

(1977) 08 MAD CK 0022
In the Madras High Court

Kumudavalli Ammal alias Kuppammal and Another
Vs

APPELLANT

P.N. Purushotham

RESPONDENT

Date of Decision : 16-08-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1978) 91 LW 205 : (1978) 1 MLJ 261

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

Ramaprasada Rao, J.—The plaintiffs in a suit filed u/s 92 of the Code of Civil Procedure, in C.S. No. 73 of 1972 on the file of the Original Side of this Court, are the appellants. After obtaining the sanction from the Advocate-General, Madras, the plaintiffs have filed the present suit to remove the defendant from trusteeship, for appointing a fit and proper person as trustee of a public trust endowed for the purpose of running and maintaining what is known as Nagammal Hindu Higher Elementary School, which was dedicated by late Nathamuni Chetti under a deed of trust dated 2nd June, 1941. For the said purpose certain immovable properties were also earmarked by the author of the trust. The plaintiffs complained of mis-management by the respondent, who is now functioning as trustee. They would claim to be interested in the trust, the first plaintiff being the widow of late Nathamuni Chetty and the second plaintiff being a close relation and old boy of the Elementary School besides being a resident of the locality. They catalogued several events in the plaint according to which their main complaint is that the defendant failed to maintain the school as per the directions of the trust and the author of the trust and has also caused wanton and continuous breach of the express terms thereof. They would also demand an account from the defendant from 1969 till date and sought for ancillary reliefs. The defendant in the written statement questions the status of the second plaintiff as a plaintiff in a suit u/s 92 of the Code of Civil Procedure, as he is not a descendant of the founder and as he cannot be said to have any real or substantial interest in the trust. He would, therefore, allege that the suit

is not properly framed and therefore, not maintainable, as the primary requirement u/s 92, Civil Procedure Code, is that there should be two or more persons interested in the trust, who could seek for any reliefs set out in the section. Besides challenging the sanction given by the Advocate-General the defendant would complain that the plaintiffs objective is to enrich themselves and not to further the objects of the trust. He would deny that he has committed any acts of waste and would plead that if any other trustee is appointed to manage the trust in the place of the defendant it would amount to a violation of the founder's express desire and considered intention.

2. Paul, J., who tried the suit, framed the following issues:

1. Whether the suit is not maintainable for any reason?
2. Whether valid sanction has been obtained from the Advocate-General u/s 92, Civil Procedure Code?
3. Whether the trust is being mismanaged by the defendant?
4. Whether the grant is suspended on account of mismanagement on the part of the defendant?
5. Whether any breach of the wish of the founder of the trust was caused by the defendant?
6. Whether the first plaintiff is entitled to file this suit?
7. To what relief is the plaintiff entitled?

3. On the first issue, the learned Judge found that the suit was not maintainable since in the related circumstances the second plaintiff cannot be said to have the requisite interest to file and prosecute the action. He held that the plaintiffs obtained due sanction from the Advocate-General and are entitled to file the suit. On issues 3, 4 and 5 which covered the main points of controversy between the plaintiffs and the defendant, the learned Judge after an elaborate discussion into the oral and documentary evidence held that the main item of trust, namely, the Nagammal Hindu Higher Elementary School is being mis-managed by the defendant and that the grant by the Government was suspended on account of such mis-management and that the defendant acted against the wishes of the founder. In the end however, the learned Judge observed as follows:

In view of my findings on issues Nos. 2 to 5, the plaintiffs would have been entitled to all the reliefs which they have claimed in the plaint, but in view of my finding, on issue No. 1 that the suit is not maintainable since the second plaintiff does not have the requisite interest, this suit has to be dismissed and the plaintiffs will not be entitled to the reliefs claimed in this suit. Hence this suit is dismissed, but, in the circumstances of the case, I direct each party to bear their own costs". The plaintiffs have come up in appeal.

4. The respondent is not represented before us. It, therefore, became necessary

for us to consider the question in some detail. We may at once state that as the respondent is not before us and has not cared to challenge in any manner the findings of the learned Judge on issues 3, 4 and 5, which is to the effect that the defendant did commit acts of waste and mis-managed the trust and acted against the wishes of the founder, it is not necessary for us to retread the ground. We however perused the judgment and we have no reason at all to differ from the findings on these issues of the learned Judge. We, therefore, confirm the same.

5. The only substantial question which arises for consideration in this appeal is whether the suit as framed is maintainable. Section 92 of the Code of Civil Procedure, which operates as a shield against the mismanagement of public trust whether charitable, religious or otherwise is, as far as possible exhaustive so as to afford protection for the due and proper maintenance, upkeep and processing of public trusts and to guard against mismanagement, misappropriation and wild indulgence on the part of those who are for the time being enjoined to administer such trusts. The infringement of private rights is undoubtedly outside the scope of enquiry under the section. As long as it is apparent from the pleadings and from the evidence let in a particular action that the suit was not for vindication of personal or individual rights, but the suit was brought in a representative capacity for the advancement of the objects of the trust, then there can be no possible bar to the maintainability of such a suit. It should be established that the persons, who are complaining against the administrators of the trust have a real interest in present and not a mere sentimental interest. The purposeful use of the expression two or more persons having a direct interest in the trust was intended to widen the class of persons entitled to institute the suit under the section. Here again, the interest should be real, substantive and an existing interest and not a mere remote, fictitious or contingent one. It would, therefore, appear from the meaningful expansion of the word "interest" in Section 92, Civil Procedure Code, that a person in order to lay a suit under it should plead and establish that he has some tangible interest towards the maintenance and progress of the public trust. Such an interest could be established in a number of ways. A resident of the locality who has some nexus or connection with the trust in the sense that he has interest in its well-being and prosperity, can, under certain circumstances be taken to be a person having an interest in the trust. In the case of a temple a fair presumption of the existence of such a right in a person can be raised in the case of a resident in the locality, who visits the temple and who takes part in normal rituals and religious functions. In the case of a public school such presumption could also be raised if he is an old student of the school, which necessarily involves a connection with it and if he is also a resident of the locality in which the school is situate he is doubly qualified to lay an action along with another u/s 92, Civil Procedure Code. What is to be primarily established is that the suit relates to a trust created for a public purpose; (2) it should contain allegations against the person-in-breach, such as breach of trust, misappropriation or mismanagement; and (3) the

necessity in the particular circumstance of a given case for administration of the trust by a body other than the body in management. If two or more persons having an interest in the trust file such a suit, then it is maintainable. The question in the instant case before us is whether the second plaintiff has such an interest.

6. It is, therefore, necessary for us to deal with the evidence let in this case before we consider further the legal requirement and its aspects. One argument which was addressed before us was that the second plaintiff is the son of the "founder's wife's sister. Such a relationship cannot be said to be a substantial compliance of the primordial requirement u/s 92, Civil Procedure Code, for the maintainability of a suit under it. A remote relationship through the female line by itself, cannot, as rightly pointed out by the learned Judge, be such an interest which is sufficient for him to lay an action along with the 1st plaintiff against the defendant, particularly under the special procedure prescribed u/s 92, Civil Procedure Code.

7. Next, can the second plaintiff be said to be interested in the trust because he is a member of the public and a resident of the locality? We have already hinted at the weightage to be given to this aspect. No doubt mere residence and the badge of being a member of the public of the locality may not by itself be sufficient to hold that the second plaintiff has sufficient interest within the meaning of Section 92, Civil Procedure Code. The school in question as founded by late P.V. Nathamuni Chetti is admittedly a public school in the sense that all members to whichever community they belonged are admitted. In the peculiar case under consideration which relates to the creation of trust for the running of a school several peculiar features enter into the discussion. A resident of the locality in which the school is situate and in which the trust is functioning may not have a direct nexus with the management of the institution, but is undoubtedly interested in keeping the school truthful, upright and well-managed. After all a school is established by a donor so as to propagate education amongst the children in the locality and any parent therefore, living nearby would obviously be interested in raising an expectation within himself that the school is a fit and proper institution in which his children could study. If it is a case of a temple or choultry evidence may be necessary to show that a resident visits the choultry or the temple or that the choultry was put up therein for the benefit of the community to which the donor belongs. But in the case of a school such an objective test is not possible. If a fair inference could be drawn that a resident in the locality is subjectively interested in the well-being of the school and, therefore, the trust, since his object is that his descendants as also the children of the parents in the locality should conveniently get their education in the nearby school, then such an interest would in our view come within the meaning of the expression "having an interest" and cannot be held to be illusory or hypothetical. Indeed the line of cases cited before the learned Judge all related to either a temple or a choultry and the ratio in such decisions was that in order to uphold an interest in such trusts, it should be a present and a substantial one

and not a remote and a fictitious one. The learned Judges in the cases cited before Paul, J., were concerned with either a temple or a mosque or a choultry. In all such cases it was held that the visitations to a temple and resort to a choultry or frequent visits to a mosque could only create such a present and substantial interest, but can that theory automatically be extended to a school which is the fountain of education to which children are sent by the people in the locality to get their children educated? Excepting for their subjective satisfaction that the school is run well and on sound grounds by persons who are fit and proper to administer the same, they cannot be said to have any more interest in the well-being of the school. Nevertheless such an interest cannot be said to be a fictitious or an illusory one. In our view it has a present and a meaningful interest also in the trust because the residents are interested in the well being of the school and its proper regulation. It is not necessary that a particular person to have an interest u/s 92, Civil Procedure Code, should be personally interested or personally affected by any act done by the administrator of the trust. If it could be established that they are interested in the proper conduct and running of the trust and are involuntarily involved in evincing interest in its being regulated and conducted in accordance with the terms of the trust, it would reasonably be said that such a person has enough of an interest in the trust concerned.

8. In the instant case it is not in dispute that the second plaintiff is a resident of the locality and is thus a member of the public. The claim of the second plaintiff is that he has studied during 1947-48 in this school. This is corroborated by P.W. 7 the first plaintiff. The defendant did not produce any records of the school of the year 1947-48 to disprove that the plaintiff was not an old student of the Nagammal Hindu Higher Elementary School of which he is the trustee. P.W. 1's evidence is that the second plaintiff's parents were living outside Madras and that even during the lifetime of her husband the second plaintiff was brought up by her and was educated in the early days in Nagammal's school. Paul, J., was of the view that since the second plaintiff did not summon the production of the transfer certificate issued to him by the Nagammal Hindu Higher Elementary School, his case should not be believed. But on the other hand by making a specific and a serious allegation which touches the core of the suit in so far as its maintainability is concerned, the onus shifted to the defendant to disprove such an allegation. We have no special ground to disbelieve the plaintiffs that the second plaintiff was an old student of the school. The point made out was that no such allegation was made in the plaint. In the plaint no doubt, the second plaintiff pleaded that he was entitled to file the action and he was a member of the public and interested in the growth, welfare and good management of the trust. The fact whether he was an old boy of the school is only a matter of evidence and need not be a matter of pleading. He swore to this aspect in the witness box and was supported by the first plaintiff as P.W. 7. We have already made it clear that in the case of a temple, visitations to it on important occasions like marriage festivals or other religious functions in the temple itself might be a

substitute of evidence to show that a resident within two or three miles of the temple site might be said to have an interest in the temple. But in our view when it is established that the second plaintiff was a resident of the locality and was also a member of the family of the first plaintiff and her husband, though in the female line and claims to have studied in the school during the particular period for which there is no contrary evidence, it cannot be said that the second plaintiff has no interest at all in the well-being and upright management of an educational institution which, as we reiterated already, is intended to benefit everyone in the locality in the sense that it has been created for the purpose of bringing into its fold the children who are the children of the residents in the surrounding locality and train them as citizens of our country.

9. We agree with the learned Judge that plaintiffs are not actuated by any personal interest or personal motives in filing this action. But we are unable with respect to share his view that the second plaintiff cannot be said to be a person having an interest in the trust.

10. For the foregoing reasons we are of the view that the second plaintiff, in the circumstances of the case and having regard to the fact that the subject-matter of the trust is a public school it should be held that he is a person having a substantial interest in the well-being of the institution and that the second plaintiff along with the first plaintiff do comply literally with the mandates regarding the number of persons to institute the action u/s 92, Civil Procedure Code. We are aside the finding under issue No. 1 and hold that the suit has been properly filed.

11. We have already held that the learned Judge in all other respects condemned the action of the defendant and in fact expressed the view that but for his finding on issue No. 1, that the suit is not maintainable, the plaintiffs should be entitled to all the reliefs which they have claimed in the plaint. As according to us the suit is maintainable, and as there is no challenge on the findings rendered by the learned Judge on issues 2 to 5 the suit has to be decreed as prayed for and the defendant is directed to render a true and proper account of the income derived in the management of the school from 1969 till date. The subject-matter however is remitted back to the learned Judge sitting on the Original Side for him to frame a suitable scheme for the administration of the trust and after the scheme is so framed, direct the defendant to deliver the suit properties to the new trustees to be appointed under the scheme and pass such further orders as are necessary for the vesting of the properties in the trustees to be constituted under the scheme.

12. The appeal is allowed, but there will be no order as to costs.