

(2009) 04 MAD CK 0556

In the Madras High Court

Case No : C.R.P. (P.D.) No. 3516 of 2008 and M.P. No. 1 of 2008

K.V. Natarajan and N. Lakshmi

APPELLANT

Vs

K.V. Anantharaj and Dr. A. Prabavathi

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2010) 4 LW 850

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : N. Suresh, for the Appellant; T.R. Rajagopalan, for Ravichandra Babu, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The petitioners are first and second defendants in O.S. No. 15 of 2006 on the file of the Principal District Judge, Villupuram. The suit has been filed by the respondents praying the Court to remove the defendants 1 and 2 from the office of the trustees of Rajas Educational Trust, Tindivanam and to direct the defendants 1 to 3 to submit accounts for income of the said property. Earlier, a suit was filed in Sub-Court, Tindivanam in O.S. No. 121 of 2002 and subsequently it was transmitted to the Principal District Court, Villupuram. The respondents filed application u/s 92 of C.P.C. for grant of leave to institute the suit and after granting leave, the suit was numbered. The petitioners filed I.A. No. 361 of 2008 under Sections 92 and 151 of C.P.C. To revoke the order of granting leave to sue the respondents in I.A. No. 251 of 2002 in O.S. No. 121 of 2002, u/s 92 of C.P.C.

2. In the affidavit of the first petitioner the following allegations are found:

2. (i) There are as many as 4 suits in Courts, only one suit in O.s. No. 72 of 2005 was filed by the petitioners. Knowing fully well, that the allegations in their plaint do not come within the purview of Section 92 C.P.C., the respondents have

filed another suit in O.s. No. 105 of 2008, and the alleged same misdeed of 1st petitioner is sought to be enlightened in both the suits with regard to purchase of properties. O.S. No. 104 of 2008 and O.S. No. 105 of 2008 would go to show that the respondents are interested in ventilating their personal grievances. The respondents obtained order of injunction in I.A. No. 250 of 2002 in O.S. No. 121 of 2002 against which C.M.A. No. 564 of 2003 was preferred before the Division Bench of the High Court and the same was ordered in favour of these petitioners on 23.12.2003.

2. (ii) The first petitioner is in charge of the day to day administration of institution from 10.3.2002 and to be the Chariman of the Trust from 10.06.2004. The respondents have stated that the value of the suit is Rs. 2,00,00,000/- and taking umbrage u/s 92 C.P.C., they wanted to have gamble by affixing a paltry sum of Rs. 50/- but at the same time, they are spending huge amounts on other legal expenses upto Supreme Court by misusing funds of the Trust to satisfy their personal grudge. It is unfortunate to see that the Court of first instance at the time of filing suit itself seems to have ordered leave to sue for mere asking without applying its mind. A simple non-speaking order is nothing but derailment of justice delivery system.

2. (iii) It was held by the High Court that there is no cause of action to file the suit. The object of purpose for filing this suit should be scanned and not the relief portion, which is paramount importance and the suit should have been brought in the representative capacity which is lacking in the suit. Section 92 C.P.C., is not to protect the private interest. Leave was granted without notice to the petitioners and the Trust had been impleaded without following the provisions of Section 92 C.P.C. In case notice was not given, the petitioners can question that the leave to sue should not be granted. Hence the petition may be allowed.

3. The averments contained in the counter affidavit of the first respondent adopted by the second respondent may succinctly be stated as follows:

3. (i) In the counter filed by the respondent it is stated that after grant of leave by Court, very many proceedings have been taken up to the Apex Court. In all the proceedings the petitioners have participated without any murmur as to the grant of leave u/s 92 of C.P.C. They have also filed written statement in detail, wherein also they have not stated anything about the grant of leave. This petition has been filed after the High Court's direction for disposal of the case before 31.10.2008 and that too after the filing of the proof affidavit for chief examination which had been returned awaiting the records from the Principal District Munsif Court, Tindivanam, in two other connected suits.

3. (ii) For essential conditions to be fulfilled to invoke Section 92 C.P.C. are (i) the Trust is created for the purpose of public or charitable or generous nature. (ii) there was a breach of Trust or a direction from court is necessary for the administration of such Trust (iii) the relief claimed in the suit is one or other reliefs created therein and (iv) the suit must be a representative one on behalf of

public and not by an individual for their own interest." As there was a breach of such Trust and the defendants 1 & 2 were acting prejudicially and to the detriment of the Trust, since the plaintiffs are also Life Trustees who are having a substantial interest in the Trust to protect and preserve the same, filed the suit which has not been instituted for personal interest but to prevent further damage to the Trust by the petitioner.

3. (iii) The allegations in the suits pending would go to show that the petitioners are committing breach of trust and acting against the interest of the trust. In the Division Bench judgment it is nowhere observed that the alleged act of misfeasance and nonfeasance stated in the plaint cannot be true. The High Court has held that interim order obtained without challenging the agreement was not correct. SLP was preferred by these respondents before the Supreme Court and the Supreme Court dispose it off with a direction to the trial Court to dispose off the suit on its own merits uninfluenced by any of such observations of the High Court, since it is only an interim order. The High Court has not dispelled the allegations of malfeasance and misfeasance made against the petitioners as false. Question of payment of court fee is not connected to the relief of revoking the leave. Leave to sue u/s 92 CPC is neither judicial nor a quasi-judicial order. The rights of the petitioners are not in any way affected by such grant of leave.

3. (iv) It need not be a speaking order nor any notice need be given to the petitioner, as the law is well settled that the issue of notice is not a statutory requirement. The petition has been filed after the lapse of six years that too after the commencement of the trial, as per the direction of the High Court. No fresh leave is necessary u/s 92 C.P.C., while impleading the Trust as a party at a later stage. The malfeasance and misfeasance occurred before the compromise and this respondent agreed to permit the first petitioner to act as a Chairman by rotation. Hence, the petition has to be dismissed.

4. The learned Principal District Judge, Villupuram, after hearing both the parties, dismissed the petition by observing that whether the plaintiffs filed the suit to vindicate their personal grievances and whether it is for the betterment of the Trust, they could only be ascertained at the time of the trial of the suit after considering the oral evidence and other evidence on record and that since two plaintiffs have come forward with the application u/s 92 of C.P.C., who appear to be concerned with the welfare of the Trust, there is no necessity to revoke the leave already granted.

5. Mr. N. Suresh, learned Counsel for the petitioner laboured hard to high light the pleadings in the plaint with reference to the other proceedings connected to it and submitted that the petitioners have only filed the suit to vindicate their personal grudge against the first respondent particularly and that the court below should not have granted leave to them. It is his further contention that in view of the Order passed by the Division Bench of this Court in C.M.A. No. 564 of 2003, the grant of leave should have been revoked.

6. Conversely, Mr. T.R. Rajagopalan, learned Senior Counsel for the respondents would submit that the plaint contains sufficient pleadings which bring to limelight the malfeasance and misfeasance committed by and attributed to the first defendant, that the petition to revoke the leave granted does not contain sufficient grounds for such revocation and that the grant of leave is lawful which need not be revoked by this Court. He further states that the order passed by the Division Bench of this Court was upon the interim injunction order passed by the Court below and there are no observations which disentitle these respondents from getting leave.

7. To begin with, the Court has to have a glance at the pleadings in the plaint and see whether any element of personal grudge would surface. Of course, it is for the court below to ascertain the existence of such a thing after scrutiny of the evidence and materials on record. It is premature to explore the genuineness of the claim of the parties for the present. However, for the purpose of grant of leave, this Court feels that there is no wrong in seeing the averments in the plaint without going deep into the contentious issues in the contentions. The plaintiffs have graphically enumerated as many as nine grounds or circumstances where the first respondent committed lapses in ignoring the welfare of the Trust or showing passive attitude and in not taking any initiative for the upliftment or smooth administration of the Trust.

8. Tersely stating they are, a) firstly the first defendant failed to take steps for further extension of AICTE approval beyond 2000-2001 for P.V. Polytechnic; b) secondly, he fraudulently and contrary to the confidence and trust, purchased the lands in his own name against the interest of Rajas Educational Trust; c) thirdly, he failed to pursue the application for approval preferred to AICTE, New Delhi and connected matters for establishing Natarajan ? Anandaraj Engineering College and allowed application to lapse; d) fourthly, he never maintained the minutes book or the attendance register of the Board Meeting; e) fifthly, he neither maintained proper or true accounts of the Trust; f) sixthly, he committed breach of trust and misappropriation of funds of the trust by fabricating false records; g) seventhly, he neglected to appoint a Chartered Accountant to audit the accounts of the Trust and file the Income Tax returns; h) eighthly, he changed the principal office of the Trust to his place of residence at Chennai by getting the Deed of Trust amended in a clandestine manner; and i) ninthly, he failed to make proper payment of monthly salary to the staff members. It is also stated that he has created a new Trust in the name and style of Professor K.V. Natarajan Educational and Charitable Trust with objects similar to the Rajas Educational Trust with that of his newly created Trust.

9. The written statement has been filed by the first respondent controverting the allegations contained in the plaint in a specific and a categorical manner. As far as the order passed by this Court in C.M.A. No. 564 of 2002 is concerned, that is with reference to the grant of interim injunction in favour of these respondents and whether they have been taken for consideration for this proceedings, since the

petition u/s 92 of C.P.C. is for a different relief, is a question. These petitioners preferred Special Leave to Appeal (Civil) No. 6095 of 2004 before the Supreme Court from the Judgment of this Court in C.M.A. No. 564 of 2003 dated 23.12.2008 and the following Order was passed by the Apex Court:

Heard. The SLP is dismissed. The trial Court shall decide the matter on its own merits uninfluenced by the any observation made in the impugned order (which is only an interim order), at the time of final hearing of the suit.

10. As for the main ground raised in the affidavit annexed to the petition u/s 92 of C.P.C., first is, the request for consideration of the order of this Court in C.M.A. No. 564 of 2003; second is, the suit should have been brought in the representative capacity, which is lacking thirdly, leave was granted without notice to the petitioners and the Trust had been impleaded (as mentioned in the affidavit) without following the provision of Section 92 of C.P.C.

11. The learned Counsel for the petitioner strenuously contend that the Court below has not applied its mind and passed the order, which is non-speaking one, without any valid reasons and hence the leave has to be revoked. He placed reliance upon a decision of the Supreme Court in (2007) 1 MLJ 171 (SC) Vidyodaya Trust and Ors. v. R. Mohan Prasad and Ors. for the proposition that the petition u/s 92 C.P.C is maintainable and to find out in the preliminary stage itself. The operative portion of the judgment goes thus:

Judged in the aforesaid background the view of the learned single Judge that the civil revision was not maintainable is clearly indefensible. Learned Counsel for the respondent has fairly conceded to this position. If it is held that the suit in terms of Section 92 C.P.C., is not maintainable, that would have the result of final disposal of the suit. However, the learned Counsel made an attempt to justify the order by stating that the matter was also dealt with on merits. That would not improve the situation. The civil revision was clearly maintainable.

12. He also relied upon a decision of Supreme Court in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, wherein Their Lordships have held that if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested., then the suit would be outside the scope of Section 92.

13. In another decision of Supreme Court in Surya Dev Rai Vs. Ram Chander Rai and Others, it is held that the curtailment of revisional jurisdiction of the High Court does not take away - and it could not have taken away ? the constitutional jurisdiction of the High Court to issue a writ of certiorari to a Civil Court nor the power of superintendence conferred on the High Court under Article 227 of the Constitution is taken away or whittled down.

14. A Division Bench of this Court while dealing with the scope of Section 92 in (2004) M.L.J. 258 L.M. Menezes and Ors. v. Rt. Rev.Dr. Lawrence Pius and Ors.

has formulated the principles as per the ingredients in Section 92 of C.P.C., they are as under:

Section 92, C.P.C., authorises either the Advocate General or two or more persons having an interest in the Trust to file a suit for claiming one or more of the reliefs specified in Clauses (a) to (h) of Sub-sec (1) of Sec. 92. To invoke Sec. 92, four conditions are to be satisfied namely, (1) The trust is created for the purpose of public or charitable or religious nature; (ii) there was a breach of Trust or a direction from Court is necessary for the administration of such Trust, (iii) The relief claimed in the suit is one or other reliefs enumerated therein, and (iv) The suit must be a representative one on behalf of public and not by an individual for their own interest.

15. As per Section 92 of C.P.C., either the Advocate General or two or more persons having interest in the Trust may file a suit. The plaintiffs have filed a suit observing the conditions that is to say both of them have filed the suit. As for as the other conditions stated above are concerned, the plaint allegations are sufficient for grant of leave under this provision.

16. The learned Counsel for the petitioner also cites a Division Bench decision of this Court in V. Rajasekaran and T. Raghavan Vs. M. Rajendran, Trustee, M.G.R. Memorial Charitable Trust, wherein it is held that the question whether leave should be granted or refused would depend upon the allegations and that effect of not granting of leave is to short out any enquiry in the alleged misdeeds of a trustee of a public trust and at times vexatious suit may be filed. If materials are strong enough to come to a conclusion that the suit is vexatious, court is justified in refusing to grant leave and on facts prima facie case has to be made out for grant of leave to sue.

17. It is his further contention that this Court can interfere with the orders of the lower courts under Article 227 of the Constitution when it has been obtained by suppression of material facts and also by playing fraud, when there are alternative remedies available, even though there is no hurdle on the part of the High Court to entertain a petition under Article 227 of the Constitution, such power is in addition to the revisional jurisdiction conferred on it, that High Court has got supervisory jurisdiction and the power of superintendence conferred on the High Court under Article 227 is administrative as well as judicial, that such power is not subject to technicalities of procedure and that perverse order of the lower Court can very well be interfered with. It is also held that when there is no evidence to support the finding of the Court below it can be disturbed by the High Court. So also the order challenged is by error or law.

18. In Vidyodaya Trust Vs. Mohan Prasad R. and Others, it is held by the Supreme Court that in a given case notice has not been given and leave has been granted, it is open to the Court to deal with an application for revocation and pass orders. It is also observed that the court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose

for which the suit was brought.

19. In *B.S. Adityan and Others Vs. B. Ramachandran Adityan and Others*, the Supreme Court has taken view that non issue of notice before passing order in the application u/s 92 is not unlawful. It is held therein that although as a rule of caution, court should normally give notice to the defendants before granting leave u/s 92 to institute suit, the court is not bound to do so and that if a suit is instituted on the basis of such leave granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable.

20. Learned Senior Counsel for the respondent cited a decision in *R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others*, wherein the Apex Court has held that a suit u/s 93 of the Code is a representative suit as such binds not only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that explanation VI to Section 11 of the Code constructively bars by res judicata the entire body on interested persons in the Trust and that a suit whether u/s 92 of C.P.C. Or under Order 1, Rule 8 of C.P.C. is by the representatives of large number of persons who have a common interest and the very nature of a representative suit makes all those who have common interest in the suit as parties.

21. Following the principles laid down by the Supreme Court it has to be held that the Court is not bound to issue notice beforehand to the respondent at the time of grant of leave and such permission can be granted without notice. The respondents are always at liberty to file an application for revocation of the leave granted.

22. Section 92 of C.P.C. envisages that two or more persons having interested in the trust and having obtained leave of the Court may institute a suit. As far as this case is concerned plaintiffs numbering in two have filed the suit and the plaint allegations prima facie show that they are interested in the welfare of the Trust.

23. As stated above, the plaint prima facie discloses the public interest possessed by the plaintiffs in the administration of the Trust. As far as the alleged misdeeds attributed to the first defendant, they could be considered and decided only after scrutinising all the evidence and materials on record at the time of final disposal of the suit. This Court is of the considered view, in the light of the above said observations, that the leave granted by the Court below for instituting the suit is not bristled with any infirmity and the order challenged before this Court, passed by the learned Principal District Judge, Villupuram, need not be disturbed in any way.

24. In fine, the Civil Revision Petition is dismissed. No costs. Consequently, connected M.P. is also dismissed.