

(2004) 01 MAD CK 0029

In the Madras High Court

Case No : O.S.A. No. 251 of 2003 and C.M.P. No's. 16946 and 15928 of 2003

Chennai Vazhal Duraiyur Nadar Uravin Murai Magamai
Sangam and Others

APPELLANT

Vs

K.A. Gurusamy and Others

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92, 92(1)

Citation : (2004) 2 LW 117 : (2004) 1 MLJ 731

Hon'ble Judges : N. Kannadasan, J;K. Govindarajan, J

Bench : Division Bench

Advocate : R. Krishnamurthy, for S. Dharmakkan, for the Appellant; K. Habibullah Basha, for R. Nadanasabapathy, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajan, J.—The plaintiffs filed the above Appeal having aggrieved by the order, dated 27.6.2003, rejecting their Application, in

Application No. 1650/2003 seeking leave to sue the respondents/defendants and to institute the suit under Sec. 92 of Code of Civil Procedure.

2. The plaintiffs filed the suit under Sec. 92 of the CPC seeking a decree to remove defendants 1 to 8 from the Chennai Vazal Duraiyur Nadar

Uravin Murai Magamai Sangam, directing the defendants to deliver possession of the land and building at Door No. 80, S.R.P. Kovil Street,

Agaram, Chennai.82 to the 1st plaintiff and its members, directing the defendants to return the books, Bank Pass Books, cheques, ledgers, Bill

Books and other records of the Sangam to the plaintiffs and directing defendants 1 to 8 to render the accounts relating to the income from the

Kalyana Mandapam and other receipts received on behalf of the Sangam. Since

the plaintiffs have to obtain leave from the Court before

prosecuting the suit filed under Sec. 92 of the Code of Civil Procedure, they filed the Application No. 1650/2003. The learned Judge in the order

dated 27.6.2003 rejected the said Application on the ground that the Sangam is not a public trust and therefore the Application is not maintainable

as the suit cannot be sustained under Sec. 92 of the Code. Aggrieved against the same, the plaintiffs filed the above Appeal.

3. Pending appeal, the President of the Sangam, Mr. A.S. Annamalaichamy Nadar died and the plaintiffs filed an Application in C.M.P. No.

16946/2003 to substitute Mr. Durairaj Nadar in the place of A.S. Annamalaichamy Nadar on the basis that he was newly elected, after the death

of Annamalaichamy Nadar, on 24.9.2003. Even before filing of the above said Application, the respondents filed another Application in C.M.P.

No. 15928/2003 to dismiss the above Appeal on the ground that the Appeal itself has become infructuous and the Appeal is not maintainable as

Annamalaichamy Nadar died, and without any representation on behalf of the Sangam by a President, the suit cannot be sustained as the Sangam

alone can be construed as an aggrieved body.

4. Learned Senior Counsel appearing for the appellants submitted that the learned Judge has decided the Application only on the basis of the

averments mentioned in paragraph No. 3 of the plaint without reading paragraph Nos.4 and 5 of the plaint, which, according to him, establish that

the appellants/plaintiffs have come forward with the suit only on the basis that the sangam is a public trust. He also submitted that even if the

President of the 1st plaintiff-sangam died, the other plaintiffs can independently sustain the suit in view of Sec. 92 of the Code of Civil Procedure.

In respect of the Application in C.M.P. No. 16946/2003, learned Senior Counsel submitted that the said Application is filed on the basis that after

the death of Annamalaichamy Nadar, Durairaj Nadar has been elected as President of the Sangam. Though the respondents/defendants have

challenged the validity of the said election, the same has to be gone into on the basis of evidence and so the rejection of the said Application at the

threshold cannot be sustained.

5. Learned Senior Counsel appearing for the respondents/defendants submitted that taking into consideration the scope of the relief sought for in

the suit, without the Sangam being a party, the suit cannot be sustained, and since the said Annamalaichamy Nadar died, the suit has to be

dismissed. Learned Senior Counsel also submitted that without seeking a relief for declaration with respect to the status of the trustees, the other

reliefs sought for in the suit cannot be sustained. He further submitted that even according to the appellants/plaintiffs, the respondents/defendants

are not the members of the Sangam, as they have left the Sangam, and the suit as framed against the respondents/defendants cannot be sustained.

On that basis, learned Senior Counsel submitted that the order of the learned Judge does not warrant any interference.

6. The points for consideration in this Appeal are:-

(1) Whether the plaintiffs 2 to 6 can sustain the suit in view of the contentions raised in C.M.P. No. 15928/2003?

(2) Can the plaintiffs sustain the Application in C.M.P. No. 1650/2003 to leave to sue under Sec. 92 of the Code of Civil Procedure?

7. Before dealing with the merits with reference to the order passed by the learned Judge, we are inclined to deal with the C.M.Ps., filed on behalf

of the appellants/plaintiffs and respondents/defendants. The Application in C.M.P. No. 16946/2003 was filed subsequent to the Application in

C.M.P. No. 15928/2003 filed by the respondents, to dismiss the Appeal on the ground that the said Annamalaichamy Nadar, the President of the

Sangam died. In C.M.P. No. 16946/2003, the appellants/plaintiffs have come forward with the prayer to substitute one Durairaj Nadar as the

President of the Sangam, as he has been elected as such. Though the learned Senior Counsel appearing for the respondents raised an objection

regarding the election of the said Durairaj Nadar, the same cannot be gone into at this stage. Moreover, since the appellants/plaintiffs have come

forward with the Application in C.M.P. No. 16946/2003, the objection raised in C.M.P. No. 15928/2003 to dismiss the Appeal is not available

now. Hence C.M.P. No. 16946/2003 is ordered giving liberty to the respondents/defendants to raise their objection regarding the validity of the

election of Durairaj Nadar in the suit. In view of the order passed in C.M.P. No. 16946/2003 allowing the same, C.M.P. No. 15928/2003 is

dismissed.

8. Before dealing with the contentions raised on behalf of the appellants/plaintiffs

and the respondents/defendants on merits, we would like to deal with the scope of Sec. 92 of the Code.

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.

The above said provision is provided to give protection to the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. The following conditions have to be specified to apply Sec. 92 of the Code.

- (a) There should be a trust created for public purpose of charitable or religious nature.
- (b) In case of any alleged breach of such trust, direction of the Court is necessary for administration of such a trust;
- (c) The suit must be representative one on behalf of the public and is not by

individuals for their own interest;

(d) The relief claimed in the suit must be one or other reliefs mentioned in the provision;

The expression ""charitable trust of a public nature"" contemplates the trust to be both charitable one and a public one, the beneficiaries must be

public though not public at large, yet a classified section of it, no specified individuals must be unascertained persons. It is no doubt true, the Court

prima facie satisfies either of breach of trust or of necessity for obtaining direction of the court before granting the relief. The Apex Court in the

decision in Charan Singh and Another Vs. Darshan Singh and Others, , decided the scope of Sec. 92 of the Code and further held that

maintainability of the suit depends upon the allegations in the plaint and does not fall for decision with reference to averments in the written

statement.

9. Even in the decision in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, , the Apex Court found that before

taking evidence in trial, it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the

ambit of Section 92 of the Code.

10. Though the learned Senior Counsel appearing for the respondents/defendants submitted that appellants/plaintiffs 2 to 6 cannot sustain the suit

as contemplated under Sec. 92 of the Code, even individuals, two or more can file such a suit for the benefit of the beneficiaries who are classified

group of uncertain persons.

11. On the basis of the above said principles of law with respect to the maintainability of the suit under Sec. 92 of the Code, now we have to deal

with the present case, on the basis of the contentions raised before us.

12. The learned Judge rejected the case of the appellants/plaintiffs" application No. 1650/2003 to leave to file the suit mainly on the ground that

there is nothing in the pleadings that there was a public trust and the public trust was created or that the property was impressed with the character

of public trust as set out in paragraph 3 of the plaint. As rightly submitted by the learned Senior Counsel appearing for the appellants/plaintiffs, the

learned Judge has not appreciated paragraph Nos.4 and 5 of the plaint, which reads as follows:-

4. The plaintiffs submit Sangam was registered under the Tamilnadu Societies Registration Act 1975 under the Registration No. 280 of 1980 the main objects of the Sangam are among other things to work for the welfare of the Duraiyur Nadar people residing at Chennai, to provide free education and for providing assistance to the handicapped persons and economically downtrodden people and to provide free education and financial assistance for the children of those people who suffered due to fire accident, flood and other natural calamities and to help the repatriates and orphans. The aims of the Sangam are among other things to provide education to the poor and needy. The objects of the Sangam are educational and charitable in nature and the weaker section of the general public is beneficiaries under the Sangam. The Sangam registered under the Tamilnadu Societies Registration Act 1975 is a public trust since the beneficiaries under the Sangam are the Duraiyur Nadar People and economically and socially weaker section of the general public. The Sangam is having bank accounts at MCC Bank, Jawahar Nagar, Chennai.⁸² and Tamilnadu Merchantile Bank Limited, Sembium, Chennai.¹¹ There are 105 members in the Sangam.

5. The Sangam disposed of the above mentioned property and purchased vacant land at No. 80, S.R.P. Kovil Street, Agaram, Chennai.⁸² in the name of the Sangam in 1981 and constructed a Kalyana Mandapam thereon by availing a loan of Rs.9,00,000/- from Subha Mangalam Benefit Fund. The Kalyana Mandapam has been getting rental income regularly. The Sangam repaid the loan in 72 instalments to the Subha Mangalam Benefit Fund out of the rental income from Kalyana Mandapam. Further the Sangam constructed a "Kopuram" for the Padrakaliamman temple at Duraiyur and carried on several other welfare measures including installing idols in the temples and purchased land for the nandhavanam at Duraiyur village and constructed a Kalyana Mandapam at Duraiyur. Every year Sangam contributed large amounts for the Chitrai Thiruvizhla celebrated at Duraiyur. The Sangam also providing the monetary assistance for the education of the poor and needy.

13. The suit is not filed to vindicate the individual rights but to vindicate the welfare of Thuraiyur Nadar people residing in Chennai, who are the beneficiaries of the charitable trust created. Even from the object of the 1st plaintiff-sangam as mentioned in paragraph 4 of the plaint, it is clear that

the Sangam was formed with a view to do charity to the beneficiaries therein providing free education, assistance to the handicapped and

economically downtrodden persons and to provide financial assistance for the children of those people who suffered due to fire accident, flood and

other natural calamities. Paragraph 5 of the plaint also deals with as to how the Sangam is getting income for the purpose of doing charity.

14. But, the learned Judge rejected the Application, as stated already, only by reading paragraph No. 3 of the plaint and came to the conclusion

that there is nothing in the pleadings to vindicate that there was a public trust and the public trust was created.

15. The next ground on which the Application was dismissed is that the appellants/plaintiffs are having the remedy under the Tamil Nadu Societies

Registration Act, 1975, for setting right the wrong and the appellants herein cannot on that score seek leave to sue under Sec. 92 of the Code. In

the plaint it is specifically stated that defendants 1 and 2 who are the Secretary and Treasurer of the Sangam, have been in-charge of the Kalyana

Mandapam and collecting the rents till date of the suit, and taking advantage of the possession of the Kalyana Mandapam, the defendants 1 and 2

along with the other defendants registered a private Trust in order to misappropriate the properties of the Sangam. As stated already in paragraph

Nos.4 and 5 of the plaint, from the income derived from the said Kalyana Mandapam, the 1st plaintiff-sangam was doing charities to the welfare of

the beneficiaries. Even in paragraph No. 11 of the plaint, it is stated about the misfeasance and malfeasance which are being committed by

defendants 1 and 2 in the course of the management of the Sangam in order to grab the immovable and movable properties of the Sangam. On that

basis, the suit is filed to remove defendants 1 to 8 from the Sangam, for a decree directing the defendants to deliver possession of the land and

building at No. 80, S.R.P. Kovil Street, Agaram, Chennai.82 to the 1st plaintiff-sangam and for accounts relating to the income from the Kalyana

Mandapam and other receipts received on behalf of the Sangam. The said prayer certainly would come under the categories mentioned under Sec.

92(1) of the Code. The correctness of the same has to be gone into only at the time of trial.

16. Since the learned Judge has not decided the issue on the basis of the relevant averments in the plaint, we appreciated the entire pleadings to

decide the sustainability of the Application filed by the appellants under Sec. 92 of the Code.

17. The learned Judge is not correct in concluding that the appellants/plaintiffs have come forward with the suit only making complaint regarding the

violation of the provisions of the Tamil Nadu Societies Registration Act, but they have come forward with the specific plea in the plaint that the

property of the Sangam, namely, Kalyana Mandapam, which was constructed to get income to do charity to the beneficiaries mentioned in the

object of the Sangam, who are classified group of uncertain persons, but it has been taken over by a private Trust. So the said complaint cannot be

construed only as violation of the provisions of the Tamil Nadu Societies Registration Act, 1975 but the nature of relief sought for has to be gone

into only by the civil Court.

18. For all the reasons stated above, C.M.P. No. 16946/2003 is allowed and C.M.P. No. 15928/2003 is dismissed and the order passed by the

learned Judge in Application No. 1650/2003, dated 27.6.2003 is set aside and Application No. 1650/2003 is allowed. Consequently, this Appeal

is allowed. No costs.