

(1962) 09 MAD CK 0022
In the Madras High Court
Case No : A.A.O. No. 259 of 1960

M. Gomathinarayagam Pillai and Others	APPELLANT
Vs	
Sri Manthramurthi High School Committee and Others	RESPONDENT

Date of Decision : 17-09-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Companies Act, 1956 — Section 25, 398, 493

Citation : AIR 1963 Mad 387 : (1963) ILR (Mad) 746 : (1963) 76 LW 229 :
(1963) 1 MLJ 56

Hon'ble Judges : S. Ramachandra Iyer, C.J;Kunhamed Kutti, J

Bench : Division Bench

Advocate : V.V. Raghavan and S. Rodha, for the Appellant; P.V. Marthandam,
K.N. Balasubramaniam and Srinivisan, for the Respondent

Final Decision : Allowed

Judgement

S. Ramachandra Iyer, C. J.

1. This is an appeal against an order passed by the learned Subordinate Judge of Tirunelveli returning a plaint presented in due conformity with the

provisions of Section 92 of the C. P. Code for presentation to the proper Court, the Company Court. One Manthiram Pillai established on 15th

May, 1918, a middle School for the benefit of the general public of Tirunelveli Town. In a short time the school developed into a High School and

the founder in order to put its management on a firm basis executed a document vesting the school and its properties in a Committee called the

Manthiramurthi High School Committee providing inter alia for the appointment and succession to the office of the members of the committee. The

Committee was registered u/s 26 of the Indian Companies Act, 1913 (which corresponds to Section 25 of the 1956 Act). That provides for the

incorporation of associations which are not formed for the purpose of making any profit in the sense in which it is commercially understood.

2. There can be no doubt that the endowment will constitute a public charitable trust.

3. The appellants claiming themselves to be interested in the Trust and alleging that there has been a breach of trust and that directions of the Court

were necessary for the due administration of the same, instituted a suit in the Sub-Court, Tirunelveli for settling a scheme for the due administration

of Sri Manthiramurthi High School at Tirunelveli and for other reliefs. They had earlier obtained for the suit the sanction of the Advocate General.

To the suit the Managing committee of the school as well as the members of the Committee were impleaded as party defendants. The defendants

contested the maintainability of the suit on the ground that the Sub Court, Tirunelveli, had no jurisdiction to entertain the same as the proper forum

for settling a scheme was the company side of this High Court. It was urged that the managing committee had been duly registered under the Indian

Companies Act, and as under that Act there exist provisions for settling a scheme, e.g., Sections 398 and 493 (of the Companies Act of 1956),

there was a special law applicable to the case and that, therefore, the jurisdiction of the Civil Court was ousted. This contention had been accepted

by the learned Subordinate Judge who returned the plaint for presentation to the proper Court. The plaintiff has filed the present appeal against the

order returning the plaint.

4. While holding that the company Court alone had and the Civil Court had not the jurisdiction the learned Subordinate Judge was labouring under

a misapprehension. Section 92 of the C. P. Code confers jurisdiction upon a Court in matters relating to administration of public and religious

charities with a view to protect the rights of the public; for this purpose it enables the Advocate General as well as the persons interested in the

trust with the sanction of the Advocate General, to stop the misuse of its funds, for the framing of a scheme for the due administration of the trust

etc. This provision had nothing to do with any vindication of private rights. Section 398 of the Indian Companies Act of 1956 is, on the contrary

concerned with private rights. It confers on a member of the company to obtain relief from court in certain circumstances where the company is not

properly managed. That is a right given to an aggrieved member of the company itself and outsiders will have no right to apply thereunder.

5. Mr. Balasubramaniam appearing for the respondent committee contends that in a case where a company is appointed as a Trustee of a public,

religious or charitable institution, the provisions of Section 92 of the C. P. Code will apply; but he contends that it will be different if the company is

created solely to fulfil a charitable purpose. In such a case, learned counsel says, that the company or association of persons registered u/s 26 of

the Indian Companies Act has no existence apart from the charitable purposes and that the only way of correcting the misconduct of the members

of such a corporation would be to apply to the company court under the relevant provisions of the Indian Companies Act.

In support of this contention, learned counsel has referred to ecclesiastical and eleemosynary corporation under the English law. Reference was

made to Law of Corporations by Stewart Kyd"" (Volume II page 192) where the learned author refers to an observation of the Lord Chancellor

Hardwicke. In that case a free school and an alms house were founded by virtue of Charter granted by Queen Elizabeth I. Governors were

appointed with a power to appoint and remove the master and usher of the school and power was reserved to the" heirs of certain persons to

appoint Governors. An information in the name of the Attorney General was filed against the master and Governors in the Court of Chancery on

the basis that the court had general superintendency over all charitable donations and trusts. A question arose whether action was within the

competence of that court. The Lord Chancellor is reported to have said from the nature of this foundation he thought the application to the

jurisdiction of the court of Chancery was improper and that the remedy of the aggrieved persons was under the terms of the Charter, as the affairs

of the charity would be left to be regulated in the manner the Charter had directed.

We do not see how that case or principle can have any application in this country where we have a statutory provision like Section 92 of the C. P.

Code. Under the English system the founder of a charitable institution has certain rights known as rights of visitation and for that purpose

corporations were divided into ecclesiastical and lay. Where the purpose was the founding of a spiritual corporation it was known as ecclesiastical

corporation and where it was temporal it was deemed to be a lay corporation. Ecclesiastical corporations are corporations established for the furtherance of religion and for perpetuating the rights of the Church property of ecclesiastical corporation like the church cannot strictly be regarded as subject to any trust; they would be vested in the church and ordinary courts were held to have no more jurisdiction over it than they had over the property of private individuals. If there were any mis-application of the property, the matter had to be dealt with under the ecclesiastical law.

6. Lay Corporations fall into two items, civil and eleemosynary. Municipal Corporations etc. are examples of the former. Eleemosynary corporations are for instance those established for the perpetual distribution of free alms etc. by the bounty of the founder, the purpose of the corporation being charitable. Further examples of such institutions are hospitals, colleges, schools etc. A eleemosynary corporation being one to fulfil a charitable purpose would hold the property as a trustee for the accomplishment of that purpose". Under the English law where a charity has been established by a charter the founder has certain rights. Keeton in his "Law of Trusts" 7th Edn. page, 184 says at page 184 thus :

Where a charity is established as an eleemosynary corporation by charter there is reserved to the founder (whether the Crown or some other person) or to those whom the founder substitutes for himself a jurisdiction as visitor. It is the office of the visitor to hear and determine all differences of the members of the society amongst themselves and generally to superintend the internal government of the body and to see that all rules and orders of the Corporation are observed. In deciding such matters the visitor is guided by the statutes of the founder and within the province the decisions of the visitor are final and there is no appeal from them. This jurisdiction primarily relates to the relations of the members of the society to one another. As regards the property of a charity established by Charter, however, a court of equity has assumed a right of supervision. Thus, though the court would not hear an information for the removal of governors or other corporators as irregularly appointed the court will hear an information against the Governors that their wrongful administration of the property is leading to frustrate the true objects of the

institution".

7. But even in England this rule will apply only to corporations created by a charter. Where a private person founds a charity the rule is stated by

Lewin in his book on Trusts 15th Edn. at page 460 thus :

Where a private person founds a charity and then the Crown grants a charter the presumption is that the Crown meant to carry out the founder's

intentions and the jurisdiction of the court which existed before will continue".

8. In Halsbury's Laws of England, 3rd Edn. Vol. IV at page 394, dealing with this subject the learned author states.

The charitable corporations exists solely for the accomplishment of charitable purposes, they are necessarily trustees of their corporate property

whether the beneficiaries are members of the corporation as in the case of hospitals and colleges. Accordingly like other trustees, charitable or

otherwise they are subject to the jurisdiction of the court Though called directors and empowered to make and amend by laws for the

corporation, apart from any provisions in the constitution of the corporation they have no right to remuneration and cannot amend the bye-laws

The court has no jurisdiction over the application of administration of the corporate property of ecclesiastical or civil corporations to which as is

frequently the case no trust is attached. But where property is held by a corporation as a trustee if the corporation holds it clothed . with public

duties, the court has always asserted its rights to interfere".

9. The rule referred to in Stewart's Kyd's "Law of Corporations" to which we have made reference earlier, proceeds upon the principle that

where there is a charter with proper powers, there is no ground to come to the court to establish the charity as it must be left to be regulated in the

manner in which the charter has directed.

10. In the present case there is no question of any charter by the administration of the charity and the rule as to exclusion of jurisdiction of this court

would not obviously apply. There is no distinction in this country between an eleemosynary and lay corporations. When ever there is a public,

charitable or religious trust, the jurisdiction of the court could be invoked u/s 92 of the C. P. Code.

10A. For the application of that section it makes no difference whether the trustees is an individual or a company, nor is there any distinction

between a company in whom the office of trustee vests and one which is specially formed for the purpose of executing the trust.

11. If an association is registered u/s 25 of the Indian Companies Act the members of it and they alone will have power to apply to the company

court for reliefs in case there is mis-management. But in a case where the beneficiaries of a trust want to complain that there has been a breach of

the trust or that a direction of the court is necessary, they can file a suit u/s 92 of the C. P. Code for any of the reliefs mentioned therein. The

provisions of the Companies Act have no application to such a case. We are, therefore, of the opinion that the lower court was in error in declining

to entertain the suit. The appeal is allowed and the lower court is directed to restore the suit to its file and dispose of the other issues in the case in

accordance with law. The respondent will pay the costs of the appellant.