

(1990) 11 KL CK 0046
In the High Court Of Kerala
Case No : C.R.P. 2183 of 1987

Chandra Worrier Rama Worrier and another	APPELLANT
Vs	
N.S.S. Karayogam and others	RESPONDENT

Date of Decision : 28-11-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1991) 2 KLJ 159

Hon'ble Judges : M. M. Parsed Pillay, J

Bench : Single Bench

Advocate : P. K. Balosubramanyan, for the Appellant; M. P. Gorindan Nair, George Poonthottam and P. Bhavadasan, for the Respondent

Final Decision : Allowed

Judgement

M. M. Parsed Pillay, J.—Revision petitioners are the plaintiffs. They are members of Antheenadu Warriam. The suit is filed for a declaration that N. S. S Karayogam (hereafter referred to as the defendant) has no right to administer the temple which belongs to the family of the plaintiffs and also for rendition of accounts. Main defence is that the suit is not maintainable as no sanction was obtained u/s 92 C. P. C. That plea was accepted by the trial Court and the lower appellate Court.

2. Contention of the plaintiffs is that the suit is only for a declaratory/relief that the defendant has no right to administer the affairs of the temple belonging to their family and that being purely a vindication of private right the averments in the plaint alone are decisive while considering the applicability of Section 92 and not the defence contentions. The question for consideration is when private rights are alleged whether it is necessary for the Court to delve into the defence plea or confine itself to the pleadings in the plaint.

3. Counsel for the plaintiffs submitted that the averments in the plaint would clearly show that the right asserted is a private one and the plaintiffs wanted

only vindication of their right in the temple as members of the family. Counsel for the defendant submitted that Bhaskara Warriar, senior most male member in the family of the plaintiffs had entrusted the temple to the management by the defendant and since then members of the public have largely associated themselves with the functioning of the temple and by course of conduct it has become a public temple and therefore plaintiffs cannot claim any relief in the suit except after obtaining u/s 92. Counsel further submitted that even if the temple was originally a private one it has become a public one during the course of time. A private temple may in the course of time become a public one either by express or implied dedication. By the user of the temple by the public as of right a private temple may become a public one. Defence contention is that the temple has become a public one and this is evidenced by the grant of annuity by the Government under the Kerala Land Reforms Act.

4. The dominant contention of the plaintiffs is that the averments in the plaint do not disclose that it is a public temple and as the relief sought is only for the vindication of private rights Section 92 has no application. For the application of Section 92 the following conditions have to be satisfied:

- (1) the trust must, be for public purpose of a charitable or religious nature;
- (2) the plaint must allege that there is breach of such a trust or that the direction of the Court is necessary in the administration of the trust;
- (3) the suit must be not only in the interests of the plaintiff individually but in the interests of the trust itself; and
- (4) the relief claimed in the suit must be one of the reliefs mentioned in the section.

If any of the conditions is not satisfied, the suit falls outside the scope of Section 92. If the relief sought in the suit is not for one of the reliefs enumerated in Section 92. the provisions of that section are not attracted. A suit u/s 92 is of a special nature which presupposes the existence of a public trust of a religious or charitable character. In a case coming u/s 92 there must be allegation that there is a breach of such trust, or that directions from the Court are necessary for the administration of the trust. The plaint must definitely contain prayer for one or other of the reliefs that are specifically mentioned in Section 92.

5. The allegations in the plaint are primarily to be considered in the first instance to see whether the suit falls within the ambit of Section 92. See *Saraswati v. Ramji Tripathi* (A. I. Ri 1974 S. C.2141 = 1974-2-S. C. C. 695)]. As a suit u/s 92 can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the trust, plaintiff has necessarily to pray for one or more of the reliefs mentioned in Section 92. When a plaintiff is not suing to vindicate the right of the public but seeks a declaration of his individual or personal right, the suit would fall outside the scope of Section 92. A suit whose primary object or purpose is to remedy the

infringement of an individual right of the plaintiff or to vindicate his private right does not fall u/s 92. It is not every suit claiming the reliefs specified in Section 92 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. "If, on the allegation! in the plaint, it is clear that the purpose of the suit is to espouse the cause of family right, Section 92 has no role to play. It is apposite to refer to Charan Singh v. Darshan Singh (A. I. R. 1975 S. G 371 = 1975-1-S. G C- 298) where the Supreme Court held that maintainability of the suit u/s 92 depends upon- the allegations in the plaint and does not fall for decision with reference to the averments in the written statement.

6. A perusal of the plaint would show that plaintiffs have asserted only private rights and they wanted only the vindication, of their right in the temple as members of the family. Their specific case is that Devaswom belongs to their family and that as per family partition it has to be managed by senior-most male member and merely because Bhaskara Warriar entered into an agreement with the defendant the character of the temple is not transformed into a public one and so Section 92 has no application. As the averments in the plaint alone need be considered by the Court, the defence plea cannot be considered at the threshold to hold that require meats u/s 92 have not been complied with. Of course, in a case where evidence is taken and if it is brought out that it is a public trust of a charitable or religious nature the plaintiff must fail for not obtaining permission u/s 92 C. P. G But merely on the allegations in the written statement the Court cannot come to such a conclusion ignoring the averments In the plaint.

The Courts below were not justified in returning the plaint. The judgment in C. M. A. 33 of 1985 confirming the order of the Munsiff in O. S. 158 of 1984 is set aside. The Munsiff is directed to take back the suit in his file and dispose of it in accordance with law. The Civil Revision Petition stands allowed with no order as to costs.