

(1962) 06 KL CK 0018
In the High Court Of Kerala
Case No : C.R.P. No. 1003 of 1959

Gheevarghese Koshy

APPELLANT

Vs

Chacko Thomas of Pallimadyil and Others

RESPONDENT

Date of Decision : 14-06-1962

Acts Referred:

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

Citation : AIR 1963 Ker 191

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : M. Abraham, for the Appellant; K.P. Abraham, G. Velayudhan Nair, E.M. Jacob and K.K. Poullose, for the Respondent

Final Decision : Allowed

Judgement

T.C. Raghavan, J.—The trial court appointed the 2nd defendant and another as receivers pending O. S. No. 173 of 1959 on its file. On appeal and cross-appeal by the parties the lower appellate court set-aside that order and granted a temporary injunction as prayed for in the plaint. The 2nd defendant has come up in revision questioning the jurisdiction of the lower courts to pass any interim order at all. When the case came up before me on a previous occasion, the learned counsel on both sides agreed that the question regarding jurisdiction of the trial court to entertain the suit itself might be decided as a preliminary issue before the Civil-Revision Petition was taken up for hearing. Therefore, I directed the trial court to submit a finding regarding its jurisdiction to try the suit itself; and" the trial court has now submitted a finding that the suit falls beyond the scope of Section 92 of the CPC and therefore it has jurisdiction to try it. The correctness of this finding is challenged before me as a preliminary to the hearing of the Civil Revision Petition itself.

2 Four parishioners of the Kadeesa Church at Kayamkulam filed the suit in their individual capacity and representing the other parishioners and also on behalf of the Church itself. In the plaint they alleged that the Church was bound by a trust

in favour of the Jacobite Syrian Community subject to the spiritual supremacy of the Patriarch of Antioch. Defendants 1 to 15 were elected as a Committee to manage the affairs of the church at a meeting held on 15th March 1959. The validity of this meeting and the authority of defendants 1 to 15 to manage the affairs of the church are questioned by the plaintiffs. According to the plaintiffs, the church was being managed by a validly constituted committee consisting of defendants 1, 9 and 22 to 26 under an earlier order of 10th August 1958 issued by the 21st defendant, who was the Metropolitan. On these allegations the plaintiffs prayed for a declaration that the meeting of 15th March 1959 and the proceedings of that meeting were invalid; for restraining defendants 2 to 20 and others belonging to their party from interfering with the administration of the church; and also for the appointment of a receiver for collecting the income and producing it in court. There was also a prayer for framing a scheme for the management of the Church. The temporary injunction was granted pending the above suit with the aforesaid prayers. .

3. The main contention of the defendants was that the Church was a public charitable trust and that the suit was hit by Section 92 of the CPC as there was a prayer for framing a scheme. On that ground the contesting defendants prayed that the suit might be dismissed, as it was not presented in the Principal Civil Court of original jurisdiction, nor was it filed with the consent of the Advocate General. The written statement was filed after I called for the finding from the trial court. Thereafter the plaintiffs filed a replication, in which they alleged that the church was not a public trust and that they did not press the prayer for framing the scheme. After considering the aforesaid relevant allegations in the pleadings, the learned Munsif has submitted the finding already referred to.

4. Mr. D. A. Krishna Variar, the learned advocate of the petitioner, contends that the suit as originally filed was one coming within the mis-chief of Section 92; and therefore the subsequent withdrawal of one prayer would not save the suit. He urges further that, in a suit coming within Section 92(1) with other prayers as well, which do not come within Sub-clauses (a) to (h) in Section 92(1), if there is one prayer coming within any of those sub-clauses, the whole suit has to be dismissed; and the court would not be justified in refusing the offending prayer alone and granting the other prayers. For these propositions he relies on *Abdur Rahim v. Abu Mahomed Barkat Ali* AIR 1928 PC 16; *Narsidas Jekisondas v. Ravishankar Prabhashankar* AIR 1931 Bom. 33 ; *Annappa Ramchandra Pai Vs. Krishna Narayan Prasad*, and *Vishram Manji v. Gangaram Ladha* AIR 1939 Sind 13.

5. Therefore, I have to decide whether this case as originally filed was one coming within Section 92 of the Code of Civil Procedure. If I come to an affirmative conclusion on that question, then the other question will arise, i.e., whether the withdrawal of the prayer, which falls within one of the Sub-clauses (a) to (h), will save the suit. For the application of Section 92 three conditions are necessary, namely, (i) there must be an express or constructive trust

created for public purposes of a charitable or religious nature; (2) there must be an alleged breach of trust or the direction of the court should be deemed necessary for the administration of that trust; and (3) there should be a claim for any of the reliefs specified in Sub-clauses (a) to (h) of Section 92(1). This is clear from the section itself and Beaumont C. J. in one of the cases relied on by Mr. Krishna Variar also observes so: (see also Sarat K. Mitra Vs. Hem Ch. Dey and Others, . It is also clear that all suits, founded upon any breach of trust for public purposes of a charitable or religious nature irrespective of the relief sought, would not come within Section 92. This is laid down in the Privy Council decision cited by Mr. Krishna Variar. Similarly, a suit for a declaration that the property in suit belongs to a public trust of a religious and charitable character does not fall within the mischief of Section 92 : (Vide Ranchhoddas Kalidas and Others Vs. Goswami Shree Mahalaxmi Vahuji and Others, ; and also Ganpat Pujari Vs. Kanaiyalal Marwari, . Thus, it is clear, for Section 92 to apply all the three conditions enumerated under the Section must co-exist; i.e., there must be an express or constructive trust for public purposes of a charitable or religious nature; there must be an allegation of breach of trust or the direction of the court should be deemed necessary for the administration of such trust; and the suit should have a prayer for any one of the reliefs mentioned in Sub-clauses (a) to (h) in Clause (i) of Section 92. If any one of these conditions is not existing, then the suit will not come within the mischief of Section 92.

6. The learned Munsif finds that the Church involved in this case forms a public trust. Mr. K. P. Abraham, the learned counsel of the contesting respondents, contends that this finding of the learned Munsif is incorrect. Paragraph 1 of the plaint alleges that the Kadeesa Church at Kayamkulam belongs to the Jacobite Syrian Community at Kayamkulam. There is the further allegation in the same paragraph that the Church is bound by a trust in favour of the Jacobite Syrian Community subject to the spiritual supremacy of the Patriarch of Antioch. These allegations prima facie show that the Church is a public trust, because the beneficiaries of the trust form a section of the general public. Moreover, there is no allegation anywhere in the original plaint that the church is a private trust. Therefore, the finding of the learned Munsif that the Church forms a public trust has to be accepted.

7. In the plaint as originally laid prayer (d) was to the effect that the court might frame a scheme for the proper and efficient management of the Church. Paragraph 12 of the plaint, even after the withdrawal of prayer (d) by the replication, stands; and it reads that in the interest of the plaint-Church, for the proper and efficient management thereof, a scheme of management is necessary, and hence it is prayed that the court may be pleased to frame a scheme for the management of the plaint-church. Thus the original plaint undoubtedly contained a prayer coming within one of the Sub-clauses (a) to (h) of Section 92. But as rightly pointed out by the learned Munsif no breach of trust is alleged anywhere in the plaint. At the same time paragraph 12 clearly indicates that the direction of the court is deemed necessary for the proper and

efficient management of the Church. Therefore, even if there is no allegation of any breach of trust, there is the allegation that the direction of the court is deemed necessary for the management of the trust. Thus, according to me, all the three elements necessary to bring the suit within the mischief of Section 92 were there in the plaint as originally laid.

8. The further question for consideration is whether the withdrawal of the offending prayer, namely, the prayer coming within one of the Sub-clauses (a) to (h) of Section 92, will save the suit from the mischief of Section 92. I think not. In *Annappa Ramchandra Pai Vs. Krishna Narayan Prasad*, already referred to, Broomfield J. observes at page 416 :

"In my view that must mean that the question whether Section 92 has to be applied must depend upon the prayers in the plaint at the date when the suit was instituted, and the provisions of the section cannot be evaded by an amendment of the plaint at a later date."

The same view is expressed by a Division Bench in *AIR 1939 Sind 13*, which has also been already referred to. (Vide also *Gajramji Jasramji Maharaj Vs. Somnath Bhudardas Soni*, . I am inclined to agree with the view taken in the aforesaid cases; and I hold that the allegations in the plaint as originally laid must be looked into to find out whether the suit would come within the mischief of Sec. 92 of the CPC or not.

9. Mr. K. P. Abraham, on behalf of the contesting respondents, invites my attention to some decisions for the proposition that in a suit as originally laid coming within the mischief of Section 92, if the offending prayer is later on withdrawn, the other prayers can be granted and the suit can be tried by the court, which will have jurisdiction if the offending prayer is withdrawn. One of the decisions cited is *Ganpat Pujari Vs. Kanaiyalal Marwari*, . In that case the suit was for a declaration that a certain property was public property, to which the entire Hindu community was entitled to go and worship, and the learned Judge held that such a suit would not come within Section 92; and consequently, the prayer in the plaint was granted, because the suit itself as originally laid did not come within the mischief of Section 92. This decision cannot therefore support Mr. Abraham. Another decision brought to my notice by Mr. Abraham is the unreported decision in *AIR 1955 N.U.C. (Assam) 2801 : ILR (1954) Gau 361*. The case is *Ambar All v. Ataur Rahman*. There also the suit was for declaration that the plaintiffs were the beneficiaries in respect of certain shares of the income of the Wakf under a deed of wakf and for accounts from the 1st defendant as Mutawalli and also for appointment of receiver. The Division Bench held that such a suit did not fall within Section 92, as the suit itself was brought for the enforcement and protection of the individual rights of the plaintiff and not for the benefit of the public in a representative capacity. This decision also does not apply to the present case. The present suit is undoubtedly a representative suit and the suit as originally laid was again undoubtedly within the mischief of Section 92. Therefore, the decisions cited by Mr. Abraham, in my view, do not

help him.

10. Hence I hold that the lower court had no jurisdiction to entertain the suit and has no jurisdiction to try it even after the withdrawal of prayer (d) in the plaint, with the consequence that the temporary injunction granted by it was without jurisdiction. The Civil Revision Petition is therefore allowed and the plaintiffs are directed to pay the costs of the 2nd defendant-petitioner in this Court.