

(2005) 04 MAD CK 0091

In the Madras High Court

Case No : Original Side Appeal No's. 31 and 32 to 34 of 2005 and C.M.P. No. 3390 of 2005

Mazdoor Welfare Trust and N.V. Devi, Managing Trustee
Mazdoor Welfare Trust

APPELLANT

Vs

The Southern Railway Mazdoor Union and Others

RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 2005 Mad 392 : (2005) 2 CTC 368 : (2005) 2 LW 495 : (2005) 2 MLJ 502

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : T.V. Ramanujam for T.V. Krishnamachari, for the Appellant; R. Krishnamurthy for A. Jinasenan, for Respondent Nos. 1 to 3, R. Krishnasamy for C. Ramesh and M. Balasubramanian, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The above Original Side Appeals have been filed against common order dated 24-2-2005 made in Application Nos. 1223/2004; 1 224/2004; 779/2004; and 780/2004 respectively in C.S. No. 160/2004 on the file of Single Judge of this Court. By the said order, the learned Single Judge held that Leave u/s 92 of the CPC was properly granted in favour of the plaintiffs to file a suit in respect of affairs of Mazdoor Welfare Trust on the file of Original Side of this Court and also confirmed the Leave granted under Clause 12 of the Letters Patent. He also dismissed the Applications to revoke the leave granted.

2. Heard Mr. T.V. Ramanujam, learned senior counsel for the appellants; Mr. R. Krishnamoorthy, learned senior counsel for respondents 1 to 3; M. Balasubramanian, learned counsel for fifth respondent; and Mr. R. Krishnasamy, learned senior counsel for sixth respondent.

3. The Southern Railway Mazdoor Union represented through its General

Secretary N. Kanniah and two others namely A. Rajah Sridhar and P. Kumaresan, who are President and Assistant General Secretary of the first plaintiff Union filed Civil Suit viz., C.S. No. 160 of 2004 against Mazdoor Welfare Trust and five others praying for removal of defendants 2 to 5 from the Office of Managing Trustee and Trustees of the first defendant viz., Mazdoor Welfare Trust to frame a Scheme for the proper administration of the first defendant Trust and its College viz., 6th defendant College with due participation among the members of the plaintiff Union; to grant a permanent injunction restraining 2nd to 5th defendants, their men, agent etc., from interfering with the management of the first defendant Trust; and direct the defendants 2 to 5 to render accounts from February, 2001 of the first defendant Trust and the 6th defendant College. In Application No. 779/2004 they obtained leave u/s 92 C.P.C., in respect of first respondent Trust and also another leave under Clause 12 of Letters Patent in Application No. 780/2004. Application Nos. 1223 and 12 24/2004 were filed by the Trust and another Trustee by name N.V. Devi for revocation of the leave. The learned Single Judge on consideration of plaint averments, details furnished in the affidavit filed in support of the Application for grant of leave, the statements made in the counter affidavit and the arguments of both sides, and after finding that the plaintiffs have established the ingredients u/s 92 C.P.C., upheld the grant of leave and dismissed the other petitions; hence the above Original Side Appeals by the Trust and one of the Managing Trustee- N.V. Devi.

4. (i) Mr. T.V. Ramanujam, learned senior counsel for the appellants, would contend that inasmuch as the plaint does not contain necessary details to show how this Court has jurisdiction, in the absence of Schedule of properties, the learned Judge ought to have revoked the leave granted u/s 92 C.P.C. He also submitted that though the plaintiffs referred to bank accounts, no details have been furnished; hence the order of the learned Judge is liable to be set aside. He further contended that there is no balance of convenience and there is no bona fide in the relief sought for in the plaint; hence the learned Judge ought to have revoked the leave granted u/s 92 C.P.C.

(ii) On the other hand, Mr. R. Krishnasamy as well as Mr. R. Krishnamurthy, learned senior counsel appearing for the contesting respondents, would submit that there are sufficient materials in the plaint which satisfied the ingredients u/s 92 C.P.C. They also contended that the entire contributions made to the Trust were given accounted in a bank at Madras, the registered office of the Trust is only at Madras and inasmuch as two trustees have joined together and laid a suit for removal of defendants 2 to 5, since their activities are against the interest of the Trust, the suit as framed and laid before the Original Side of this Court is in order and the learned Single judge was perfectly right in granting leave u/s 92 C.P.C., as well as Clause 12 of Letters Patent.

5. We have carefully considered the relevant materials and the rival submissions.

6. In view of the limited question involved in these appeals, it is unnecessary for this Court to go into all the factual details as referred to by both parties.

However, in view of the objection raised by the appellants herein/contesting defendants, we perused the plaint averments, particularly the information given in the cause of action paragraph (para 4). It is specifically stated in that paragraph that the first respondent Trust was established by registration of a Deed of Trust in Chennai within the jurisdiction of this Court. It is also stated that the Trust developed in status on account of donations received from Railwaymen through the office bearers of plaintiff Union at Chennai, in 1994-95. On verification of the above details and other pleadings, we are satisfied that there is a public Trust and two persons who have an interest in the said Trust joined together and laid the present suit. Further, they have to obtain leave of the Court and whole or any part of the subject matter of the Trust is to be situated within the local limits of the Court in which such suit is filed. The plaint must also state the relief mentioned in Section 92 C.P.C. As said earlier, we are satisfied that the plaintiffs have substantial interest in the Trust. Apart from the specific averments regarding donations/contributions by various members of the Union, Mr. Krishnamurthy, learned senior counsel for the contesting respondents, has brought to our notice the details annexed in the form of separate type-set. The perusal of those details would amply show that several donations by way of contributions from various Mazdoor Unions have been sent to the Trust and those amounts were credited in the bank account at Chennai. As rightly observed by the learned Single Judge, Trust property means money belonging to the trust and it was established that on the day when the suit was filed, the Trust was having a bank account in Chennai within the jurisdiction of this Court.

7. Mr. T.V. Ramanujam by placing reliance on a Division Bench decision of this Court in Parameswari Veluchamy v. T.R. Jayaraman, reported in 2002 (1) CTC 134, would contend that when almost all properties are situate outside Madras leave ought not to be granted. It is true that when major properties situate outside and only few are available, it is the discretion of the Court either to grant leave or not. In these cases on hand, as we held earlier, the necessary averments in the plaint would go to show that plaintiffs have satisfied the ingredients as found in Section 92 C.P.C. and the learned Single Judge has rightly exercised his discretion.

8. The learned senior counsel for the appellants by drawing our attention to a decision of the Supreme Court in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, , would submit that inasmuch as 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. We have already verified the plaint averments, the allegations made against the defendants as well as the grievance of the plaintiffs and after a careful consideration of those materials, we are satisfied that the plaintiffs are not seeking the relief against individual or personal right or rights of any other person or persons. Mr. T.V. Ramanujam basing reliance on a Division Bench decision of this Court in Menezes, L.M. v. Rt. Rev. Dr. Lawrence Plus,

reported in 2004 (1) CTC 321, would submit that in the light of the fact that the plaint does not contain the material averments in terms of Section 92 C.P.C. the suit is not maintainable and the learned Judge ought not to have granted leave. There is no dispute with regard to the proposition of law laid down in that decision, namely, that maintainability of suit depends upon the allegations in the plaint. We have already mentioned that we have perused the entire averments made in the plaint. As rightly observed by the learned Judge, merely on the basis of some averments in the legal notice dated 1-9-20023 namely that a call was made on the defendants either to have in the board of trustees some members of the first plaintiff union within the fixed capacity or amend the trust deed to increase the number of trustees, so that some nominees of the first plaintiff union can be nominated as trustees of the Trust, it cannot be concluded that the plaintiffs have projected only their personal cause and not the cause of the general public. We are satisfied that the entire plaint averments clearly showed that the plaintiffs are only interested in the proper maintenance of the Trust and its affairs and it cannot be construed or claimed that the plaintiffs are not interested in general public or for the cause of the beneficiaries.

9. We have already referred to the specific assertion that thousands of members of Mazdoor Union contributed money/ donations and all those contributions have been credited in the bank account of the Trust at Chennai. As rightly ruled in the case of Annamalai v. Solaiyappa AIR 1935 Mad. 983, a suit u/s 92, C.P.C. should be brought where the subject matter of the trust, that is to say, the trust property or the trust money or any part of it, is situate. In Krishnadoss Vithaldoss v. Ghanshamdoss, reported in 1925 Mad. 1984, a Division Bench of this Court had held that a suit for account of Management of trust is really a suit for administration of a trust and not a suit for land and therefore is not excluded from the jurisdiction of the High Court, though the trust properties are in the mofussil. In Mt. Amir Bi v. Abdul Rahim, reported in AIR 1928 Mad 760, again it was held that an administration suit is not one for land, but this Court (High Court) can try suit though whole of the property is outside its jurisdiction.

10. Though it is contended that no Schedule of property has been mentioned in the plaint, in the light of the relief prayed for, we hold that the omission of the same is not a defect and the said contention is liable to be rejected. In the light of our above discussion, the appellants cannot claim that there is no details regarding bank account. Further, as discussed earlier, in the light of the specific averments in the plaint, it cannot be construed that there is no balance of convenience in their favour and secondly it cannot be claimed that there is no bona fide in filing the suit. Apart from this, learned counsel appearing for 6th respondent has also brought to our notice that trust meetings were held only at Chennai for which he produced details in the form of typed-set. Based on these factual details, the learned Judge has rightly held that leave to sue u/s 92 C.P.C. as well as Clause 12 of Letters Patent was properly granted and there is no valid ground to revoke the same. We agree with the said contention.

11. In the light of what is stated above, we do not find any merit in the appeals; consequently the same are dismissed. No costs. Consequently, connected miscellaneous petition is closed.