe the 1st petitioner, there is no averments in the pleadings to show the existence of a Trust, whether Public or Private. On the other hand, the materials on record clearly shows that the 1st petitioner is a Society registered under Act XII of 1955.

14. A comparison of Section 25 of the Act XII of 1955 and Section 92 of C.P. Code shows that the reliefs provided u/s 25 of the Act and u/s 92 of the C.P. Code are similar. The suit u/s 25 of the Act is also to be filed before the District Court. The main difference is that to file a suit u/s 26 of the Act a minimum 10% of the members of the Society must join together as plaintiffs. But they need not obtain any permission as contemplated u/s 92 of the C.P. Code. The minimum number of 10% of the members is insisted to see that the Society is not unnecessarily dragged to Court of law. The members of the Society cannot be allowed to circumvent that provision by making an allegation that the Society is a Trust.

15. The learned counsel appearing for the contesting respondents has argued that when there are averments in the petition regarding the existence of a trust, the Court is bound to grant the permission sought for and the Court cannot consider whether the allegation regarding the existence of trust is true or not. It is argued that that is a matter to be decided after taking evidence.

16. It is true that it is the allegation in the plaint that determines the jurisdiction of the Court u/s 92 of C.P. Code. If a breach of trust is alleged in the plaint, it is sufficient to confer jurisdiction to the Court. But, when the very existence of a trust of any kind is denied, the Court must look into the pleadings and the documents produced by the plaintiffs to see whether there is any material to show a prima facie case of existence of the trust. Of course, if the contention is that there is no public trust but only a private trust, a decision as to whether the trust is public or private can be taken only after taking evidence.

17. The learned counsel for the respondents 1 to 6 has argued that if there are averments in the Original Petition to the effect that the O.P. relates to a trust the District Court shall not reject the O.P. on the ground that there is no trust. It is argued that the Apex Court has held that it is not even necessary to hear the respondent before granting leave. It is true that in B.S. Adityan v. B. Ramachandran Adityan (AIR 2004 SCW 3044), the Apex Court has held that leave can be granted without issuing notice to the respondent. But in the very same decision it was also held that the respondent after appearing in the suit, can file petition to revoke the leave already granted. So, there is no merit in the

contention of the contesting respondent that if there are averments in the petition regarding the existence of trust, the District Court shall entertain the application and grant leave.

18. The learned counsel appearing for respondents 1 to 6 has argued that the scope of enquiry, in an Original Petition is very limited and the District Court has merely to see whether there is prima facie case for granting the relief. He relied on the decisions reported in St. Mary''s Church v. Saju (2001 (2) KLT 6, Case No. 6), Neelakantan Namboodiri v. Kumaranallur Devaswom (1991 (2) KLT 36, Case No. 46), Baby v. Steward Co. Ltd. (1990 (2) KLT 26, Case No. 38) and Amrithakumari v. Ramanathan (1998 (2) KLT 305). It is true that the plaintiff need only establish a prima facie case of existence of a trust. But, there must be materials to make a prima facie case of existence of a trust. There is total lack of any such materials in this case.

19. The learned counsel appearing for respondents 1 to 6 has contended that even assuming that the suit filed will not come within the purview of Section 92 C.P.C., still it is maintainable in view of the provisions contained in Section 9 of the C.P. Code. He also relied on the decisions reported in Subramoniam v. Sreenivasan (1971 KLT 699), Walton v. Cochin Stock Exchange Ltd. (1996 (1) KLT 81), Marikar (Motors) Ltd. v. Ravi Kumar ILR (1982 Ker 68), Dr. T.M. Paul Vs. City Hospital (Pvt.) Ltd. and Others, , Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, and Dhruv Green Field Ltd. Vs. Hukam Singh and Others, in support of that argument. Section 9 of C.P.C. deals with the jurisdiction of an ordinary Civil Court. It is well settled position of law that the jurisdiction of the Civil Courts to try all suits of a civil nature is very wide. It is also well settled position of law that the statute which excludes such jurisdiction should be interpreted strictly. In Dhruv Green Field Ltd. case (supra), it was held that even in cases where the jurisdiction of a civil court is barred expressly or impliedly, the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity. But such a suit is to be filed before the civil Court of lowest grade competent to try it and not before a District Court u/s 92 of the Code of Civil Procedure.

20. According to me, the principles laid down in the above cited decisions can have no application to the facts of the present case. The only question arising for consideration in this case is whether the petition filed by respondents 1 to 6 u/s 92 C.P.C. before the District Court alleging that the 1st petitioner is a Trust of public nature is maintainable or not. In this case I need not consider whether the jurisdiction of an ordinary civil Court is taken away on account of the provisions contained in Section 25 of Act XII of 1955. Section 25 of Act XII of 1955 deals with a suit for the reliefs enumerated in that Section. It is well settled position of law that when a statute provides that a particular act shall be done in a particular manner, it shall be done only in accordance with that manner and in no other manner (See Miss Raj Soni Vs. Air Officer in Charge Administration and

another, .

21. The learned District Judge allowed the Original Petition on a wrong assumption that the 1st petitioner Society is a Trust. There is absolutely no material to show prima facie that 1st petitioner is a Trust, either public or private. There is also no material to show that there was a Trust of public nature, which subsequently got registered under the provisions of Act XII of 1955. Since there is no materials to make out a prima facie case that the 1st petitioner is a public Trust and any person had settled any properties, for the benefit of the beneficiaries, the provisions of Section 92 of C.P.C, cannot be invoked. So, the impugned order is illegal, unsustainable and liable to be set aside.

In the result, the Civil Revision Petition is allowed. The order passed by the learned District Judge granting permission to respondents 1 to 6 herein to institute a regular suit in representative capacity is hereby set aside. The Original Petition is dismissed. The parties are directed to suffer their costs. C.M.P. 2255 of 2003 shall stand dismissed.