

(1981) 03 MAD CK 0040

In the Madras High Court

Case No : Appeal No. 899 of 1977

Melur Panchayat Union and Another

APPELLANT

Vs

L. Sundararajan and Others

RESPONDENT

Date of Decision : 11-03-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92(1)

Citation : AIR 1982 Mad 278 : (1982) 95 LW 53 : (1982) 1 MLJ 285

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : Chandrasekharan, for the Appellant; T.R. Rajagopalan, for the Respondent

Judgement

1. This is an appeal by the plaintiffs 3 and 4 in O. S No. 419 of 1973 on the file of the III Additional Subordinate Judge, Madurai against the judgment and decree dated 25-10-1976 in the said suit dismissing the said suit Instituted under Sec. 92 C. P. C.

2. It is unnecessary at this stage to dwell in detail the case that has been put forward by either side before the trial court. Because, it is sufficient for the purpose of this appeal if it is only said that the suit had been instituted by all the plaintiffs for changing the object of the trust that had been created by one Ananthanarayana Deek-shidar, for providing food to Byragis and Brahmins, into one of Educational institution, it was also opposed by the defendant in the trial court that inasmuch as the scope of Sec. 92 (17) (h) does not contemplate such a kind of transformation of the object of the trust into one something different from the object with which it had been initiated Or started by the founder, and what is more, if at all that is the scope of construction. first of all, the plaintiffs are obliged to prove with adequate evidence that there has been no scope at all to carry on the object of the trust any further, namely, to provide food for Byragis and Brahmins, then only the question of transforming the trust into one for educational institution that is proposed can be taken into consideration at all.

3. As a matter of fact, the main point urged on behalf of the appellants, namely, plaintiffs 3 and 4 is that Ananthanarayana Deekshidar got the land as inam from, the Nawab of Arcot, though the details relating to the date and the purpose for which the inam was granted by the Nawab of Arcot are not known, It is also not disputed that the trust came into existence for the said purpose, Therefore it is not now open to have a dispute over the matter especially when it is common ground that the said trust though not Properly being maintained, has lost its character of providing food for Byragis and Brabmins,

4. It is common knowledge that when the founder of a trust has created the same with an object, that object should be continued by the trustees who are administering the properties of the said trust and only in an utter failure and frustration of the object by not being in a Position to carry out the object, then they can come forward with any petition. if at all, they are maintaining under Sec. 92(1)(h) C. P.C. The argument advanced in this regard by Mr. T. R. Rajagopalan, the learned counsel for the respondent herein cannot be rejected as wholly unsustainable Mr. Chandrasekharan the learned counsel for the appellants, in his interesting argument, no doubt, submits that when the very properties attached to the trust have become so dilapidated and not in a Position to be managed or administered- as there are no funds even to carry out the repairs, it is but necessary that the, provision of Section 92 (1) (h) has to be allowed to have its way for the benefit of the continuance of the trust though by changing its name and according to the learned counsel, by changing the purpose of the trust to one of educational institution for imparting knowledge to the posterity of this nation, it cannot be said to be in any way against the purpose and aim of the said trust.

I have carefully applied my mind to the submissions made in this regard by both the sides, I have also applied my mind and read carefully the provisions of Sec. 92 of the new Civil P. C. namely, the Civil P. C. 1908 as amended by Act 104 of 1976. Section 92 of the Civil P. C. deals with "Public charities" Cl. (1) (h) of S. 92 of the said Code enumerates that a relief such as "granting such further or other relief as the nature of the case, may require" can be granted under the provision of this section by a court, when a Party connected with the trust comes forward with an application and it feels that the purpose of the trust can be enhanced and its continuance can also be allowed for some appreciable period by changing the object can be brought under provision.

5. In the instant case it is relevant to note that though evidence has been led in on behalf of the plaintiffs, in the second plaintiff examining himself as P. W. 1, and also filing Ex. A. 1 and Ex. A. 2, and on the other side the father of the defendant examining himself as D. W. 1 and also filing Ex. B. 1 to Ex. B. 4, it has not been convincingly brought as a Point so as to uphold that this s. 92(1)(h) can be made use of for the purpose of granting the relief prayed for by the plaintiffs in the suit. Suffice it to say, without going in detail even at this stage, that the trial court is correct in having come to the conclusion on the two issues framed

by it. Namely 11(I) whether the suit Chatram belongs to a private trust? And (2) whether this court has no jurisdiction to try this suit T, and holding under issue No. 1 that it is a private trust pure and simple and it cannot be said to be public trust and further holding that" issue No. 2 that this court (the Subordinate Judge's Court, Madurai) has no jurisdiction to try the suit since S. 92 C. P. C. does not contemplate a public trust of charitable nature being considered in a suit arising out of it, and that the plaintiffs are not entitled to the direction prayed for since the direction prayed for by the plaintiffs was not for proper or better administration of the trust for which the Chatram building had been created in the result the suit was dismissed as mentioned above.

6. On appeal by the plaintiffs 3 and 4 it is vehemently contended by the learned counsel for the appellants and reiterated that even if he is not obliged to put forward any arguments against the finding regarding the first issue by the trial court yet, he is obliged to put forward arguments regarding the finding that the court has got no jurisdiction to try the suit, because, S. 92(1)(h) C. P. Code does not give jurisdiction for it to go into that aspect of the matter.

7. In this regard, learned counsel for the respondent refers to the decision in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, , for the following proposition-

"A suit under S. 92 C. P. C. 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 relief's 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 under 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 of the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope A S. 92."

8. Applying my mind to the observation of the Supreme Court in the said decision and utilising the ratio decidendi imbedded therein to the facts of the instant case, I am constrained to concur with the finding of the trial Court that the trial court had got no Jurisdiction to entertain the suit as framed and instituted as O. S. No. 419 of 1973, because the averments made in the plaint as well as the points arising for determination in the suit on the basis of the various contentions raised in the written statement do not come within the Purview of cl. (1) of S. 92 C. P. C. No further discussion is necessary for arriving at this conclusion, because, the observation of the Supreme Court in this regard in the above decision referred to, when applied to the facts of this, case, clearly shows that when the plaintiffs want to change the very character of the trust, in other

words, to change the very object of the trust and transform the trust which was originally initiated for the purpose of providing food for Byragis and Brahmins into of an educational institution on the ground that the properties of the said" trust have become dilapidated, it can, never come under the purview of Sec. 92(1)(h) C. P. Code.

9. Mr. T. R. Rajagopalan, the learned counsel for the respondents, further points out that S. 92 cl. (3) C. P. C. contemplates the application of doctrine of CY-Pres so far as the diversion of the funds to any other purpose than the Purpose for which the trust has been created originally, before the amending Act 104 of 1976 it is the High Court which has to be moved with respect to such a Prayer or in the mousy it is the District Court, which has to be moved for accomplishing that object. Now, inasmuch as this provision is also there under S. 92 the scope of S. 92 had to be comprehensively understood and what is more, it is not out of place, according to him, if it is submitted that S. 92(1)(h) C. P. C. does not contemplate the object for which the suit has been instituted by the plaintiff in the trial court. The object of the institution of the suit by the plaintiff before the trial court was to change the very character of the suit, in that, originally when the donor or the author of the trust had endowed the property for the purpose of feeding the Byragis and Brahmins. The plaintiff now seeks the permission of the court to change that object into one of utilising the funds of that trust for transforming the very Chatram, which is the property of the trust into one of educational institution. The scope, according to the learned counsel for the respondent, Mr. T. R. Rajagopalan is that S. 92 is not so wide as to imbibe the aforementioned prayer that has been now put forward by the plaintiff the appellant herein. In view of the foregoing discussions and also the evidence available on record, as an appellate court, I hold that the provision under S. 92(1)(h) C. F. C. does not contemplate the change of the character of the original trust into a different one but all that, the said subsection contemplates is granting such further or other relief as the nature of the case may require and these words do not, under any circumstance, mean and include the change or alteration of the object with which the trust has been created by its author. Therefore, there is no merit in the appeal. The appeal is dismissed. There is no order as to costs.

10. Appeal dismissed.