

(2012) 09 KAR CK 0037
In the Karnataka High Court
Case No : M.F.A. No. 6174 of 2011 (CPC)

M/s. Bharathiya Vidya Vahini Trust and Others

APPELLANT

Vs

Sri D. Ganesh Murthy and Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2012) 09 KAR CK 0037

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : Sriyuths S. Sriranga and S.S. Naganand, for M/s. Just Law, for the Appellant; Jayakumar S. Patil for Sri B.R. Vishwanath, Advocate for R1 and R2, Sri Muniraju, Advocate for R3 and M/s. Indo Legal Inc., Advocates for R4 and R5, for the Respondent

Final Decision : Allowed

Judgement

N. Ananda

1. The learned Principal City Civil Judge, Bangalore has refused to grant leave to petitioners/appellants u/s 92 CPC. Therefore, appellants are before this Court. I have heard Sri S.S. Naganand, learned Senior Counsel for appellants/petitioners and Sri Jayakumar S.Patil, learned Senior Counsel for respondents.

2. The reliefs sought for in plaint are as follows:

a) To declare that defendant No. 1 is not a trustee or Chariman of 1st plaintiff and direct him to deliver all the Books, Trust properties in his possession pertaining to the 1st plaintiff trust to the plaintiffs.

b) To restrain defendant No. 1 from holding out and representing himself as Trustee/Chairman of the 1st plaintiff Trust before the statutory authorities, banks and financial institutions and general public or act as such to PTA School or other institution belonging to 1st plaintiff Trust.

- c) To restrain the defendants from admitting any children accepting any donations, fees or issuing any appointment letters to anybody either temporarily or permanently.
- d) To restrain the defendants or for that matter anybody else from parking vehicles inside the school premises PTA School, Ashoka Pillar, I Block, Jayanagar, Bangalore- 560 011 or/and using the said premises for any personal activities.
- e) To restrain the defendants from entering the school premises morefully described in the schedule written hereunder
- f) To conduct an enquiry into the affairs of PTA school and order for return of funds, which have been grossly misused fro purposes other than the ones not approved/sanctioned by the Trust and order for return of money which all the defendants have drawn every month from the Trust, in violation of the provisions of the Trust Deed.
- g) To remove the defendants No. 2 and 3 from the office of trustee of 1st plaintiff Trust
- h) For such other or further reliefs as this Hon"ble court deems fit to grant in the circumstances of the case.

3. The learned trial judge has held that petitioners 2 to 7 have contended that respondents 1 to 3 are mismanaging the affairs of first appellant Trust. The learned trial judge has held that petitioners 2 to 7 (who are trustees in majority) can remove respondents 1 to 3 from Trusteeship. In the circumstances, there are no sufficient grounds to grant leave u/s 92 CPC. The learned trial judge has held that dispute raised by the parties is an interse dispute of trustees and the suit is filed to vindicate their personal rights.

4. The learned trial judge has relied on the judgment of Supreme Court reported in Vidyodaya Trust Vs. Mohan Prasad R. and Others, wherein, the Supreme Court has held:

Civil P.C. S. 92- Suit against Public Trust--Leave-- suit was projected as for vindicating public rights. But emphasis was on certain purely private and personal disputes -- Grant of leave, thus not legal.

Further, at para 25 of the judgment, it is observed as under:

To put it differently, it is not every suit claiming reliefs specified in Section 92 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. As a decisive factor 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 plaintiff has sued and the purpose for which the suit was brought. The courts have to be careful to eliminate the possibility of a suit being laid against a public trusts u/s 92 by persons whose activities were not for protection of the interest of public trusts.

The learned trial judge has also referred to the earlier judgments reported in AIR 1938 Madras 92, AIR 1943 Madras 466 and AIR 1969 SC 884.

5. The learned trial judge has relied on Page 17 of judgment reported in Vidyodaya Trust Vs. Mohan Prasad R. and Others, wherein, the Supreme Court has held:

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 Sec.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 by 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 denying 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 Sec.92

The learned trial judge relying on the above decisions has held that appellants No. 2 to 7 are trustees of the first appellant trust. Therefore, they fall outside the purview of Section 92 CPC, as basically suit u/s 92 CPC is intended to be filed in a representative capacity representing the members of public to protect the interest of public or beneficiaries, as the case may be. When right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside the purview of Section 92 CPC. Therefore, leave cannot be granted u/s 92 CPC.

6. The learned Senior counsel for appellants referring to Section 92 CPC would submit that in respect of trust created for public purposes of charitable or religious nature, two or more persons having an interest in the trust may institute a suit. The appellants 2 to 7 are trustees and they are competent to institute a suit. Therefore, the finding recorded by the learned trial judge is erroneous. The learned senior counsel referring to Section 92 (1) (a) would submit that leave has to be granted where suit is filed for removal of any trustee on the allegation that he has committed breach of trust or he is misusing the trust property. The learned senior counsel would further submit that suit u/s 92 CPC is a representative suit. The court may direct the parties to take out paper publication so that all the persons interested in the trust may take part in the proceedings and on that ground leave cannot be refused.

7. The learned senior counsel for appellants has taken me through averments of plaint to submit that the first appellant is a public charitable Trust, the second appellant is the founder executive Trustee as also Principal of PTA School established by the first appellant Trust; Appellants No. 2 to 5 are Trustees. Respondent No. 1 was the Chairman of plaintiff Trust. Respondent No. 2 became

the Trustee on 17.02.2012. Respondent No. 3 is nobody but claiming that he is a Trustee to attend the school and control the staff.

8. The learned Senior counsel would submit that first appellant Trust was constituted under registered deed of trust dated 19.11.1992. The second appellant is the Executive Trustee for life and founder Principal. The first appellant Trust is managing the affairs of PTA school in a premises taken on lease from Karnataka Hindi Prachara Samithi, I Block, Jayanagar, Bangalore. The other Trustees namely, Sri Shivaji Rao, Sri A.K. Govindan and Col. C.N.R. Swamy retired from the trusteeship and there have been some changes in the constitution of the Board of Trustees. The details of Trustees worked in those vacancies are stated thus:

Sl. No.

Names

Retired/Resigned

1

A. Krishna Murthy

Dead

2

Col.C.N.R. Swamy

Resigned

3

Dr. Shivaji Rao

Resigned

4

A.K. Govindan

Resigned

5

D. Ganesh Murthy

Tenure over wayback in 1998 itself

6

Chandrashekar G.A.

Resigned

7

K. Narasinga Rao

Resigned

8

Ashwin Shah

Resigned

9

L.P. Srinivas

Tenure over on 17.02.2002

10

K. Ramanna

Tenure over on 17.02.2002

11

S. Srinivasa Murthy

Resigned

12

Govindaraj

Tenure over on 17.02.2004

13

Krupakar

Resigned

14

D.H. Guru

Appointed on 17.02.2002 but prevented from functioning as Trustee

15

Parthan

- do -

16

Prabhakar

Appointed on 01.11.2002

17

Annaiah

Appointed on 17.02.2004

18

Y.N. Srinivasa Reddy

- do -

9. The learned senior counsel has taken me through averments of plaint. As per averments of plaint, the first respondent was taken as a Trustee in 1994 vide proceedings of the meeting dated 20.10.1994 for a period of two years but somehow has completed over 13 years though Trust Deed provided for a maximum tenure of four years for Trustees. The first defendant had misrepresented himself as Trustee in High Court, Civil court and Criminal courts and has committed perjury.

The second respondent was appointed as Trustee on 17.02.2002 for a period of 4 years and his term came to an end on 17.02.2006. The third defendant has no locusstandi to represent the Trust and he is meddling with the trust properties. The defendant No. 1 had made several attempts to withdraw funds of the Trust held in Corporation Bank and such attempts were defeated because of objections by second appellant and also authorisation held by appellants No. 2 and 3. Respondents No. 1 to 3 have withdrawn money from various banks by producing unauthorised resolutions to the banks. The respondents had filed a suit in O.S. No. 656/2003 seeking injunction against second appellant, however, no relief was granted and finally the suit was dismissed on 9.10.2006. Respondent No. 1 has no capacity to run educational institution because of inherent infirmities. Respondent No. 1 has not accounted about two transport vehicles belonging to Trust and maintained by the Trust. Respondent No. 1 had permitted some persons to sell books in the PTA school premises and collected Rs. 30,000/- from such persons. Respondent No. 1 is accountable to income derived by permitting aforesaid persons to sell books in the school premises. Respondent No. 1 had also directed the parents of children (students) to go to a particular shop to buy uniform cloths and there is no transparency in this regard. Since September 2002, respondents have not remitted the amounts to the bank account of first petitioner Trust held in Corporation Bank, Jayanagar Branch, Bangalore. There are other serious allegations of breach of trust and misuse of trust properties against respondents No. 1 to 3. In these circumstances, appellants/plaintiffs were constrained to file a suit seeking aforesaid reliefs.

10. The learned Senior counsel appearing for respondents relying on the judgment of Supreme Court in Vidyodaya Trust Vs. Mohan Prasad R. and Others, would submit that, relief sought u/s 92 CPC, cannot be granted if the suit is brought to vindicate personal rights. The court in order to decide an application u/s 92 CPC, will have to go beyond the relief sought and should have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was

brought. The Trustees of Public Trust are precluded from suing u/s 92 CPC to vindicate their individual or personal rights.

The learned Senior counsel would submit that when the right to the office is asserted or denied and relief asked for on that basis, the suit falls outside Section 92 CPC.

11. In *Vidyodaya Trust Vs. Mohan Prasad R. and Others*, the Supreme Court has 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.

x x x

19. In the result, the appeals are allowed as aforesaid. The impugned judgment of the High Court is set aside. The trial court is directed to dispose of the application for revocation of leave on merits and in accordance with law."

17. In *Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another*, it was held as follows:

5. The main allegations in the plaint were that Brahmanand did not execute the Will while he was in a sound disposing state of mind, that respondent 1 had not the requisite learning in Sanskrit and the Vedas and, therefore, he was not qualified to be nominated as successor to the Headship of the Math, that he came into possession of the Math properties and has committed breach of trust by applying for grant of succession certificate and other acts, that Krishnabodhashram was duly installed as the Shankaracharya of the Math on June 25, 1953 and that direction of the Court was necessary for the administration of the Trust properties. The plaintiffs prayed for the removal of respondent 1 from the Headship of the Math, a declaration that Krishnabodhashram was the duly installed Head of the Math and to appoint him as the Head, and in the alternative, to appoint any other competent person as the Head of the Math. They further prayed for vesting of the properties of the Jyotish Math in the new Head and for rendition of accounts by respondent 1, etc., and to restrain him from prosecuting the application for succession certificate and also the mutation proceedings.

x x x

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*, *Tirumalai Devasthanams v. Udiavar Krishnayya Shanbhaga*, *Sugra Bibi v. Hazi Kummur Mia 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.

11. We see no reason why the same principle should not apply, if what the plaintiffs seek to vindicate here is the individual or personal right of Krishnabodhashram to be installed as Shankaracharya of the Math. Where two or more persons interested in a Trust bring a suit purporting to be u/s 92, the question whether the suit is to vindicate the personal or individual right of a third person or to assert the right of the public must be decided after taking into account the dominant purpose of the suit in the light of the allegations in the plaint. If, on the allegations in the plaint, it is clear that the purpose of the suit was to vindicate the individual right of Krishnabodhashram to be the Shankaracharya, there is no reason to hold that the suit was brought to uphold the right of the beneficiaries of the Trust, merely because the suit was filed by two or more members of the public after obtaining the sanction of the Advocate-General and claiming one or more of the reliefs specified in the section. There is no reason to think that whenever a suit is brought by two or more persons u/s 92, the suit is to vindicate the right of the public. As we said, it is the object or the purpose of the suit and not the reliefs that should decide whether it is one for vindicating the right of the public or the individual right of the plaintiffs or third persons.

x x x

14. It is, no doubt, true that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92 (See *Association of R.D.B. Bagga Singh v. Gurnam Singh*, *Sohan Singh v. Achhar Singh* and *Radha Krishna v. Lachhmi Narain*). But, 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 or 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. This was one of the grounds relied on by the High Court for holding that the suit was not maintainable u/s 92.

18. Prior to legislative change made by the CPC (Amendment) Act, 104 of 1976 the expression used was "consent in writing of the Advocate-General". This expression has been substituted by the words "leave of the Court". Sub- Section (3) has also been inserted by the Amendment Act. The object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of public trusts. Thus, there is need for scrutiny. In the suit against public trusts, if on analysis of the averments contained in the plaint it transpires that the primary

object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in Swami Parmatmanand's case (supra) a suit u/s 92 CPC is a suit of special nature, which pre-supposes the existence of a public trust of religious or charitable character. When the plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has no application. 19. In Swamy Parmatmanand's case (supra) it was held that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92. But 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 fact or reason but is made only with a view to bringing the suit under the Section then suit purporting to be brought u/s 92 must be dismissed.

20. In Chettiar's case (supra) it was held that normally notice should be given before deciding the question as to whether leave is to be granted.

21. If 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 necessary orders.

22. One of the factual aspects which needs to be highlighted is that the allegations which have been made against respondents 2, 3 and 10 are referable to a decision taken by the Board, though may be by majority. The fundamental question that arises is whether allegations against three of them would be sufficient to taint the Board's decision. As was observed by this Court in Swamy Parmatmanand's case, (supra) to gauge whether the suit was for vindicating public rights, the Court has to go beyond the relief and to focus on the purpose for which the suit is filed. To put it differently, it is the object or the purpose for filing the suit and not essentially the relief which is of paramount importance. There cannot be any hard and fast rule to find out whether the real purpose of the suit was vindicating public right or the object was vindication of some personal rights. For this purpose the focus has to be on personal grievances.

23. On a close reading of the plaint averments, it is clear that though the color of legitimacy was sought to be given by projecting as if the suit was for vindicating public rights the emphasis was on certain purely private and personal disputes.

12. In the case on hand, it is not disputed that the first plaintiff is a Public Charitable Trust created under the registered trust deed dated 19.11.1992. In view of the rival contentions and in view of what has been held in the aforesaid decision, it is necessary to find out whether petitioners have moulded reliefs to bring the suit u/s 92 CPC and in reality the suit is filed for vindicating their private and personal disputes.

13. I have extracted some of the averments of plaint. It is the contention of

appellants 2 to 7 that even after expiry of their term as Trustees, respondents 1 and 2 are meddling with trust properties and they have misused trust properties. They have committed breach of trust and interference of the court u/s 92 CPC is necessary. It is seen from averments of plaint that there are serious allegations of breach of trust by respondents No. 1 and 2 and respondent No. 3 has been used as a front runner. It is alleged in the plaint that these illegal activities of respondents 1 to 3 will have to be curbed to protect the interest of the Trust.

14. In the plaint, there is reference to O.S. No. 656/2003 filed by the first respondent (herein) representing himself as the Chairman of first appellant trust. In O.S.656/2003 it was averred by first respondent that first petitioner is a Trust registered under the Trust Act and first petitioner is running a school under the name and style of PTA School. It is alleged that there are conflicts between Trustees and the Trust properties have been misused. The aforesaid suit was filed for decree of permanent injunction to restrain the second defendant (second appellant herein) from interfering with affairs of the trust and also for mandatory injunction directing the first defendant bank (Corporation bank) to allow withdrawals to meet the statutory requirements such as payment of salary, electricity charges etc.

Thus, from the averments of plaint filed in O.S. No. 656/2003, it is clear that, there are serious allegations of misuse of Trust properties by the Trustees. When there are serious allegations of misuse of Trust properties, interference of the court is necessary. At this juncture it is necessary to state that PTA school managed by the Trust is a private aided school and it is receiving Grant-in-aid.

15. The learned Senior counsel for respondents has contended that appellant No. 2 has been asserting that he is founder Trustee. The suit is filed to vindicate his rights as founder Trustee.

There are serious allegations of breach of trust, during trial of suit, if it is proved that trust has been mismanaged, there is breach of trust either by respondents or appellants, they will be removed from the Trusteeship. The court will have to formulate a scheme for management of trust properties and proper application of income of Trust to achieve the object of Trust. The PTA school run by the Trust is receiving Grant-in-aid from the State. Therefore, it is necessary to find out if the Trustees notwithstanding the fact that they are arrayed as plaintiffs or defendants have committed breach of trust and they have been mismanaging the affairs of the Trust. In the circumstances, it is not possible to hold that petitioners have filed the suit to vindicate their private and personal disputes. The court after according leave shall direct the plaintiffs to take out paper publication so that all the persons interested in the trust may take part in the proceedings.

In view of above discussion, I hold that the learned trial judge was not justified in rejecting the application (Misc. No. 309/2007) filed u/s 92 CPC. In the result, I pass the following:

ORDER

i) The appeal is accepted.

ii) The impugned order is set aside.

iii) The leave sought for by the petitioners in Misc. No. 309/2007 u/s 92 CPC is granted. The learned trial judge is directed to register the suit and proceed with the suit in accordance with law.