

(2007) 11 DEL CK 0263
In the Delhi High Court
Case No : CS (OS) No. 1478 of 2007

Lt. Gen. C.K. Kapur (Retd.) and Others	APPELLANT
Vs	
Guruji Ka Ashram and Others	RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 11, 151, 92, 92(1)
Trusts Act, 1882 — Section 34, 73, 83

Citation : (2008) 146 DLT 300 : (2008) 100 DRJ 180 : (2007) 10 ILR Delhi 150

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Chetan Sharma and Siddharth Mridul and Vineet Malhotra, for the Appellant; Sanjay Jain and Amresh Mathur and Arjun Mitra for Defendant Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.

IA No. 9232/2007 in CS(OS) No. 1478/2007

1. This is an application by the plaintiffs u/s 92 of the Code of the Civil Procedure seeking leave to institute the present suit u/s 92 of the CPC praying inter alias a declaration that appointment of defendant No. 3 by the defendant No. 2 as an additional trustee of defendant No. 1 "Guru Ka Ashram Trust" is bad and non est being in contravention to the terms and conditions of trust deed dated 14th May, 1999 and first (amended) trust dated 11th January, 2007; to remove defendant No. 3 as an additional trustee; a declaration that defendant Nos. 2 and 3 or their nominee/agents, attorneys from taking any decision in respect to the expenditure of trust funds of the defendant No. 1/Trust and to approve the draft scheme for running the affairs of the defendant No. 1/Trust and to direct the Advisory Committee of defendant No. 1/Trust to continue to oversee and administer the legal and financial administration of the defendant No. 1/Trust till such time the court approves the scheme of Trust/Management committee of the

defendant No. 1/Trust in the spirit of original trust deed and draft scheme placed before the court for effective legal and financial administration of defendant No. 1/Trust.

2. The applicant/plaintiffs contended that they have not filed the present suit u/s 92 of the CPC for their personal interest or to settle any personal score against defendant Nos. 2 and 3, but as devotees of defendant No. 1/Trust and since they are seeking a relief u/s 92(a)(b)(cc) and (g), it will be just and appropriate to grant them leave to institute the present suit.

3. The application is contested by defendant Nos. 2 and 3 contending that appointment of defendant No. 3 as a co-trustee is in consonance with the provisions of trust deed and Act and in furtherance of the wishes and desires of the settler. According to the non-applicant, after a few days of working of defendant No. 3, it cannot be inferred by the plaintiffs who are not even aware of the activities of the trust in the past that appointment of defendant No. 3 will defeat the very purpose of the Trust. According to the defendant Nos. 2 and 3, the suit is outcome of ulterior personal motives and malafide designs of plaintiffs and their accomplice. It is averred that Trust is not a living person so as to invite any devotees and plaintiffs may have been devotees of late Guruji, i.e., Nirmal Singhji, the settler of the Trust and they were only associated to the extent of seeking his blessings on account of his personal siddhies and they never had any association with the Trust or any of its activities. In the circumstances, it is prayed that the leave as prayed by plaintiffs be not granted to them and the application be dismissed.

4. The object of Section 92 is to enable two or more persons interested in any trust created for a public purpose of a charitable or religious nature to file a suit for the relief set out in the said section without having to join all the beneficiaries as it would be highly inconvenient and unpractical for all the beneficiaries to join in the suit. Therefore, any two or more of them are given right to institute a suit for the relief mentioned in the Section 92 of the Code of Civil Procedure. It is also considered desirable to prevent a public trust from being harassed or put to legal expenses by reckless or frivolous suit being brought against the trustees and, Therefore, a provision has been made for obtaining leave of the Court before the suit is instituted. A plain reading of Section 92 of the CPC indicates that leave of the court is a pre-condition or a condition precedent for institution of a suit against the public trust for the reliefs contemplated in the said section.

5. In the present case, since the notice was given to the defendants and they are opposing the grant of leave, what is to be considered is whether the plaintiffs have applied for leave merely with a view to harass the Trust or plaintiffs have such antecedents that it would be undesirable to grant them leave. What is also to be considered is whether delay in grant of leave will cause loss of the public trust or not. It also cannot be doubted that it is only the allegations in the plaint that have to be looked into, in the first instance, to see whether the suit falls within the ambit of Section 92 and for this the reliance can be placed on

Association of R.D.B. Bagga Singh v. Gurnam Singh AIR 1972 Raj 268 ; Sohan Singh Vs. Achhar Singh and Others, and Radha Krishna v. Lakshmi Narayan AIR 1948 OUDH 208.

6. The pleas of the plaintiffs are that revered Guruji, late Nirmal Singh Ji, son of Shri Mast Ram, executed a Trust Deed dated 14th May, 1999 at New Delhi thereby creating a public charitable Trust by the name of "Guruji Ka Ashram". The said trust deed was registered with the office of the Sub Registrar ? VI, Vikas Sadan, New Delhi and as per Clause 4, the settler had appointed Smt. Surjit, wife of Shri Mast Ram, mother of the settler, as the first Trustee of the Trust who expired on 10th May, 2001 and to fill up the said vacancy the settler appointed Shri Mast Ram, his father, as an additional Trustee vide Trust (Amendment) Deed on 11th January, 2007.

7. The disputes have arisen after the demise of the settler on 21st May, 2007 as on his demise there was only one Trustee left, defendant No. 2. The defendant No. 2 is stated to be 75 years of age and has frail health.

8. According to the plaintiff, the sole authority to appoint trustees vested with Settler and defendant No. 2, as a Trustee or additional Trustee, has no authority to appoint such co-trustee. The appointment of defendant No. 3 as co-trustee by defendant No. 2 has aggrieved the plaintiffs and Sangat/devotees/regular followers of the charitable Trust. It is not disputed that the charitable Trust was created with the objects as enumerated hereinafter:

a. To conduct research in the field of the arts, philosophy, history and culture relating to Indology, Indian Culture, Meditation and Yoga and to establish an institution or institutions for the same.

b. To establish an institution or institutions for the conservation, development and exhibition and culture and environment.

c. To establish libraries, reading room, screen, art collection centers, museums and other similar centers;

d. To grant financial help, scholarships, stipends and to provide books, instruments and appliances and other aids to students and provide for their education for fulfilling the primary objects of the Trust;

e. To give donations, contributions, gift, monetary or financial assistance to individuals and/or any other institutions or organizations for the fulfillment of primary objects of the trust;

f. To establish, run maintain or grant aid or financial assistance to any dispensary, hospital, nursing home, sanatorium, aftercare clinic, maternity home and/or any other institution for dispensing or distributing medicines at any place or places in India for the benefit and use of the poor, needy, sick and the suffering and to provide aids and to meet their expenses for the same or incidental thereto;

g. To grant aid for exhibitions, fair, public functions and to cultural activities for attainment of main objects of the Trust;

h. To raise funds by borrowing on such terms and within limits as provided in the Indian Trust Act, 1882, and sanctioned by the trustees in the manner provided herein;

i. AND Generally to do all other acts, deeds and things, as may be conducive to the attainment and furtherance of any object of public utility not involving the carrying on any such activity for profit.

9. Perusal of the Trust Deed reveals that the appointment of additional trustees and the increase or reduction had to be made by and at the sole discretion of the Settler. Even during the lifetime of the Settler, the management and exercise of powers referred to in Clauses 9 to 15 vest solely with the Settler or such other Trustee or Trustees whom the Settler may have authorized to perform.

10. The Trust Deed contemplated that the total strength of the Trust at given time shall not exceed 11 and shall not be less than 7 and the Trustees collectively were to be referred as Board of Trustees and the power of appointing new or additional trustees had to vests with the Board of Trustees.

11. What also emerges in the facts and circumstances is that on the demise of Settler, there was only one Trustee which admittedly did not constitute the Board of Trustee. Prima facie, the surviving additional Trustee/Trustee could neither appoint an additional Trustee of the Trust nor can administer the Trust.

12. Learned Counsel for the defendant Nos.2 and 3 has very emphatically urged that since the Settler, on the demise of another Trustee, his mother, could appoint defendant No. 2 as a Trustee, Therefore, on the demise of the Settler, even defendant No. 2 could appoint the Trustee, i.e., defendant No. 3. This is strongly disputed by the plaintiffs. This dispute raised by the plaintiffs cannot be termed as only an attempt to harass the Trust, in the facts and circumstances of the case. There are no such allegations against the plaintiffs which will lead to any such inference that the antecedents of the plaintiffs are such so as to decline them leave as contemplated u/s 92 of the Code of Civil Procedure. Except the bald allegation that the suit is outcome of personal motives and malafide designs of plaintiffs and their accomplice, nothing substantial has been disclosed.

13. The plaintiffs have categorically contended that there is a vacuum with regard to the management of the Trust and consequently a group of conscientious follower had taken the initiative before a large number of Sangat at the Bhog of revered Settler at his birth place, Village Durgi, Malerkotia, District Sangrur, Punjab, on 10th June, 2007, and a resolution was passed electing 75 eminent and regular follower of the Settler as the members of an Advisory Board which also filed a complaint dated 18th June, 2007 to the Regional Manager, Syndicate Bank, for freezing the bank account of defendant No. 1.

14. Learned Counsel for defendant Nos.2 and 3 contends that the attempt to

freeze the accounts of defendant No. 1 is nothing but a malafide act by the plaintiffs, however, considering the disputes which have arisen and inadequacy of the Trust settled by the Settler to deal with all the situation that has arisen on the demise of the Settler, it cannot be termed as a malafide attempt by the plaintiffs and other followers of the Guruji so as to draw an inference that the attempt is to harass the Trust and the defendant Nos.2 and 3.

15. Considering the charitable purpose settled by the Settler, the funds and the income of the Trust are to be utilized properly and cannot be left to the whims of defendant No. 2 who is 75 years old and defendant No. 3, son of the brother of the settler, in the present facts and circumstances.

16. The learned Counsel for defendant Nos. 2 & 3, Mr.Sanjay Jain has relied on Duttgir Mahant Vs. Rishi Ram etc., Duttgir Mahant v. Rishi Ram etc to contend that the suit u/s 92 of the CPC will not be maintainable for removal of defendant No. 3 who has been appointed validly. The learned Counsel contended that there are no substantial allegations of breach of trust against the defendants and in the circumstances the plaintiffs have failed to make out a case for direction for proper administration which is the very foundation of the suit and, Therefore, the suit filed u/s 92 is not maintainable and consequently the relief should not be granted to the petitioners nor the petitioners are entitled to leave u/s 92 of the Code of Civil Procedure.

17. No doubt it is true that if a trustee is validly appointed and only the removal of the trustee is sought it will be beyond the purview of Section 92 but the facts of the present case are distinguishable. In Duttgir Mahant (Supra) the plaintiffs in that case had impliedly admitted that the trustee was validly appointed in contradistinction to the present case where the main contention of the plaintiffs is that defendant No. 3 cannot be and has not been appointed validly. This cannot be disputed that a suit u/s 92 shall be maintainable, if the directions are required for administration of the trust and the reliefs claimed are those which are mentioned in the said section.

18. The other judgments relied on by the defendant Nos. 2 & 3 are Rahul Jain and Another Vs. Shri Pradeep Kumar and Others, ; Mayer Simon Parur Vs. Advocate General of Kerala and Others, ; Harl Bhagwan Sharma and Others Vs. Badri Bhagat Jhandewalan Temple Society and Others, ; Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, and State of U.P. Vs. Bansi Dhar and Others, to contend that the suit u/s 92 is not maintainable and consequently leave should not be granted to the plaintiffs u/s 92 of the Code of Civil Procedure.

19. In Swamy Parmatmanand Saraswati (Supra) the Supreme Court had held that only the allegations made in the plaint should be looked into in the first instance to see whether the suit falls within the ambit of Section 92. It was also held that if after evidence is taken it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is

not based on any solid foundation in facts and for reason but is made only with a view to bring the suit under the Section, then a suit purporting to be brought u/s 92 must be dismissed. In paras 9 and 10 at page 2144 the Supreme Court had held as under:

9. It is clear from the allegations in the plaint that the plaintiffs primarily wanted a declaration from Court that Krishnabodhashram was duly installed as the Shankaracharya of the Math on June 25, 1953, that he came into possession of the properties of the Math and, Therefore, the Court should appoint him as the Shankaracharya of the Math. In order to enable the Court to give that declaration, the plaintiffs wanted a declaration that the Will nominating Respondent 1 as successor of Brahmanand was not executed by Brahmanand when he was in a sound disposing state of mind and that even if the Will was validly executed, Respondent 1 did not have the requisite learning in Sanskrit and the Vedas and so, he was not qualified to be nominated as the Head of the Math and Therefore, his installation as the Shankaracharya of the Math on June 12, 1953, was invalid. There was no allegation in the plaint questioning or even casting any doubt on the validity of the installation of Krishnabodhashram as the Shankaracharya of the Math and there was also no allegation against him as respects his management of the Trust properties. Then, how was it that the plaintiffs prayed in the alternative for appointment of some other person as Shankaracharya? The relief for the appointment of Krishnabodhashram as the Shankaracharya of the Math by the Court and the alternative relief to appoint some other person as the Shankaracharya, without any allegation as to the circumstance which would invalidate the installation of Krishnabodhashram and without impleading him as a party to the suit would show the strain of the draftsman to dress up the plaint with prayers to make it appear that the plaintiffs were the disinterested champions of the right of the public and not the mere partisan advocates of the personal cause of Krishnabodhashram.

10. A suit u/s 92 is a suit of a special nature which presupposes the existence of a public Trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, Therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit u/s 92 are made out, 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 (see *N. Shanmukham Chetty v. V.M. Govinda Chetty* 1, *Tirumalai Devasthanams v. Udiavar Krishnayya Shanbhaga* 2, *Sugra Bibi v. Hazi Kummia* 3 and *Mulla*: CPC (13th edn.) Vol. 1, p. 400). A suit whose primary object or purpose is to remedy the infringement

of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.

20. From the above it is clear that if a case has not been made out for a direction for proper administration of the trust, the very foundation of suit under this section fails, 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.

21. This has not been disputed by defendant Nos. 2 & 3 that the settler of the trust, Guruji had divine powers and was a compassionate soul who started the trust. A bare reading of the trust deed reveals that the power to appoint the trustee was with the settler only. Though the contention of the learned Counsel for defendant Nos. 2 & 3 is that if the settler (Guruji) could appoint his father as a trustee, the father after the demise of settler, the surviving trustee, who is not a settler could also appoint defendant No. 3 as a trustee. What is to be considered is whether the settler who was stated to be having divine powers nominated his father on the premise that his father would also have the divine powers and he would be discharging the same functions as settler and whether he can be deemed to have similar power under the trust deed as the settler and can this be also pre supposed in case of defendant No. 3.

22. Reliance has also been placed by the Respondents on Nilkanth Devrao Nadkarny Vs. Ramakrishna Vithal Bhat, to contend that unless a suit falls clearly within the scope of Section 92, the mere fact that it resembles in certain respects a suit which may be properly brought u/s 92, can afford no good ground for holding that Section 92 should apply. In this suit only a declaration was sought that the defendant Nos. 1 to 4 were not properly appointed trustees of the temple and for an injunction appropriate to the declaration. This was not a case where the trust could not function in absence of the four trustees nor it was the case that directions were required for running and administration of the trust. This case is clearly distinguishable from the facts of the present case.

23. In Ambalal Manibhai Patel Vs. State of Gujarat, the Supreme Court observed:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

Similarly in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , the Supreme observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

In *Bharat Petroleum Corporation Ltd. and Anr. v. N.R. Vairamani and Anr.* AIR 2004 SC 778, it was held that a decision cannot be relied on without disclosing the factual situation. The Apex Court had also observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The decision cited and relied on by the defendants have been carefully examined and it is apparent that the reliance placed by the Counsel for the defendants is quite misplaced and they do not further the case of the defendants.

24. The reliance of the learned senior Counsel, Mr. Jain on *Hari Bhagwan Sharma* (Supra) can also be clearly distinguished. In this case the leave was granted subject to just exceptions and it was held that these words were added by way of abundant caution and in these circumstances the prayer of the plaintiffs to amend the plaint before the rejection of the plaint under Order 7 Rule 11 was allowed. The learned Single Judge of this Court while allowing the application for amendment had also considered whether the plaint discloses any cause of action to institute a suit u/s 92 of the CPC and had referred to a full Bench decision of Madras High Court, *T.R. Ramachandra Iyer and Anr. v. Ponniath Akathuthu Parameswaran Hunbu and Ors.* (1919) 50 Ind Cas 693 where it was held that a plaintiff who was a brahmin and who had visited the temple at Tellicherry and who was likely to visit the temple again for worship did not have existing and substantial interest so as to confer on him the right to bring a suit u/s 92 of Code of Civil Procedure. It was held that it is not only for a person who is a Hindu by religion to have interest in any of the Hindu temple and its trust as there are millions of Hindus in this country. The full Bench was of the opinion that there must be special relation in which the plaintiff stands to endowment in question as compared with the whole body of religious community throughout the country and he must be in a position to derive some benefits from the trust in respect of

which the suit is to be filed. In this case the judgment of Privy Council in *Vaidyanatha Ayyar and Anr. v. Swaminatha Ayyar and Anr.* AIR 1924 PC 221 was also referred to, holding that the interest contemplated by Section 92 must be substantial and existing interest and not just a sentimental or a remote interest. What emerges in the circumstances is that the interest must be substantial and existing and not remote or contingent. In *Hari Bhagwan and Ors. (Supra)* since the plaintiffs were not only votaries of Sanathan Dharam and believers in Idol worship but they were residents of the same town, Delhi, in which the endowment in question was situated. It was held that the claims of the plaintiff could not be brushed aside on the facile plea that the plaint does not disclose any cause of action and the Court held that it must look to substance and not mere form of averments made in the plaint and since the plaintiffs by way of abundant caution had also moved an application for amendment under Order 6 Rule 17 read with Section 151 of CPC for amendment of the plaint and, Therefore, the same was allowed. It is apparent that the case relied on by the learned Counsel for the defendants, Mr. Jain is clearly distinguishable and rather supports the plea of the plaintiffs. It has been contended that about ten thousand people, devotees of Guruji congregated after settler attaining mahasamadhi and in order to perpetuate legacy of the settler recommended constitution of an advisory body as a collective body to consider and the decide the ways to carry forward settler's legacy. This cannot be compared with the locus of one Brahmin in the temple as in the case of *T.R. Ramachandra Iyer (supra)*. This advisory body was comprised in presence of Deputy Commissioner and District Magistrate, District Sangrur, Punjab; Sub Divisional Magistrate, Malerkotla, Punjab and the advisory body also comprises of eminent devotees from Delhi, Punjab and Chandigarh. A committee of judges comprising of three eminent retired judges of Punjab and Haryana High Court including a former Chief Justice of India was also constituted to analyze the various situations and advise was also constituted. In view of this the allegation of the defendants that the suit is the outcome of personal motive and malafide designs of the plaintiff and their accomplice cannot be relied on for the purpose of granting leave to the plaintiffs to institute the present suit.

25. A full Bench of Kerala High Court in *Mayer Simon Parur (Supra)* placed reliance on *Davular Pitchayya and Another Vs. Divi Venkatakrishnamacharlu and Others*, and on the decision of the Supreme Court in *Chairman Madappa Vs. M.N. Mahanthadevaru and Others*, and referred to the following passage:

The main purpose of Section 92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits (under that section can only be filed either by the Advocate-General or two or more persons having an interest in the trust with the consent in writing of the Advocate General. The object is that before the Advocate General files a suit or gives his consent for filing a suit, he would satisfy himself that there is a prima facie case, either of breach of trust or of trust necessity for obtaining directions of the Court.

26. In the circumstances it was held that the interest of the plaintiffs in a suit u/s 92 must be real and not remote and must be substantial and not illusory and it must be an existing interest and not a contingent one and the action contemplated under the Section is one in the interest of the public and not merely for the vindication of the individual's personal rights. Another Single Judge of this Court in *Rahul Jain and Anr. (Supra)* had also reiterated that the plaintiffs u/s 92 of the CPC must have clear, present and a substantial interest and not merely remote, fictitious or purely illusory interest. It was further held that the question whether any given person has or has not an interest as was defined, is a pure question of fact which the Court should decide on a consideration of the particular circumstances of each case. The "interest" which is required of a person wishing to sue u/s 92 must be substantial and not a sentimental or remote interest. In this case one person namely Bholanath had created a charitable trust and his sons Sh. Triloki Nath, Amarnath and Bishambhar Nath were the founder trustees and on the demise of founder trustee, Amar Nath, his sons Surender Kumar claimed that his appointment was communicated to other two trustees, Triloki Nath and Bishambhar Nath and on assuming his duties and responsibilities as a trustee, he realized and found out that the properties of the trust were being mismanaged and were not being kept properly by the defendants and even defendant No. 1 was neither a trustee nor had any authority to deal with the trust property and, Therefore, the plaintiff had filed the petition u/s 92 of the Code of Civil Procedure. In these circumstances the order earlier granting leave to institute the suit in favor of the plaintiff was revoked. In *Rahul Jain (Supra)* admittedly Sh. Surender Kumar one of the trustee was claiming rights not in the interest of public but rather for vindication of his personal rights and Therefore, the leave already granted to him was revoked.

27. Mr. Sanjay Jain, learned senior Counsel for the defendant Nos. 2 & 3 have also contended that the provisions of Indian Trust Act, 1982 though did not apply proprio vigore to the case of each charitable trust but since there are common area of legal principle which cover all trust, Therefore, some of them apply even in respect of public trust. The Counsel for the plaintiffs refuted this and relied on *Shanti Devi Vs. State and Others*, where a Division Bench of this Court had held that an application pending u/s 34 of the Trusts Act, 1882 was not maintainable because the trust created in that case was a public charitable trust and not a private trust and public charitable trust is outside the scope of the Trusts Act, 1882. It was held that in a private trust the beneficiaries are defined and ascertained individuals or who within a definite time can be definitely ascertained but in the public trust the beneficial interest must be vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description. The learned Counsel for the defendants has contended that the ratio of the Division Bench judgment of this Court is not in consonance with the ratio of the Supreme Court in *State of U.P. Vs. Bansi Dhar and Others*, holding that the principle of private trust and the provisions of Trust Act, 1882 are applicable to the public charitable trusts.

Perusal of two judgments reflects that there is no contradiction as has been perceived on behalf of the defendants. In Bansi Dhar (supra) the Supreme Court had held at page 454 in para 18 as under:

18. ...The next question is whether the Indian Trust Act, 1882, applies to the present case. The Courts below have argued themselves into an application of Section 83 of the Trust Act. Sri Dixit rightly objects to this course because that Act relates only to private trusts, public charitable trusts having been expressly excluded from its ambit. But while these provisions *proprio vigore* do not apply, certainly there is a common area of legal principles which covers all trusts, private and public, and merely because they find a place in the Trusts Act, they cannot become 'untouchable' where public trusts are involved. Care must certainly be exercised not to import by analogy what is not germane to the general law of trusts, but we need have no inhibitions in administering the law by invoking the universal rules of equity and good conscience upheld by the English judges, though also sanctioned by the statute relating to private trusts. The Court below have drawn inspiration from Section 83 of the Trusts Act and we are not inclined to find fault with them on that score because the provision merely reflects a rule of good conscience and of general application. The details of the argument on the basis of this principle will be discussed a little later.

28. In Shanti Devi (supra), the Division Bench was concerned with the maintainability of the application u/s 34 of the Trusts Act, 1882 in respect to a public trust and it was rightly held that the application was not maintainable and in this respect it was held that the provisions of the Trusts Act, 1882 do not apply to the public trust. The Division Bench did not hold that the principles of the private Trust do not apply to the public trust. The Apex Court had rather held that there are common principles which covers all the trusts, private and public, and merely because they find a place in the Trusts Act, 1882 they cannot become untouchable where public trusts are involved. Therefore though the principle may apply but the provisions of Trusts Act, 1882 will not apply *proprio vigore* to the public trusts and Therefore, the defendants can not contend that the appointment of defendant No. 3 will be in consonance with Section 73 of the Trusts Act, 1882. In any case, whether the defendant No. 3 could be appointed as an additional trustee u/s 73 of the Trusts Act, 1882 is to be ascertained and if he could not be appointed and if he is running the trust, the suit will be maintainable as it is not a case where the appointment of the defendant No. 3 has been admitted and his removal has been sought for personal reasons as are the cases in the precedents relied on by the defendants. The learned Counsel for the defendants have also relied on Phulchand Lakhmichand Jain and Another Vs. Hukumchand Gulabchand Jain and Another, and AIR 1958 Mad 307, Sundaralingam Chettiar and Ors. v. S. Nagalingam Chettiar and Ors. I have examined the aforesaid decisions and I am of the view that the reliance placed by the counsel for the defendants on the aforesaid decisions is entirely misplaced as the same do not in any manner further the case of the defendants and Therefore, they are not referred to in detail here.

29. The learned Counsel for the plaintiffs has contended that to decide whether the leave should be granted or not, the contentions and pleas raised in the suit has to be adverted to and not the respective contentions of the parties. Relying on the observation of the Supreme Court he contended that there cannot be trial before the trial. It is also contended that it is not merely the case of the removal of the defendant No. 3 who could not be appointed as a trustee but also for the directions for administration of the public charitable trust, as the settler of the charitable trust, Guruji, has since deceased and the defendant Nos. 2 and 3 cannot take his place. Reverence which the followers of the Guruji had for him, cannot be for defendant No. 3. Had the intentions of the Guruji be to run it as a charitable trust within the control of the family, he would have made the provision for the same. Appointment of mother and then father as the trustees by the Guruji seems only the reverence which he had for his father and mother and the same reverence cannot be extended to the son of the brother of the settler after his demise. In any case, in these circumstances, without admitting the valid appointment of the defendant No. 3 and in whose absence, there will not be a board of trustee, the direction to administer the trust has also been sought and the suit is not merely for the removal of the defendant No. 3. The learned Counsel has contended that even notice was not required to be given to the defendant Nos. 2 and 3 for ascertaining and deciding whether the leave should be granted or not because the Court has to consider the averment and pleas raised in the plaint. Reliance was placed on AIR 2004 SC 3448 , R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others, The Supreme Court had held that the Court is not bound to give notice to the defendants in all cases in all circumstances and non issuance of notice would not render the suit bad or non maintainable. The Apex Court in Ram Narayana Chettiar (supra) in para 17 on page 56 had held:

17 . A plain reading of Section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave u/s 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave u/s 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave u/s 92 can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section 92 of the Code

would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. 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. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.

30. The Supreme Court reiterated the ratio of R.M. Narayanan Chettiar (supra) in B.S. Adityan and Ors. v. B. Ramachandran Adityan and Ors. and also relied on the recommendations of law commission recommending that to expect the Court to issue notice and then to try the several points of details before granting leave in the light of the objections put forth by the respective defendants, would mean that there will be trial before trial and this would not be desirable. The Supreme Court in para 9 had held as under:

9. ...Although as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. 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. Grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law or even in the course of suit which may be established that the suit does not fall within the scope of Section 92 CPC. In that view of the matter, we do not think, there is any reason for us to interfere with the order made by the High Court.

31. In the circumstances all the pleas which has been raised by the defendants are not to be adjudicated conclusively though they have been considered in determining whether leave should be declined to the plaintiffs or not. For granting leave their cannot be trial before trial as has been observed and held by the Supreme Court. The suit by the plaintiffs in the present facts and circumstances cannot be termed as a suit for a vindication of personal rights of the plaintiffs. The large congregation decided to have an advisory board comprising of respectable persons to administer the trust according to the legacy of the settler and prayer has been made in the suit by the plaintiffs. The other reliefs which have been prayed under the suit are also within the purview of Section 92 of the Code of Civil Procedure. Merely because there is no substantial allegation of the breach as has been alleged by the defendants, they cannot administer the trust contending that the defendant No. 3 has been appointed according to the trust deed despite absence of specific stipulation in the trust

deed for the appointment of trustees by the surviving trustee. There are no such allegations in the suit which will reflect that the allegations have been made merely with a view to bring the suit u/s 92 of the Code of Civil Procedure. The plaintiffs are suing to vindicate the rights of followers who gathered after mahasamdhi of the setter and not for their personal rights. The suit does not reflect the infringement of individual rights of the plaintiff or to vindicate such private rights which do not fall u/s 92 of the Code of Civil Procedure.

32. Although a number of submissions pertaining to the merits of the case were made in the course of hearing of the present application, however, this Court refrain from recording any findings to avoid prejudice to either party and any observations made herein before will not affect the merits of the case.

33. For the forgoing reason the application of the plaintiffs to institute the suit u/s 92 of the CPC is allowed and the plaintiffs are granted leave to institute the present suit.

CS (OS) 1478 of 2007 & is No. 9233 of 2007

Issue summons to defendants. Mr. Mathur accepts summons on behalf of defendants and seeks time to file the written statement. Written statement be filed within four weeks. Replication, if any, be filed within four weeks thereafter.

Parties are also directed to file their original documents or certified copies thereof within eight weeks.

List on February 6, 2008 before the Joint Registrar for admission/denial and marking of documents.

List on May 9, 2008 before the Court for framing of issues.

IA No. 9233/2007

The statement given on behalf of defendant Nos. 2 and 3 on 17th September, 2007 shall continue till the next date of hearing.

List for hearing on January 9, 2008.