
(2001) 09 MAD CK 0122
In the Madras High Court

Periasami

APPELLANT

Vs

Chinnathambi Padayachi and Another

RESPONDENT

Date of Decision : 29-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2001) 3 MLJ 686

Hon'ble Judges : S. Jagadeesan, J

Bench : Division Bench

Judgement

S. Jagadeesan, J.—The first defendant in O.S.No. 63 of 1985 on the file of the Subordinate Judge, Ariyalur is the appellant herein.

2. The first respondent and herein filed the said suit for framing of the scheme in respect of the suit temple and for consequential injunction restraining the appellant herein from interfering with his right to perform the poojas on the festive occasions mentioned in the plaint.

3. The claim of the plaintiff/first respondent herein is that he along with the appellant and the second respondent herein are entitled to perform the poojas on turn system and however the appellant with his man power, interfered with the right of the respondents and hence the suit was laid.

4. The trial court, after considering the evidence on either side, decreed the suit. The appellant herein preferred an appeal in A.S.No. 177 of 1990 on the file of the Principal District Judge, Tiruchirappalli, who confirmed the judgment and decree of the trial court and dismissed the appeal. As against the same, the Second Appeal has been filed.

5. At the time of admission of the Second Appeal, the following substantial question of law was formulated:

Whether the courts below are right in entertaining the suit without obtaining prior leave as contemplated u/s 92 of the Code of Civil Procedure.

6. Even though both the learned Counsel advanced the arguments on merits ultimately, the appeal has to be disposed of on the question of technical ground as stated on the substantial question of law.

7. It is the main contention of the appellant herein that obtaining the leave of this court u/s 92 of the CPC is a condition preceded and as such, in the absence of such leave, the suitcase is liable to be dismissed.

8. Section 92 of the CPC contemplated that in the case of breach of any express or constructive trust of a charitable or religious nature or when the direction of the court is deemed necessary for the administration of such trust the Advocate General or two or more persons having an interest in the trust and having obtained the leave of the court, may institute a suit.

9. In this appeal, the suit has been laid only by the first respondent alone and there is nothing on record to show that he has filed the suit on a representative capacity. Even assuming that it is a private trust, it may be open to him to file the suit for framing of the scheme. However, he has to plead as to who are all the interested persons. Even on this ground, if the suit is held to be maintainable, then, the other requirement of obtaining the leave of this court had not been complied with by the first respondent herein before ever the suit was filed. Since this is an admitted fact, this court is of the view that the suit cannot be entertained without the leave of the court, because such leave is a condition preceded for the purpose of maintaining the suit. On this short ground, the second the appeal is liable to be allowed and the suit filed by the first respondent has to be consequently dismissed.

10. Accordingly, the second appeal is allowed. No costs. Consequently, the above C.M.P. is dismissed as unnecessary.

11. It is made clear that since the suit filed by the first respondent being dismissed on a technical ground, it is open to him to file a fresh suit for framing of the scheme, after obtaining the leave of the court.