

(1988) 10 KAR CK 0018

In the Karnataka High Court

Case No : C.R.P. No. 3487 of 1984 & C.R.P. No. 3487/1984

D. Achariah Setty and Others

APPELLANT

Vs

D. Adinarayana Setty and Others

RESPONDENT

Date of Decision : 05-10-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 92

Citation : (1989) 1 KarLJ 79

Hon'ble Judges : S. Rajendra Babu, J

Judgement

Rajendra Babu, J.-This revision petition is directed against an order dated 8-10-84 made by the Principal City Civil and Sessions Judge, Bangalore City, in Miscellaneous Petitions No. 680/83, which is a petition filed under Section 92 of the Code of Civil Procedure for grant of leave to file a suit. Though the learned Judge has not disposed of that application, he only considered the question in relating to the nature of the trust, namely, public or private and held the same to be a public trust.

2. This Court in THE CHURCH OF SOUTH INDIA TRUST ASSOCIATION v REV. D.I. ANAND & OTHERS (1980(2) Kar. L.J. 469) following several decisions of the Supreme Court, has formulated principles to be considered while dealing application for grant of leave u/s 92 of the Code of Civil Procedure, thus:

1. Whether there is a public trust;
2. Whether there are allegations alleging breach of trust or the directions of the Court are necessary for the administration of such a trust;
3. That the suit to be filed must not only be in the interest of the plaintiffs individually but in the interest of the trust itself; and
4. That the relief to be claimed in the suit should be for one of the reliefs mentioned in Section 92 of the Code of Civil Procedure.

The Learned Judge considered only one aspect of the matter i.e. the nature of

the trust and not the other questions. When the application itself has not been disposed of, it is not clear as to whether there is any case decided for the purpose of Section 115 C.P. Code moreover, the observations made by the Court while considering such an application are only for the purpose of that application and do not bind the parties of the Court itself which to finally decide the suit. Be it so. In as much as the application itself has not been disposed of finally I do not think that it is necessary to decide any of the points raised on behalf of the petitioners in this petition for the time being. This case is premature as the Court below has still to consider and decide the other aspects that have been referred to above. If the petitioners are still aggrieved by the final order on the application, they can approach this Court for appropriate relief including matters raised in this petition. This revision petition is dismissed subject to the observations made above.

Petition dismissed