

(2015) 02 KAR CK 0339
In the Karnataka High Court
Case No : M.F.A. No. 404/2011 (CPC)

R. Ashwin Choudri and Others

APPELLANT

Vs

C.R. Nagappa and Sons Charitable Trust A Public Charitable
Trust and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, 92

Citation : (2015) 02 KAR CK 0339

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : S.R. Krishnakumar, for the Appellant; Aravind Kamath and Vamshi Krishna, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—Petitioners of a case bearing Misc. No. 611/10 which was pending on the file of Principal City Civil Judge, Bengaluru, have filed this appeal as they are aggrieved by the dismissal of the petition filed by them seeking leave to institute a suit under Section 92, C.P.C.

2. The 1st respondent is a public charitable trust created by Late C.R. Nagappa under a deed dated 7.7.1975. The 2nd respondent is the secretary and respondents 3 to 6 are the remaining trustees of the 1st respondent trust. Appellants herein are the sons of the 3rd respondent-Rudramurthy. Their case is that respondents 2 to 6 have alienated "A" schedule property bearing Survey No. 8, though permission had been accorded by the Principal City Civil Judge to alienate "A" schedule property to the 7th respondent and that further alienation made by the 8th respondent to 9th respondent is illegal.

3. It is the specific allegation of the appellants that respondents 2 to 6 have mismanaged the properties belonging to the 1st respondent trust and they have misused the funds of the public charitable trust.

4. The 2nd respondent and respondents 4 to 6 have filed detailed written statement to the petition filed under Section 92, C.P.C. and respondents 3 and 7 did not participate in the proceedings before the trial court though they were duly served. The 9th defendant has filed detailed written statement which is almost on the lines of the one filed by respondents 2 and 4 to 6.

5. After hearing the arguments of the learned counsel for the parties, the learned Principal City Civil Judge has dismissed the petition vide order dated 19.10.2010. It is this order which is called in question on various grounds as set out in the appeal memo.

6. The facts leading to the filing of the petition under Section 92, C.P.C. are as follows:

a) Petitioners who are appellants herein are the paternal grandsons of Late C.R. Nagappa. He was a philanthropic person and wanted to help the public at large. Hence, he created a trust. He was the first president of the trust and respondents 2 to 6 are his own sons.

b) According to the petitioners, respondents 2 to 6 in general, and respondent No. 2 in particular have misused the funds of the trust and have mismanaged the properties belonging to the trust. Therefore they filed the plaint seeking the following reliefs:

"Wherefore the petitioners pray that the Hon"ble Court be pleased to permit and grant leave to the petitioners to institute the accompanying suit and pass other suitable orders."

7. Learned counsel for the appellants has argued that the petitioners, being grandsons of the original trustee, are entitled to maintain a suit against the misuse of the funds of the trust and mismanagement of the properties in terms of Section 92, C.P.C. Learned counsel for the respondents does not dispute the locus standi of the petitioners to file the petition under Section 92, C.P.C. along with a scheme suit.

8. The main argument advanced on behalf of the petitioners is that is that respondents 2 to 6 in general, and respondent No. 2 in particular has misused the funds owned by the trust and its properties. According to them, land bearing Survey No. 130 of Seegenahalli village measuring 1.04 acres as described in schedule "A" belonged to the trust and with the permission of the Principal City Civil Judge, Bengaluru, the 2nd respondent has sold the same and the said sale is not made in favour of the 7th respondent as permitted by the court, but is sold to respondent No. 8. Therefore it is argued that the said alienation of 1.04 acres is contrary to the permission by the Principal City Civil Judge, Bengaluru in Misc. No. 4/05.

9. It is further argued that schedule item No. "B" is an important property situate by the side of Kasturba Road, Bengaluru City, and it measures 2,400 sft. and the intention of the 3rd respondent to gift it to the trust was to put up a

Kalyan Mantap and a hostel to students. Contrary to the intention of the donor, a commercial building has been up. It is further argued that schedule item No. "C" bearing Municipal No. 24/1 measuring 28,500 sft. situate on Siddaiah Road, Bengaluru, is a very valuable property of the 1st respondent trust and the same has been the subject matter of several sham and colourable transactions. It is argued that the 2nd respondent in particular has been acting detrimental to the interest of the trust and the public at large.

10. Learned counsel for the appellants has strongly contended that the contents of the written objections filed by the respondents cannot be looked into while considering the application under Section 92, C.P.C. seeking leave to institute a suit relating to the properties of the trust. It is argued that the trial court has adopted wrong approach to the real state of affairs in spite of coming to the conclusion that the petitioners have locus standi to file the suit.

11. There is no second opinion about the proposition of law that the contents of the written objections should normally not be looked into while considering an application under Section 92, C.P.C. As per the decision reported in the case of *Sugra Bibi Vs. Hazi Kummua Mia*, it is specifically held by the Hon'ble Supreme Court that the mere fact that the suit relates to a public trust of religious or charitable nature, and the reliefs claimed fall within some of the clauses of sub-section (1) of Section 9, would not by itself attract the operation of the section, unless the suit is of a representative character instituted in the interest of the public and not merely for vindication of any individual or personal rights of the plaintiffs."

12. In the case of *Vidyodaya Trust and Others Vs. Mr. Mohan Prasad R and Others*, the Hon'ble Supreme Court has held as follows:

"The suit filed in terms of Section 92, C.P.C. brought by individuals as representatives of the public must be one for vindication of public rights and not for vindicating purely private and personal disputes. Though the court before which an application is filed under Section 92, C.P.C. seeking leave to institute a suit against a public trust is expected to look into the contents of the plaint and written statement, it has to see as to whether the proposed action is one to vindicate purely private and personal disputes." As could be seen from the address of the petitioners as found in the cause title in 611/10, and that of the 3rd respondent-Rudramurthy who is none other than the father of the petitioners, it is one and the same. Permission was obtained by the 1st respondent trust represented by its secretary from the Principal, City Civil Judge, Bengaluru, by filing a petition in Misc. 4/05 in order to alienate item No. 1 measuring 1.04 acres of Seegenahalli village to the 7th respondent. The said permission was granted by the Principal City Civil Judge only after notifying the same in PRAJAVANI, Kannada daily newspaper which has a large circulation in the city of Bengaluru. The case of the petitioners is that they had no idea about the publication being made in PRAJAVANI. All the trustees including the 3rd respondent-Rudramurthy had chosen to file their respective affidavits stating that

the proposed sale in favour of the 7th respondent was in the best interest of the 1st respondent trust.

13. It is true that the 7th respondent intended of purchase the property and permission was granted in his favour to nominate any purchaser on his behalf and therefore the 8th respondent being the nominee of the 7th respondent, purchased the property through a registered sale deed. Subsequently the 8th respondent has sold the same in favour of the 9th respondent, a partnership firm represented by respondent No. 9(a) and 9(b).

14. The documents produced by the respondents show that respondent No. 9 is represented by respondent Nos. 9(a) and 9(b). It is their case that they have already put up 80 flats. It is not as though the construction of such a huge building has come up overnight. Admittedly it had taken several years for its completion and therefore petitioners cannot now contend that they were not aware of the same.

15. Insofar as item No. 1.2 is concerned, it is situate by the side of Kasturba Road, Bengaluru, and the property originally belonged to the 3rd respondent who is none other than the father of the petitioners. Being the absolute owner of the same, he gifted the property of the 1st respondent trust under a registered gift deed dated 29.3.1978 and a commercial building has been put up thereon.

16. Respondents have filed voluminous documents inclusive of income tax returns, audit reports, balance sheet relating to the trust, up to date. They have also produced documents to show that a school is being run by the 1st respondent trust in the name and style OUTREACH SCHOOL in Wilson Garden, Bengaluru.

17. As held by the Hon"ble Supreme Court in the case of VIDYODAYA TRUST (supra), a plain reading of Section 92, C.P.C. indicates that "leave of the court is a pre-condition for institution of a suit against a public trust for the reliefs set out in the said section; unless the beneficiaries join in instituting the said suit, if such a suit is instituted without leave, it would not be maintainable at all." What is argued before this court is that serious allegations have been made against respondents 2 to 6 in general and respondent No. 2 in particular, about breach of such trust and therefore direction of the court is necessary for proper administration of the trust. Hence it is argued that a request is made to formulate a scheme for better management of the trust and its properties.

18. Even if all the other ingredients of a suit in terms of Section 92, C.P.C. are made out, the suit will not be maintainable provided plaintiffs are not suing to vindicate the right of the public to personal rights or against persons in whom they are interested. In the case of N. Shanmukham Chetty Vs. M. Govinda Chetty and Others, , the Hon"ble Supreme Court has held that a suit whose primary object or purpose is to infringe the individual right or a personal right, the same does not fall within the purview of Section 92, C.P.C. This is exactly the reason why trustees of a public trust of religious or charitable nature are

precluded from suing under the section to vindicate their personal or individual rights.

19. It is quite immaterial whether the trustees pray for a declaration of their personal rights or denying personal rights of one of more defendants. It is made clear that when the right to the office of a trustee is asserted or denied and the relief asked for on that basis, the suit falls outside Section 92, C.P.C.

20. In the present case, the petitioners and 3rd respondent have participated in the trial court and are residing in the same address. The 3rd respondent is none other than the father of the petitioners and it is he who gifted two of the properties in the year 1978 through a gift deed. Petitioners have tried to assert that the alienation made in favour of the 8th respondent by respondents 2 to 6 is illegal. That appears to be palpably false in the light of the 7th respondent nominating the 8th respondent to purchase the property. The 8th respondent has already sold the property to the 9th respondent who has put up a huge building investing cores of rupees. These facts cannot be forgotten while evaluating as to whether the petitioners have personal vendetta against some of the defendants and they have filed the present petition for and on behalf of the public at large to vindicate public rights.

21. Suffice to state that respondents 4 to 6 have clearly averred that it is the 3rd respondent who has set up his own sons against them and it is filed with a motive to vindicate personal or private rights against the trustees.

22. In this view of the matter, the principles enunciated by the Hon''ble Supreme Court I the case of VIDYODAYA TRUST is aptly applicable to the facts of the present case. The learned judge has therefore held that the present petition being filed by the petitioners a sons of the 3rd respondent is not maintainable. Viewed from any angle, no good grounds are made out to interfere with the order passed by the learned Principal City Civil Judge.

23. Even on re-appreciation of the entire materials placed on record, no case is made out to grant the relief as contemplated under Section 92, C.P.C. The appeal therefore is liable to be dismissed.

24. In the result, I pass the following order:

ORDER

The appeal is dismissed. No order as to costs.