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**(1991) 04 AHC CK 0036**  
**In the Allahabad High Court**  
**Case No : Civil Revision No. 396 of 1991**

Gyan Prakash Chaurasia and others

APPELLANT

Vs

Bans Narain Rai and another

RESPONDENT

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**Date of Decision :** 29-04-1991

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 92

**Citation :** AIR 1991 All 266 : (1991) 2 AWC 209

**Hon'ble Judges :** B.L. Yadav, J

**Bench :** Single Bench

**Advocate :** Sankatha Rai, for the Appellant;

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## Judgement

1. This is a defendant's revision in a suit filed by the plaintiff opposite parties I to 5 under S. 92 of the Civil P.C., 1908 (for short the Code), against the applicants, the defendants, who were vendees of the trust properties. The relief sought in the suit was that the defendant No. 1 is the Sarbarakar of the temple named Mahavir Ji containing idol of Ram Janki and Laxman and also a Sheo temple. The defendant No. 1 Ram Kar Pandey, opposite party No. 6 was the Sarbarakar that he was mismanaging the property as he was not making arrangement for the worship and prayer in the temple, rather he has transferred a sizeable portion of the property dedicated to the temple to defendants Nos. 2 to 4 the present applicants, and thus he has mismanaged the trust properties. The defendant No. 1, the alleged Sarbarakar did not file any objection in the proceedings under S. 92 of the Code, rather opposite party Nos. 2 to 4, the present applicants contested the application denying that there was no temple either of Mahavir Ji or Ram Janki or Laxman, nor the property was trust property. It was alleged that Ram Kar Pandey, the defendant No. 1 was the owner of the property. The defendants 2 to 4 have purchased the property from defendant No. 1 and the plaintiffs have no right to file the application under S. 92 of the Code. The plaintiffs wanted themselves to purchase the property. The application under S. 92 was allowed by the impugned order.

2. Sri Sankatha Rai, learned counsel for the petitioner urged that the suit or the application under S. 92 of the Code must be filed against the trustee and not against defendants Nos. 2 to 4, the present applicants, who were vendees and the plaintiffs must have personal interest in the property and the property must be a trust property.

3. Having heard the learned counsel for the applicant I am of the view that the revision is devoid of merits. The suit or application under S. 92 of the Code has got a unique characteristic. It pre-supposes the existence of a public trust of a religious or charitable character and the suit can proceed only on the allegation that there is a breach of the trust and a consequential direction from the court has become imminent. The plaintiff has to pray one or more reliefs specified under the section. The suit is filed not in the individual capacity as plaintiff or plaintiffs, but as representatives of the public in general for vindication of public rights. In deciding whether plaintiffs have correctly filed the suit as representatives of the public or as private individuals, apart from looking into the reliefs claimed, the court must consider the capacity in which the plaintiffs are suing and the purpose for which the suit is brought.

4. The legislative history may be noticed in order to appreciate the expression "having an interest in the trust". Under S. 539 of C.P.C. 1877, the words were "a direct interest", but under the subsequent Code of 1888 the expression was substituted by the expression "an interest in the trust", just with a view to widen the class of persons who could be entitled to institute under the section. The same expression has been maintained under the present Code even after the amendment of 1976.

5. In the instant case it has been specifically alleged that defendant No. 1 was the Sarbarakar, but he was posing himself as if the trust property was his own personal property. It was alleged that plaintiff No. 1 Bans Narain Rai was the Pujari of the temple and other plaintiffs were devotees and interested in offering Puja etc. It was further alleged that it was the trust property which was sold by defendant No. 1 in favour of defendant Nos. 2 to 4. Unless defendants Nos. 2 to 4 were made defendants the substantial relief as envisaged under S. 92 could not be obtained, hence they were necessary parties in a suit in respect of property of trust created for public purpose of charitable or religious nature.

6. The court below has considered the submission and recorded a finding that it was trust property mismanaged by defendant No. 1 and others and that the plaintiff has interest in the property. These are findings of fact correctly arrived at by the court below. There are no merits in the submissions of learned counsel for the applicants.

7. Consequently, the present revision is devoid of merits and the same is dismissed.

8. Petition dismissed.