
(1986) 11 MAD CK 0010
In the Madras High Court
Case No : O.S.A. No"s. 113 and 192 of 1986

S. Guhan and Others

APPELLANT

Vs

Rukmini Devi Arundale and Others

RESPONDENT

Date of Decision : 19-11-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, 92

Citation : AIR 1988 Mad 1 : (1987) 100 LW 182

Hon'ble Judges : Sathiadev, J;Maheswaran, J

Bench : Division Bench

Advocate : A.C. Muthenna, for the Appellant; V.P. Raman, for P.S. Raman, G. Subramanian and G. Rajagopala and K.S. Bhaktavatchalam, Addl. Govt. Pleader, for the Respondent

Judgement

Sathiadev, J.—O.S.A. 113 of 1986 is preferred by three persons of which first appellant is a member of the Executive Committee of

Kalakshetra, a Society registered under the Societies Registration Act, the second appellant is a life member of the Society and the third appellant

is not only a life member but also member of its Executive Committee. They sought for leave to present the appeal against the judgment in C.S.

716 of 1985 and also to condone the delay in preferring the said appeal in C.M.P. Nos. 935 and 5269 of 1980 and leave was granted on 16-4-

1980.

2. O.S.A. 192 of 1986 is filed by fourth defendant in C.S. No. 716 of 1985. Both the appeals are preferred against the scheme decree passed in

the said suit No. on 20-11-1985. C.S. 716 of 1986 (A) was filed on the Original Side of this Court under S. 92(1) and O. VII, R. 1, C.P.C. by

three plaintiffs claiming that they are persons having interest in the Trust called

"Kalakshetra".

3. In the plaint, it is stated as follows: -"Kalakshetra, the first defendant, was founded by the first plaintiff. Rukmani Devi Arundale in or about

1936, as a public charitable trust. She was the Founder life trustee Director of the Trust. She nominated the other plaintiffs among others as co-

trustees, and all of them together constituted the Board of Trustees of the Trust. She acquired over the years the properties mentioned in schedule

A to the plaint, and dedicated the same to the trust, which was having the management and control of the Trust, and its properties are vested in the

Board of trustees with the first plaintiff as the life-President and founder Director. In paras. 5, 12 objects of the Trust are enumerated. The Trust,

as an institution, had acquired considerable magnitude; especially since 1962. The first defendant in so far as it related to its academic activities was

registered as a, Society, first under the Societies Registration Act 1866 and later on under the Tamil Nadu Societies Registration Act 1975

(hereinafter referred to as the Act). Its memorandum of association sets out its objects and it provides for an Executive Committee, a General

Body etc. However, the Society is and has always been distinct and different from the Kalakshetra Trust and its trustees, in whom the properties

and management and control of the Trust had been vested. In its discretion, the trust sanctions funds to the Society for its various activities. It is the

first plaintiff who had been responsible for its growth, and keeping in mind the fact that she and other trustees have become old in age and that time

has come to take suitable steps to device a machinery to preserve, promote and manage the trust in perpetuity and carry out their valuable

objectives for ever, the trustees have unanimously arrived at certain view points, which form part of the draft scheme enclosed to the plaint. Out of

the many suggested, the important aspects relate to vesting of the properties in 9 trustees who are to hold office I or lifetime, and the first set of

trustees has to be named by the Court and the said set up to supersede all else hitherto obtaining including the society etc. Leave of the Court

under S - 920), C.P.C. having been obtained plaintiffs have prayed for settling of a scheme of management as contained in the draft scheme

appended to the plaint, and for constitution of Board of Trustees by naming and nominating its first nine trustees and granting permission to seek in

future for directions of this Court in respect of the trust.

3A. Apart from the A schedule properties, B schedule in the plaint refers to properties belonging to a public charitable trust called Besant

Centenary Trust, and which had been impleaded as the second defendant in the suit represented by its secretary P. B. Krishnamurthi. In so far as

they are concerned, similar relief had been prayed for so as to vest those properties also in the same trust. No appeal having been preferred

relating to 8 schedule properties, these appeals are confined only to the properties covered by A schedule, relating to which alone, first defendant

has been impleaded represented by its Secretary A. Y. Sundaram.

4. First defendant filed a written statement stating that trustees have unanimously concluded that a scheme of management for the Trust should be

settled through Court, and therefore, the said defendant has no objections to the plaint prayers being granted, in terms of the draft scheme filed

along with the plaint. First plaintiff and other trustees co-opted by her have hitherto exclusively managed the Trust and the Trust is a distinct and

different entity, independent of the registered Society, as stated in the plaint. As and when a decree is passed, it will be for the registered Society to

consider the constitution and come to a decision and take action under S. 41, of the Act.

5. Second defendant in relation to B schedule properties filed a written statement giving consent for passing a decree, as prayed for. Third

defendant filed a written statement stating that he joins with the plaintiffs in the prayers in the plaint and consents to a decree being passed. The

fourth defendant-appellant in O.S.A. 192 of 1986 had not filed any written statement. A scheme decree was passed on 20-11-1985, which

contains all the proposals made in the draft scheme filed by the plaintiffs. They state that on the next day they took charge of all the trust properties,

their management and administration and of the responsibility to carry out the objects of the Trust

6. It was on 7-1-1986, O.S.A. 113 of 1986 was filed by appellants, raising the following grounds among others. Henceforth ranking of parties as

in this appeal.

Kalakshetra being a Society registered under the Societies Registration Act and as the A schedule properties belong to it; S. 92, C.P.C. is

inapplicable; and hence, the suit itself is not maintainable. Fourth respondent Society never brought to the notice of the Executive Committee about filing of the suit and of the intention of the plaintiffs to wind up the Society by resorting to S. 92, C.P.C. When the Society alone could manage and administer Kalakshetra and the properties belonging to it, respondents I to 3 on their own whims and fancies cannot subject its properties to a scheme decree. Respondents I to 3 have misled the Court to think that fourth respondent formed a subsidiary to the parent institution Kalakshetra which in fact is not a subsidiary of any other organisation; that they have obtained by practising fraud and in collusion with respondents 4 and 6 the scheme decree by gross abuse of process of Court in a hasty manner; and there being no allegation of any breach of trust not any particulars furnished as to why directions are sought for, on the only plea that first respondent and her co-opted persons are getting old, a scheme decree cannot be passed in which apart from the existing six persons out of the three more added, two of them are more than 70 years; and hence none of the requirements of S. 92, C.P.C. had been satisfied; and that at no point of time any grievance having been ever made that the Society headed by the first respondent did not constitute an adequate, efficient and dedicated machinery to carry on the mission for which Kalakshetra was founded, the suit had been filed in grievous breach of trust reposed in them; and that when the Society owns nearly 100 acres of land, and when the Act provides for a democratic method of functioning with various checks and counterchecks against mismanagement, at the instance of three of its more than .100 members, its extinction could not have been brought about by filing a scheme suit in direct violation of the provisions of the Tamil Nadu Societies Registration Act. The Society could not have been superseded by an illegal clause in the scheme decree. In the absence of consent secured from Central -and State Governments which are interested in Kalakshetra as per S. 41(4) of the Act, by the scheme decree, the Society could not have been superseded, and hence, taking over of the affairs of the Society by the nine trustees was illegal, and that a suit of this nature to be disposed of within one month of its institution without even waiting for the representation of the Registrar of Societies indicates the gross abuse of process committed by them in obtaining the decree, on the basis of incorrect averments etc.

7. Before dealing with the points so taken, elaborate affidavits have been filed pending disposal of these appeals, it will be in the interests of the

parties to refer to the contents of those affidavits and which could enable a proper appreciation of the contentions raised by respective counsel on

the points dealt with hereunder. Considerable repetitions of the same facts could also be thus avoided.

8. Appellants in the affidavits filed in -C.M.P. Nos. 935 and 5269 of 1986 have stated as follows. Regarding the filing of the suit and securing a

scheme decree, neither the Executive Committee nor the members of the Society, save and except respondents I to 3 and 6 were made aware of.

Mr. Sundaram Secretary of the Executive Committee who had received the notice of the suit on 28-10-1985 had never informed the members of

the Executive Committee when the meeting was held on 2-11-1985, about the pendency of the suit, and this conduct on their part shows that the

suit is a collusive affair between respondents I to 3 and 6 and Sundaram. Kalakshetra being a Society registered under the Act, it is not a trust

regarding which S. 92, C.P.C. could be invoked. Respondents I to 3 (hereinafter referred to as respondents) have misguided the Court by,

claiming that Kalakshetra is a Trust and the Society is a subsidiary of it, whereas it is exactly the other way around. In 1979, its rules were

amended vesting the properties of the Society in the President of the Society in trust and enabling her to co-opt up to five other trustees. There is

no document creating the Trust. All the A schedule properties belong only to the Society. Their present action in extinguishing the Society is a

breach of trust on their part. When Society could be wound up only as provided under S. 41 of the AM by a special resolution in which three-

fourth of the members will have to vote for it; by invoking S. 92, C.P.C. the Society cannot be extinguished and more so in the absence of consent

from Central and State Governments, when they had contributed considerably to the Society. As members of the Society, appellants are vitally

interested in its affairs, and when the Secretary had colluded with respondents I to 3 and 6, they had to file the present appeal to have the Society,

which has more than 100 members and its assets worth around Rs. 54 Crores. Having come to, know by the middle of December of what had

been done to harm the Society, appellants have prayed for permission to file the appeal and to condone the short delay in filing it.

9. First respondent had filed an elaborate counter-affidavit stating as follows: -

Fourth, respondent Society having ceased to exist on being superseded by the Scheme, the Board of Trustees appointed by Court had taken charge of its affairs on the next day, of the passing of the order by Court, and yet, the Board is not impleaded as a party. The appeal is motivated by personal prejudices and grievances and not An the interests of Kalakshetra, which is a public charitable trust, and that appellants, have no locus standi or any particular right to interfere with its management and administration of the Trust and its properties. The suit was filed to put "the properties and place their administration on a firmer footing and freeing them from fissiparous personal or group rivalries antagonistic divisions and prejudices. In law and on fact, the Trust has always been an entity by itself, distinct and different from the erstwhile society, which was but an instrument to carry out the objects of the trust, with the funds the trustees provided. Kalakshetra, from the start had, been dedicated by first respondent as a public charitable trust, which was established by her on 6-1-1936 and the properties have been acquired before and after - the date of constitution of the public charitable trust, which is an independent legal entity of its own. The properties were always vested in her, as the founder of the Trust, It was in 1944, the name Kalakshetral was chosen for the International Centre of Art, and on 1944, it was registered und# the Central Act 21 of 1860.

But this made no difference whatever to the character of the properties which continued to vest in her as a trustee as before registration, and that the Society never owned the properties. They were never deemed under S. 5 of Act 21 of 1860 to have vested in the governing body of the Society. After the Tamil Nadu Act was enacted, as she found that it was strain upon her to manage the properties, on 24-8-1979, by-laws 24, 26 and 27 were added for a Board of Trustees to be constituted by co-option of five trustees. Therefore, right from 1936, the trust has always been a distinct and separate entity different from the Society, and as Founder-Trustee and sole director since then she had managed them; and mainly because the objective of the Society and the Trust are identical, the common expression "Kalakshetra" applied to the said public charitable trust and the Society, and therefore, the Society was but an extended arm or aide of

the Trust to carry out the objects of the Trust. Hence, neither the Society nor its general body nor its Executive Committee or governing body had any right to interfere with the Trust or the trustees or the trust properties vested in them. They were never created by the Society; as claimed. The allegation of collusion, is baseless. In one of the meetings, first appellant was present, and in which the filing of a scheme suit was considered, and it was in the meeting held in April, 1985, the idea of filing a suit took definite shape. In spite of her failing health, she participated in those meetings and that plaint in the suit was unanimously approved by all the trustees at their meetings before it was filed in Court. There was no need for this matter to go before the general body or the Executive Committee, or the governing body of the Society, as it was a concern of the concerned trustees. There was no privacy or secrecy adopted, because once the plaint was filed in Court, and summonses were sent out to and served on the defendants, it was to the knowledge of every body who had cared to know. "The contesting parties in the suit were more than the representatives". The Court was apprised of every relevant fact and more particularly, about the relationship between the said Trust and the Society as its extended arm. On the framing of the scheme, the legal, logical and necessary consequence is supersession of the Society. S. 41 of the Act has no application. Notice did go to the society, as the first defendant. The scheme provided for vesting of the properties in the Trust, so that there was no longer any necessity or justification for any such Society. Factually, more properties were added, on a similar relief secured as against the second defendant. The allegations of breach of trust by respondents and collusion are baseless. First defendant in the suit was the Society itself represented by its Secretary, and it had filed its written statement and was also heard by Court through counsel. It was formed only to carry out the purposes of the Trust, which gives; funds to it from time to time, First appellant presumably on being proved that he did not find a place in the Board of Trustees as constituted, had used the second appellant as a tool to achieve his intention. Hence the third appellant has also joined him. On the delay which has occasioned in the filing of the appeal, it is stated that the scheme decree on being passed, was published in newspapers, and the first appellant had met the sixth respondent and

protested. Thus having knowledge of what had happened, there is no valid ground to excuse the delay, in the preferment of the appeal, nor to grant them leave to prefer an appeal.

10. To this, appellants have filed a reply affidavit stating that the affidavit sworn to by the first respondent on 16-2-1986 was served upon them on

26-3-1986. Reference is also made to representations made by respondents on 17-2-1986 in Court, that the affidavit to be filed by respondents

was not yet settled but the first respondent had signed the counteraffidavit on 16-2-1986 and when she had died on 27-2-1986, this matter had

attained significance. Appellants have preferred the appeal solely in the interests of "Kalakshetra" so as to preserve the Society, which alone in law

has the right to administer and manage it. It is owing to the conduct of the Secretary of the Society who had wilfully suppressed all the informations

to the concerned members, they had to prefer the appeal. Kalakshetra is nothing else but a society. The trustees were a creation of society and

derive their existence from the rules of the Society. They owe their existence to the society and were responsible to it. Respondents have not

adduced any proof that any of the schedule properties belonged to first respondent and that she had dedicated them to the trust. No document had

been filed to constitute any such dedication relating to an immovable property. It is for her to prove by production of correct and detailed evidence

as to what properties belonged to her and when she dedicated them and the dates on which she had dedicated them and as to what were her

personal references in acquiring those properties, and how they became vested in her independent of the society. Not a single property in A

schedule having been acquired prior to the registration of the Society in 1941, and all of them having been acquired by and in the name of the

Society; respondents have to prove the tall claims made that the properties do not belong to the Society. Respondents being bound by the terms

and conditions of the Memorandum of Association and rules, and more particularly Rule 24, respondents I to 4 and 6 cannot put forth contentions

which are opposed to the Rules. No deed of trust was filed. No rules or by-laws or any correspondence to show the existence of the Trust, was

produced. No Annual report, audited accounts relating to it, were ever produced. It had never applied for any income tax exemption, whereas it

was the Society which had the benefit of such exemption. The Society had continued to exist on and from 3-6-1940 and its General Body has more than 100 members and it is managed by an Executive Committee, which is elected by the general body, and the entire income and expenditure relating to A schedule properties are maintained and audited only by the Society; all the activities of Kalakshetra are being carried only by the Society through its Executive Committee, and therefore, by no stretch of imagination, it could be ever contended that the Society, is "an extended arm of the Trust". Regarding the purchase of the property by the first appellant, the sale deed dated 14-5-1980 clearly shows that the !owner and the vendor of the property was "Kalakshetra, a society registered under the Societies Registration Act, XXI of 1860" represented by C. S. Vidyasankar, a trustee authorised by the Trustees of Kalakshetra⁷. In the site plan, A. Y. Sundaram, Secretary of the Society had signed "for the owner", viz, the society. The claim, that first appellant had induced the other two appellants to join in the petition as if they are not interested in Kalakshetra is baseless, because, second appellant had dedicated her entire working life to the institution and she is-a life member. She is keenly interested in its affairs. As for the third appellant is concerned, he is a member of the Executive Committee, and no particulars are furnished as to what axe he had to grind against respondents. When respondents have claimed that all the trustees had decided to get the scheme settled and unanimously approved the plaint before it was filed into Court, the 6th respondent herein, who was one of the trustees, had been strangely impleaded as a defendant. As for the meeting in which the first appellant had partaken, it was convened to discuss a proposal to convert Kalakshetra into a deemed University, and the aspect of. filing a scheme suit was never discussed. There were several meetings subsequent to April, 1985 and even the General Body met on 29-6-1985, and in none of these meetings the filing of the scheme suit was ever made known. When there was a proposal to extinguish the society, it is strange to plead that there was no need or occasion for the General Body or the Executive Committee, of the Society to know about its intended fate. The Secretary to the Society has now become a trustee and no better illustration is needed to prove" collusion, privacy and secrecy, than what had been done by the concerned person. In the suit as filed, the

requirements of S. 92 C.P. C. having not been pleaded, nor existing, and as they were only trustees for the specific and limited purpose of holding

the society's properties and when Society had not ceased to exist by following the procedure under the Act, S. 92, C.P.C. does not and cannot

override the provisions of the said Act, which is a special provision. Hence the suit itself was misconceived. On the allegations made regarding

motivation, and as to what had happened subsequent to the passing of the decree, after referring to them, it is stated that it is unfortunate that the

late Rukmani Devi Arundale should have been asked to make a statement of facts, which could not have been there within her knowledge.

11. In C.M.P. 6240 of 1986 which w 6240 of 1986 which was filed to stay the operation of the decree till the disposal of O.S.A. 113 of 1986,

appellants have referred to most of the pleas, which have been put forth in the affidavits already filed. It is stated therein, that Kalakshetra was

inaugurated on " 6-1-1936, as the "International Academy of the Arts" in the Headquarters Hall of the Theosophical Society at Madras. At that

time it was not a legal entity and was only an informal association of like-minded persons, who had two objectives for the institution viz, to bring

about unity of all arts and to work for the recognition of the arts as vital to individual, national, religious and international growth. In April, 1939, the

Academy acquired the name of "Kalakshetra". It is then the members felt that a legistered Society should be formed and the Memorandum of

Association and the Rules were framed by Mr. P. V. Rajamannar, a former Chief Justice of Madras High Court. On 3-6-1940 it was registered as

a Society. When Tamil Nadu Societies Registration Act of 1975 was passed, it because necessary to bring about certain amendments in the rules

of the Society, and it resulted in Rule 24 and other rules being incorporated providing for a Board of Trustees to manage the properties of the

Society. In 1985, the following were the trustees-

1. Smt. Rukmini Devi Arundale

2. Sri R. Venkataraman

3. Sri K. Sankara Menon

4. Sri S. Narayanaswami

5. Sri R. V. Ramani

6. Sri C. S. Vidyasankar.

Except Mr. Venkataraman, all the other trustees- are members of the Executive SCommittee of the society. Only three of the trustees have f fled

the suit with a draft scheme, which provides for three more new trustees to be appointed, out of which two of them are over70 years of age. The

suit was filed on 9-10-1985 and the leave was granted by Court on 10-10-1985. Secretary Sundaram received notice on 29-10-1985, but he

never informed either orally or in writing any of the members of the Executive Committee about the suit. On 29-11-1985, the Executive Committee

met, but it was kept in the dark about the suit. Except, respondents I to 3, Sundarani an 6, no other members of the Society, which has about

112members, knew about the suit with the possible exception of Mr. R. Venkataraman, Mr. C. S. Vidyasankar and Mr. M. V. Arunachalam,

who are now members of the new Board of Trustees. The suit was brought up for final disposal on 20-11-1985, and a decree was passed on that

date, even though the 4th defendant had not entered appearance. Sixth respondent had been added as a defendant only to give the suit a colour of

a contest, when in fact he is a close associate of first respondent. When the properties belong to the Society, sonic of the trustee had no right to

convert the properties as now done unauthorisedly, Society's Bank accounts are now being operated by the new trustees and strangely even the

legal fee incurred in connection with the suit is paid out of the Society's Bank account.

12. No counter is filed in the stay petition for the following reason, and hence non-filing of counter-affidavit cannot be construed as if the contesting

respondents have not disputed the claims made in the said petition. Rather, as Mr. Subramaniam, repeatedly states, he would not leave out any

conceivable point without being argued and in fact had argued strenuously for a day and a half.

13. On the stay petition being taken up for hearing, it was represented by Advocates appearing for all the parties that subimissions to be made in

the stay petition would cover almost all the contentions involved in the appeal, and as it would take at least a day to hear the stay petition, they

would rather request the Court to take the appeal itself for final disposal so that the same contentions need not be once again put forth when the

appeal is heard later on. All the advocates appearing for the parties have filed a joint memo requesting for an early disposal of the appeal itself.

14. The first point relates to the identity of first defendant. In the cause title, it is described as Kalakshetra-represented by its Secretary A. Y.

Sundarain. It is the society which had been registered as No. 54 of

41 under T. N. Act 27 of 1975, or a public charitable trust called Kalakshetra which is distinct and different from it. In paragraph 4 of the plaint, it

is stated that Kalakshetra the first defendant, founded by the first plaintiff, in or about 1910, is a public charitable trust (hereinafter called w%

TrUS0. In para. 7. it is stated that "the first defendant, in so far as it related to its academic activities, \vas registered as a Society, first under the

Societies Registration Act 1W), later under Tamil Nadu Societies Registration Act. 1975 The Society, however, is and has always been distinct

and different from the Kalakshetra Trust and its trustees in whom the properties, and management and control of the Trust have been vested down

to date

Appellants dispute this claim and state that the learned Judge had proceeded on a wrong basis that Kalakshetra is a Trust and the Society is a

subsidiary of the Trust, whereas in fact, it is exactly the other way round. The Trustees were a creation of the Society and derived their existence

from the rules of the Society. They also disputed the existence of the Trust in the manner claimed. Hence, respondents in their counter-affidavit

would

claim that in law and on fact the said Trust had always been an entity by itself, distinct and different from the erstwhile society, which was but an

instrument to carry out the objects of the Trust with the funds the trustees provided The properties of Kalashetra had, from the start been

dedicated by me as a public charitable

trust The properties acquired before and after that date constituted a public charitable trustee, an independent legal entity on its own The Society

never owned the properties I was the founder trustee and sole director from 1936, that the Trust has always been a distinct and separate entity

different from the society that the trust and the administration of its properties were entirely vested in the trustees and the Society had no control

over the trust that the Society was but an extended arm or aide of the said Trust

to carry out the object of the said Trust with the funds provided to it by the trustees. Contrary to his statement in his affidavit, the plaintiff never said that the Society by itself is a trust. To reiterate the trust aforesaid existed even prior to registration of the Society in 1944. As submitted earlier, the registration of the Society made no difference to the character of the properties as constituting a public charitable trust vested in its trustee and later in the co-opted trustees as well...,-.

14A. Therefore, a clear cut stand had been taken by respondents that the Trust known as "Kalakshetra" pertaining to which the suit had been laid is "a public charitable trust, an independent legal entity on its own" and that the Society never owned the plaintiff's scheduled properties, because the trust had always been a distinct and separate entity different from the Society and it had no control over the Trust. During the course of the arguments, on the point taken by appellants that the Trust had not at all been impleaded as a defendant in the suit and all the trustees were not before Court, and that the plaintiff had been drafted in a dubious manner so that the Court which has to pass a consent decree would not be able to know whether the proper parties are before it or not; this aspect assumes vital importance. In para. 4 of the plaintiff, it is stated that the first defendant is a public charitable trust and in para. 7, it is stated that the first defendant in so far as it related to its academic activities, was registered as a society and had always been distinct and different from Kalakshetra, trust to which alone, the plaintiff's scheduled properties belong. Relevant portions extracted above show that the respondents themselves have taken up a clear stand in the course of the proceedings that the trust in respect of which alone the suit had been laid, is a separate legal entity and the society had no control over the trust. A. Y. Sundaram was the secretary of the Society. The registration certificate and the accounts filed annually all these years, and which have found in files of 7th defendant show that he was the Secretary of the Society. Respondents have not filed any sheet of paper to show that he is functioning as Secretary of a trust, which was not created by the Society. Therefore, first defendant as impleaded represented only registered Society and not the Trust. This fact later on came to be admitted by respondents in their counter-affidavit dt. 16Z-1986, where in they state, as follows:-

In para. 10. - Notice did go to the society as the first defendant.

In para. 12. - It is astonishing that such an allegation is made when the first defendant in the suit was the society itself represented by its Secretary, it filed a written statement and was heard.

Hence, whatever be the manner in which the claims have been made in plaint or any indefiniteness regarding the identity of the first defendant was

inducted in the plaint; on assertions made by respondents that the society "is distinct and different from the Trust and it is a separate legal entity and

that the first defendant in the suit is only the society represented by its secretary; and when all the annual accounts do go to show that Mr. A. Y.

Sundaram had only functioned as secretary of the Society it has to be held that fourth respondent (first defendant in the suit) was only the society

and not the Kalakshetra trust. Fifth respondent is Besant Centenary trust by its secretary by P. B. Krishnamurthi, and impleaded for the purpose of

B schedule properties, as second defendant. * Sixth respondent as third defendant is one of the two Vice-Presidents of the Society. Seventh

respondent was impleaded as fourth defendant, being the Registrar of Societies. Hence, these four alone having been impleaded as defendants in

the suit, the Kalakshetra trust, regarding which the suit has been filed, had not been impleaded, as a party to the proceeding at all.

15. The suit itself was filed by respondents I to 3 as plaintiffs, claiming in para. 3 that "the plaintiffs are persons having interest in the trust as will

appear infra". The trust is not the plaintiff. It is claimed in the plaint that first respondent is the founder-life-trustee director of the trust and that she

nominated the other plaintiffs, among others as cotrustees. Only two have joined her in the suit. In their affidavit dt. 16-2-1986, it is stated that first

respondent found it too much of a strain and responsibility on her to be a sole trustee, and therefore, on 24-6-1979 rules of the Society were

amended to enable her to coopt not more than five trustees.. Therefore, out of the six trustees, only four had been impleaded. They being

respondents I to 3 and 6 (plaintiffs I to 3 and third defendant). Two other trustees being Mr., R. Venkataraman and C., S. Vidyasankar, have not

been impleaded in the proceedings, nor any notice was issued to them prior to the filing of the suit nor have they filed any supporting affidavits.

Respondents as plaintiffs have not claimed that they are filing the suit on behalf

of the trust. Rather, they state that they are persons having interest in the trust and the first defendant founded by first respondent in 1936 is a public charitable trust. This claim they could not maintain later on "and clearly admitted in their affidavit that it was only the Society that had been impleaded, which is distinct and different from the trust and that trust is a separate legal entity. The suit having been filed for framing of a scheme for the proper administration of the trust, under S. 9, 2(1) C.P.C., and the said trust being an absolutely necessary party having* not been impleaded as a party to the proceeding, the suit, as filed, deserves to be dismissed in view of proviso to Order 1, Rule 9, C.P.C. In *The State of Punjab Vs. Nathu Ram*, and in *P. Govinda Reddy and Others Vs. Golla Obulamma*, it was held that where a Court cannot deal with the matter in controversy, with the parties actually before it and will be ineffective without the absent parties, then the suit is liable to be dismissed. Without the trust being a party to the suit, at the instance of some trustees a scheme cannot be imposed on the trust without itself being heard. This point itself would suffice to dispose of the appeal, but proceedings in Court are such that even when basic foundation for the entire proceeding is not made out, still all other points raised will have to be dealt with.

16. Does the plaint as filed comply" with the requirements of S. 92, C.P.C. for passing a scheme decree? Respondents claim that the suit had been laid under S. 92), C.P.C. for securing a direction from the Court, for the proper administration of the trust. This is not a case wherein they have come making allegation of breach of any express or constructive trust~ created for public purpose of a charitable- nature. The only averment made on this aspect is found in para. 9 of the plaint to the following effect-

..... The time has come to take suitable steps to devise a machinery to preserve promote and manage the trust in perpetuity and carry out their valuable objective forever.

Both Mr. V. P. Raman and Mr. G. Subramanian, are not able to point out any sentence in the plaint which deals with particulars in this regard. No factual details are found about what sort of machinery had been in existence and what disadvantages are experienced necessitating framing of a scheme. Para, 7 of the plaint deals with the Society and not about trust. It is contended that prayer to frame a scheme is a direction under S. 92

C.P.C. This is not a matter in which already a scheme had been framed by Court, and therefore, the court was being moved, for any modification

of the scheme or for any further directions to be given. For the first time, three of the six claiming to be trustees of an independent trust filed a plaint

of this nature asking for a scheme decree to be passed in terms of the particulars found in the draft scheme annexed to the plaint, and such a relief

asked for is now claimed to be a direction sought for from Court. One of the requirements of S. 92 C.P.C. is that it will be obligatory on the part

of the plaintiff in such a suit while seeking for direction, to aver in the plaint about any necessity existing for a direction to be issued for the

administration of the trust. For this purpose, the plaintiff has to give details in the plaint as to how affairs of trust are being carried out and as to

what are the circumstances which had occasioned and which could not be prevented, but for the directions being issued by a Court. The

"Necessity" for moving the Court for direction has to be spelt out, by referring to the relevant facts and circumstances. The one and the only reason

for moving the Court is that the first respondent and the other two co-opted trustees have become old in age. The memorandum of Association or

the Rules pertaining to the society were not filed, because it is a separate legal entity, as now admitted by respondents. along with the plaint, no -

document about the creation of the trust or any accounts maintained by it or any correspondence it has entered into with the authorities like Income

Tax Department or the State or the Central Government from which grants have been received or any copies of sale deeds to show how and when

the properties were purchased by the trust, etc., etc., minutes of meetings held by the so called trust or any register or other relevant records on

this aspect had not been filed along with the plaint or till date minutes file now produced by respondents contains proceedings of the trust created

by Society and not by society independent trust. The plaint nowhere states as to what was the machinery existing during the five decades of its

existence, and how far the existing machinery was not adequate and that it has now become necessary to get directions of Court for - its

administration. Mr. G. Subramaniam learned counsel appearing for respondents 4 to 6, while dealing with the allegations of collusion pleaded by

appellants, had " relied upon the following decisions to show as to what particulars should be there in a plaint filed under S. 92 C.P.C.

17. In AIR 1943 147 (Privy Council) , it was held that "In India as in England, the duty of a pleader is to set out the facts upon which he relies and not the legal inferences to be drawn from them".

18. In Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, , it was held at para 55 as follows : -

We think, with all respect, that such an assumption was contrary to the well established principle that in construing a pleading or a like petition, in

this country, the court should not look merely to its form, or pick out from it isolated words or sentences; it must read the petition as a whole,

gather the real intention of the party and reach at the substance of the matter

19. In Charan Singh and Another Vs. Darshan Singh and Others, in a matter which arose under S. 92 C.P.C. it was held that as it was not filed in

conformity with the requirements of the said provision of law, it was not maintainable. By reading the plaint as a whole, it was held that it was not h

suit where the plaintiffs wanted a declaration of their right in the religious institution, in respect of the Granth Sahib and it was only a suit wherein

they wanted enforcement of due performance of the duties of the trustee in relation to a particular object of the trust. It is then stated-

..... It is well settled that the maintainability of the suit under S. 92 of the Code depends upon the allegations in the plaint and does not fall for

decision with reference to the averments in the written statement".

20. A Division Bench of this Court in considering the scope of S. 92 C.P.C. in Kamudavalli and Another Vs. P.N. Purushotham, held as follows :-

What is to be primarily established is : 1) that the suit relates to a trust created for a public purpose; (2) it should contain allegations against the

person-in-breach, such as, breach of trust, misappropriation or mismanagement and (3) the necessity in the particular circumstance of a given case

for administration of the trust by a body other than the body in management.

21. In another Division Bench decision of this Court in New College v. Basheer Mohammed, (1979) 1 M U 145, it was pointed out that in

according sanction under S. 92 C.P.C. the Court has to look into the, plaint allegations only for its satisfaction, to

grant or to refuse to grant the leave.

22. Hence, except for the last decision, which dealt with grant of leave in the

other decisions above referred to, and more particularly, as pointed out by the Supreme Court in Charan Singh and Another Vs. Darshan Singh and Others, it was held that the maintainability of the suit under S. 92 C.P.C. depends upon the allegations in the plaint. Even in the affidavit filed later on, or during the conduct of the suit, no documentary evidence or any other particulars had been furnished to show as to how the machinery already existing would not enable the trustee to preserve, promote or manage the trust and its properties. How the draft proposals are anything better than what are existing had not been made out at all. Hence as the plaint is totally silent regarding the particulars of the machinery which has been existing for five decades, and what necessity had arisen to evolve a different method of managing and administering the trust, it is held that a fundamental prerequisite to maintain a suit under S. 92 C.P.C. is absent in the plaint.

23. The only reason given is that, all the trustees have become old in age. Could this be under the circumstances of the case, treated as an appropriate and relevant reason? Appellants have contended that respondents themselves have exposed by their own conduct such a totally irrelevant factor being put forth, being fully aware that the properties belong to the society; and for which the first respondent had taken all the required safeguards, as will be later on pointed out. She herself having contemplated the contingency of her disappearance and as to what should be done in future; the fact that the respondents trustees have become old in age had not necessitated in moving the Court for a direction. Including the first respondent, there were six trustees. Whether they were trustees of a separate trust or created by a Society, will be dealt with later on.

Proceeding on the basis of the plaint claim, first respondent was aged 81, second respondent was aged 70 and third respondent was aged 59.

Sixth respondent (3rd defendant) was aged 78. C. S. Vidyasankar, one other trustee was 75 years of age. In the draft scheme filed, they have proposed three other persons; out of whom two are more than 70 years of age. Hence, respondents have asked for two more aged persons to be added having pleaded that old age prevents trustees from effectively functioning and administering the trust. Yet another curious feature is that, they have asked for a scheme decree and secured it as asked for providing all the

nine trustees to hold office for their lifetime. This shows that respondents are quite aware that, till each trustee breathes his last, it would be possible for him or her to preserve, promote or manage the properties. Old age of the present set of trustees would not affect the administration because they have asked for inclusion of two more persons, who have crossed 70 years of age. Therefore, if the solitary sentence relating to old age is to be taken into account, as the only factor for invoking S. 92 C.P.C. on what they have proposed by asking for life membership for every one and by asking for two more aged persons to be included, the circumstances of this case do not make out the required necessity to give directions resulting in framing of a scheme for the trust.

24. In the next sentence, it is stated that Time has come to take suitable steps to carry out the objects of the trust. It is not for the Court to draw legal inferences or to surmise circumstances as held in the decisions above referred to. Hence" the plaint is devoid of the required particulars and does not contain the prerequisites of - S. 92, C.P.C. and more particularly when respondents were taking steps to secure a consent decree, the plaint ought to have contained particulars regarding :

- (1) how and in what manner and what machinery was being followed in managing the trust hitherto during the past 50 years; ,
- (2) how the present arrangement existing is not conducive for its management;
- (3) as to why by any other arrangement apart from moving the Court, necessary safeguards could not be taken;
- (4) as to how by inducting three more trustees, and out of whom, two are beyond 70 years, the trust could be better managed than by the existing old people etc.

Three -of the six trustees having filed the plaint impleading one among them as a third defendant, even the names of two other trustees are nowhere spelt out in the plaint. The copy of the resolution unanimously passed was unknown to the Court. As pointed out above, the reason of old age has no relevance, to the facts and circumstances of this case. For old age it does not mean that the entire existing set up inclusive of the Society "should be wiped out by way of direction. They have not confined relief for a direction, to solve such of those difficulties, having nexus to old age. Hence necessity to issue directions had not been spelt out in the plaint. In the light of

the decisions above referred to, on the basis of such a ill-drafted
plaint, which does not contain required particulars making out necessity to issue
directions, the suit under S. 92 C.P.C. is not maintainable.

25. The third point is, whether the plaintiffs have proved that there was a public
charitable trust called "Kalakshetra" in relation to A schedule
properties?

While dealing with the earlier point, in making reference to trusteeship, and trust
it was dealt with on the plea put forth by respondents, , that there
was a trust independent of the society in relation to the A schedule properties. It
"has been already held that the so-called trust had not been
impleaded in the suit. Appellants have claimed that the properties belong to
Society, which alone vested them in the trustees, and that no trust
distinct -and different from Society ever existed. If existence of trust, as claimed
by respondents, is not made out, the suit claim has to fail, is not in
dispute.

26. In the plaint, it is claimed that Kalakshetra is a public charitable trust and
first respondent was the Founder-life-trustee director of the trust and
she nominated the other plaintiffs among others as co-trustees and that all the A
schedule properties acquired by her, were dedicated to the trust.

The Society has been distinct and different from the Kalakshetra trust and its
trustees in whom the properties have been vested down to date. But
appellants challenge her claim that such a trust had existed with reference to
these properties. In the

counter-affidavit of respondents dated 16-2-1986 in para 5 it has been stated -

The properties of Kalakshetra had, from the start been dedicate " d by me as a
public charitable trust

and it was founded by her on 6-1-1936; that the properties acquired before and
after that date constituted the public charitable trust, an

independent legal entity on its own and that the Society never owned properties.
As the administration of the trust and its properties was found, in

the course of years, to be too much strain and responsibility on her, as a sole
trustee, on 24-6-1979, rules 24 to 27 of the Society were included.

The Society was an extended arm or aide of the trust and it had no control over
the trust and both of them had the common expression

"Kalakshetra" and such application depended upon the context of what required

to be done. In the meeting of trustees in April 1985, the idea of filing a scheme suit took a definite shape and there were later meetings, and in spite of her failing health, she had participated in them and a unanimous approval of the plaint was arrived at, and hence, there was no need to go before the General Body of the Executive Committee or the Governing Body of the Society. The trust existed even prior to registration of the Society in 1944, and registration of the Society made no difference to the character of the properties as constituting a public charitable trust and that the plaint never said that the society by itself was a trust. On the framing of the Scheme, the legal, logical and necessary consequences was the supersession of the, Society.

27. Appellants have claimed that the trustees were a creation of the society and derived their existence from the rules of the society. They point out that no trust deed is produced nor any document is filed to show that any one of the properties ever belonged to first respondent, and how later on, she had dedicated any of the immovable properties to the trust. None of the sale deeds of the plaint schedule properties had ever stood in the name of either the first respondent or in favour of trust," as claimed by her. All of them were acquired only by and in the name of the Society. Prior to its registration, not a single property had been acquired. The plaint schedule itself shows that earliest of the properties was purchased only in 1949 in the name of the Society. Reference is made to the meeting held in 1985. Pertaining to the meeting held by the Executive Committee and the General Body of the Society no evidence is forthcoming. Not a single sheet of paper had been produced by respondents to show that there was a trust with reference to plaint schedule properties, as claimed by her. Since respondents rely upon purchase of a property by first appellant from Kalakshetra, the sale deed dt. 14-5-1980 is filed to show that the owner is mentioned therein as "Kalakshetra" a society registered under the

Societies Registration Act, represented by Shri C. S. Vidyasankar, a trustee authorized by the trustees of Kalakshetra. Secretary of first defendant

has signed the plan as owner. The property purchased by Kalakshetra on 20-3-1963 is filed to show that the extent covered therein was

purchased only by the society from and out of which a portion was sold to first

defendant. The letter dt. 18-12 -1979 by first defendant addressed to Central

Board of Direct Taxes is relied upon to show that on 11-4-1978 an order of exemption had been obtained under S. 35 of the Income Tax Act in relation to the properties belonging to the society and requesting for carrying out suitable changes made to the Articles of Association in the Society, consequent to Tamil Nadu Societies Registration Act coming in to force. No

order of exemption secured from the Income Tax Department for the

.plaint schedule properties, as if they belong to the trust had been produced by respondents. In the letter dt. 2-5-1984, written to Union Ministry for

Education and Culture, in para 4 it is stated that Kalakshetra is a Society registered under Act XXI of 1860 and is managed by an Executive

Committee with Rukmani Devi as President and that movable and immovable properties belonging to the Society are vested in the Society; as

per Rule 24 of Kalakshetra Rules. In informing the University Grants Commission, it is stated as follows-

(a) Location and year of establishment Thiruvannamipur, Madras 600041 -- 6-1-1935

(b) Whether the Institute is registered under the Societies Registration Act or is registered as a trust. Registered under the Societies Registration

Act 1860 (XXI of 1860) as No. 54 of 1940-41 on 3-6-1940.

28. On behalf of respondents, they have produced the inaugural address by the first respondent, which finds a place in Theosophical Magazine

published in February 1936 and she had spoken as follows : -

This is an informal meeting of what for the present we are calling the International Academy of the Arts possibly we may find a better name for it

afterwards. Our objects will be :-

(1) to emphasize the essential unity of all true Art; I

(2) to work for the recognition of the Arts as inherent in effective individual, national and religious growth.

For the time being we shall have no formal organisation, as we want to begin in a small way, so that as we work we may sense the lines along

which we should develop. The spirit within all our work will be to reflect as best we can Art as a pure power of Divine Nature. God in His Aspect

of Beauty..... I feel particularly happy that we are inaugurating this movement on a day sacred to Nataraja, the Eternal Lord of the Dance, the Lord of Divine Rhythm, to whom I offer whatever I can give.

The book written by second appellant, the niece of the first respondent, styled "Kalakshetra-Rukmini Devi" refers to Kalakshetra being founded as

early as 6-11-1936 as the International Centre of Arts. The file containing the minutes of the Meetings of the trustees of Kalakshetra, is produced by

respondents 4 to 6. Notices affixed therein calling for meetings of trustees are in the letter-heads of Kalakshetra, with the names of office-bearers

of the Society, and signed by Sundararm as Secretary of Society."

29. On the claim made by respondents that properties have been purchased before and after 5-1-1936, none of the sale deeds mentioned in plaint

A schedule properties is before 1949. Therefore, this claim is incorrect.

30. The next claim is that first respondent had purchased the properties. Not a single sale deed is produced to show that she had purchased any

property in her name. The other claim is that she had dedicated the properties which belonged to her. Here again, when she had not purchased the

properties, her claim of dedication to the-trust, is not proved at all. Having put forth a claim that a public charitable trust had come into existence in

1936, the onus is on responder if to show that any one of the plaint schedule properties was in existence and belonged to the trust in 1936. Yet,

another claim made is that, Kalakshetra came into existence in 1936. Her own inaugural speech shows that for the time being there was to be a

formal association and whatever association she had started on 6-1-1936, was called only as the International Academy of Arts, and that

afterwards she would find out a better name for it. Hence, what was started on 6-1-1936, was a movement to advance the cultural heritage of this

country. Hence, as claimed in the plaint, no trust came into existence on 6-1-1936. In the counter-affidavit, it is claimed that the properties were

never owned by the society. All the sale deeds stand only in the name of the Society. One other claim is that, in administering the trust, it was a

strain on her as a sole trustee and therefore, on 24-6-1979, the rule of the Society was amended. If the trust is independent and is distinct and

different from the society, there could have been no need to amend the rule of the society so as to enable her to co-opt five more trustees. It was

only on the said rule being amended, she had co-opted the five trustees, and that could be done only on the basis that the properties belonged to

the society and not to any, independent trust. The file of 7th respondent contains the original Memorandum of Association of the society filed on

36-1940. Appellants have claimed that only in April 1939, the International Academy of Arts acquired the name of Kalakshetra and the

Memorandum of Association and rules were drafted by Mr. P. V. Rajamannar, a former Chief Justice of this Honourable Court, when he was a

practising advocate. As the members of the Kalakshetra, felt that it should be registered, on 3-6-1940, it was registered as a Society under Act

XXI of 1860. Statements filed furnishing income and expenditure, balance-sheets etc. filed till date, are found in the file.

31. On the claim made by the appellants that no document is produced to show about the trust being created, it is claimed that it can be orally

created and for dedication made relating to immovable properties, no document is required and that the properties never belonged to the society.

32. Respondents have thus miserably failed to show that at least one of the A schedule properties either belongs to the trust or once belonged to

the first respondent, who had later on dedicated it to the trust. All the sale deeds stand only in the name of the Society. The earliest of the

purchases was made in 1949. The Society came into existence only in 1940. In the absence of any property existing, there could have been no

trust created in 1936. Even the name Kalakshetra was decided upon only in 1939. The members thereafter decided to have it registered as a

Society. Rule 19 of the Rules framed in 1940 provided that "the properties movable and immovable belonging to the Society shall be vested in the

President". First respondent was the President and was to hold office for seven years. The general body was authorised to elect a President once

in seven years. it is after, T.N. Act 27 of 1975 was passed, Rules 24 to 28 came to be incorporated and respondents themselves in para 5 of the

counter, have stated that in administering the trust and its properties, because of the strain suffered by the first respondent, Rule 24 came to be

amended on 24-5-1979. If really the properties did not belong to the society, there would have been no need to amend its rules to enable the trust

properties to be managed by the co-option of five more trustees. They themselves rely upon rules 24 to 27 which had enabled the President-first

respondent to co-opt trustee. This is a clear admission made by them that the existence of trustees and the properties dealt with by them are only on the basis of the rules of the Society, and Board of Trustees is the creation by the Society and not distinct and different from it. Rule 24 states that the properties, movable and immovable belonging to the Society shall vest in trust in the President, who shall have the power to co-opt not more than five trustees. In extracting this rule referred to as by law in the affidavit, the following sentence is left out "After her lifetime, the trustees shall elect among themselves a Chairman". Hence, as to what should happen on her death, is amply safeguarded. As to what the trustees should do, it states that they will have to make available to the Executive Committee the funds required from time to time to carry on the affairs of the, Society. Therefore, first respondent as President and respondents 2 and 3 and 6th respondent as trustees along with others who are not impleaded, were fully aware as to how they have come into existence in relation to the plaint A schedule properties and that they belonged only to the Society. It is unfortunate that first respondent at a time when her health was failing had to subscribe to an affidavit putting forth a claim that the society never owned the properties". There being no iota of material existing and none placed before Court, and as each one of the claims made and which have been referred to above having proved to be false, it has to be held that respondents have failed to show that a trust came into existence on 3-1-1936 or that A schedule properties belonged to a trust called "Kalakshetra", which is a separate legal entity and is distinct and different from the society, which had been impleaded as the first defendant. Neither on 3-1-1936 nor in 1939 when the name "Kalakshetra" was conceived of, nor in 1940 when the society was registered providing for the properties to vest in the President, any property was in existence to constitute a trust.

33. Section 18 of T.N. Act 27 of 1975 provides that all properties belonging to a Registered Society whether acquired before or after its registration, if not vested in trustees, shall vest in the committee and any such property involved in legal proceedings may be referred to as the property of the Committee. Evidently, it was then considered that to incorporate rule 24 would be in the interests of the

Society for certain purposes. The Board of Trustees and the Office of Presidentship had been created by the Rules of the Society, as initially vesting had been provided for under Rule 19 of the Rules framed in 1940. Later on, under Rule 25, along with five co-opted trustees, that trust was to be administered. Hence respondents have failed to establish the existence of a trust, independent of the Society.

34. Mr. G. Subramaniam, learned Counsel for respondents 4 to 6, submits that as held in *R. Venugopala Reddiar and Others Vs. Krishnaswamy*

Reddiar and Others, , no written document is required to create a trust under Hindu Law and the three things which are indispensable to constitute

a valid trust are : "the first is sufficient words to raise it; the second is a definite subject and the third is a certain or ascertained object." All the three

required are totally absent, in the instant case. Then he would strongly rely upon the decision in *Kesava Panicker Vs. Damodara Panicker and*

Others, which holds that the factum of registration of a society would not change the character of the properties which had already been

constituted as trust properties and impressed with the trust and that any addition to those properties must also have the same character. Already, it

has been pointed out that there is no proof of any material forthcoming from respondents that on 6-1-1936 any property existed for creating a trust

or in 1939, when the name of Kalakshetra was coined for the Academy. No property existed, over which a trust could have been created. Hence

the principles laid down in the said decision have no relevance to this case.

34A. A Division Bench of Calcutta High Court in *Harinarayan Shaw and Another Vs. Gobardhandas Shroff and Others*, takes the view that any

property which had vested in the trustees of an unregistered society before registration, becomes from the date of registration the property

belonging to the society and must be deemed to be its property. Once it is found that there was no trust constituted in the manner pleaded in the

plaint, and more particularly in a case of this nature where there had been a startling omission to implead the trust as defendant in the proceedings

and as these essential and paramount requirements for instituting a suit under S. 92, C.P.C. are not existing, the scheme framed by learned Judge

Was inoperative and illegal.

34B. In the course of hearing of these appeals, all the parties have chosen to file

typed sets, pamphlets extract from books and more important of all of them is the Minutes Book, volume I of Kalakshetra produced by respondents 4 to 6 and the file of the 7th respondent. Except these, no other document is relied on by respondents to rebut the claims of appellants. Genuineness of these not being disputed by any of the parties, they are referred to in these appeals, to appreciate the merits of claims involved therein. As held in Mahant Pragdasji Guru Bhagwandasji Vs. Patel Ishwarlalbhai Narsibhai and Others, , when appellants had denied existence of trust, respondents have to show its existence, failing which, for want of cause of action their claim has to fail. None had ever applied for oral evidence to be adduced.

35. The three vital points hitherto dealt with, each by itself clearly shows that none of the essential foundations for a scheme to be framed under S.

92, C.P.C. exists. Mr. G. Subramanian had repeatedly stated, that he would not leave a single point from being argued out, the other points as

taken, are considered hereunder.

35-A. According to him, appellants having pleaded collusion between respondents I to 3, 6 and Sundaram, unless particulars are given, such a plea cannot be entertained. The decisions relied upon by him as to what a plaint should contain, have been already adverted to in paras 17 to 11.

Apart from them, he also lays considerable emphasis on Varanasaya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and

Another, . in which it was held as follows :

We do not think it is enough to state in general terms that there was "collusion" without more particulars. This Court said in Bishundeo Narain and

Another Vs. Seogeni Rai and Jagernath, as under:-"General allegations are insufficient even to amount to any averment of fraud of which any Court

ought to take notice, however, strong the language in which they are couched may be, and the same applied to undue influence and coercion". We

have already set out the general allegations of alleged collusion by which the plaintiff respondent seemed to imply some kind of fraud. He indicated

no reason for this and made no specific allegation against any particular person".

Appellants having not been parties in the suit, could put forth the pleas of collusion and fraud only in the memorandum of grounds and in the

affidavit filed for leave to be granted to them for filing an appeal. In formulating

the grounds of appeal, factual particulars cannot be spelt out. In the affidavit filed on 7-1-1986 in paragraph 5 it is stated that "the facts will reveal that the entire suit is a collusive affair between the plaintiffs, Secretary of the Executive Committee of the society and third respondent". Reference is made to the secretary of the first defendant receiving notice on 28-10-1985 and about a meeting of the Executive Committee of the Society having been held on 2-11-1985 in which he had not brought to the notice of the members of the Committee about the institution of the suit or even thereafter. Respondents 1 to 3 and 6 were members of the Executive Committee and they did not also inform the Committee or the Society about the filing of the suit on 9-10-1985. To this, the stand taken by respondents in para 7 of counter-affidavit is that : -

..... There was no need for the matter to go before the general body or the executive committee or the governing body of the society. The then trustees, who alone were concerned, were unanimous and rightly felt that there was no need or occasion or necessity for it. Nor was it bona fide thought by them to be expedient.... In any case,, the petitioners could not, in propriety or as a matter of right, make a complaint that none mentioned to them about proposed filing of the suit

Therefore, for the collusion alleged, appellants have relied upon the non-disclosure about the filing of the suit, and it is under such circumstances pleaded, they have claimed that respondents 1 to 3 and the secretary of the fourth respondent and sixth respondent have colluded together and committed breach of trust to the Society. Once it is found that the properties belong to the Society, the stand taken that even though a definite shape in filing a scheme suit took place in the meeting held in April 1985, still they were not obliged to inform either the Executive Committee of the Society which met on 2-6-1985, 29-6-1985 and 2-11-1985 or the General Body consisting of nearly 112 members need not be informed when it met on 28-6-1985, go to show that all these persons have colluded together to institute the suit and get a decree passed with the consent of concerned defendants. Hence," in the supporting affidavit filed, the factual aspects relating to plea of collusion having been thus spelt out, it cannot be held that except for a ground being taken on

this aspect, no supporting facts have been spelt out by appellants.

36. Ground No. 2 refers to gross abuse of process of Court by them and of a decree having been obtained by fraud and collusion on the basis of

incorrect averments. On this, Mr. Subramaniam, would straightway rely upon the decision in Nagubai Ammal and Others Vs. B. Shama Rao and

Others, wherein it was held as follows-

There is a fundamental distinction between a proceeding, which is collusive and one which is fraudulent. Collusion in judicial proceeding is a secret

arrangement between two persons that the one should institute the suit against the other in order to obtain the decision of a judicial tribunal for

some sinister purpose. (Wharton's Law Lexicon 14th Edn., p. 212). In such a proceeding, the claim put forward is fictitious, the contest over it is

unreal, and the decree passed therein is a mere mask having the similitude , of a judicial determination and worn by the parties with the object of

confounding third parties.

But when a proceeding is alleged to be fraudulent, what it means is that the claim made therein is untrue, but that the claimant has managed to

obtain the verdict of the Court in his favour and against the opponent by practising fraud on the Court. Such a proceeding is started with a view to

injure the opponent and there can be no question of it having been initiated as the result of an understanding between the parties. While in collusive

proceedings the combat is a mere sham, in a fraudulent suit it is real and earnest.

37. Appellants during the course of the hearing, have confined only to the plea of collusion. Apart from what they. have pointed out in dealt with

above they also rely on the, records of this Court. There is no dispute that first respondent was the President, and respondents 2 and 3 were

members of the Executive Committee and 6th respondent was one of the Vice-Presidents, First defendant viz, 4th respondent as represented by

the Secretary- of the Society. Under Rule 24, a Board consisting of six trustees had been constituted or vesting the pro

Society, and minutes book respondents contain the letterhead of the Society, furnishing the names of the office

bearers of the Society. The six trustees were-

1. Smt Rukmini Devi Arundale

2. Sri R. Venkataraman
3. Sri K. Sankara Menon
4. Sri S. Narayanasami
5. Sri R.. V. Ramani
6. Sri G. S. Vidyasankar"

Except two and six, others to the parties to the suit. It is the consistent claim made that an unanimous decision had been arrived at for filing a

scheme suit. 6th respondent herein had been impleaded as 3rd defendant, even though he was similarly placed like respondents I to 3 as one, of

the trustees. He was as well a Vice-President of the Society. No explanation is forthcoming as to why tie should be ranked as defendant, and did

not join as a plaintiff the suit. The written statement filed by him fully supports the plaint claim. Yet, he had been impleaded only as a defendant.

First defendant is the Society represented by its secretary and the written statement was filed to support the entire claim made by-plaintiffs and it

states that "this defendant has in can have no objection to the plaint prayer being granted as prayed for by the plaintiffs and a-decree settling a

scheme of management to pass in terms of the draft scheme appended to the plaint". The plaint was presented on 9-10-1985. The vakalat for the

plaintiffs was executed on 9-10-1985. A petition to grant leave to file the suit was filed in Appn. No. 4406 of 1985 o n that day, and it came up

for hearing on 10-10- 1985. The order of the Court is as follows :

Mr. Alagiriswami, appearing for R- I and Mr. A. R. Lakshmanan appearing for R-2 and R-3 state that they have no objection for granting the

leave. Learned Additional Government Pleader appearing for R. 4 wants time till 14-10-85. Call on 14-10-1985.

38. What the appellants pointed out, and which is of considerable significance is that, on 9-10-1985 itself, both defendants I and 2 have signed

their vakalats and filed them into court on 10- 10- 1985, through their respective counsels. Third defendant had signed his vakalat on 11-10-1985

and filed it through the same counsel, who had appeared for 2nd defendant. All the written statements have been filed on (Y- I 1- 1985. In the

background of allegation of collusion made, how they took alike cannot be brushed aside, even though Mr. Subramaniam being embrarrassed on

what he had come to fight would state that the Court should not look into these aspects, even though collusion is pleaded.

39. When a leave to institute a suit had been filed on 9-10-1985, and even before it could be posted before Court, for hearing, on the day of filing

itself,- defendants I and 2 have signed their vakalats and "" the three

defendants were represented by counsel in court on 10-10-1985, and stated that they had no objection for granting leave. Hence even though a

claim is made in the plaint that an unanimous resolution had been arrived at among the trustees, out of whom two had not been impleaded in the

proceeding, defendants I to 3 had been impleaded to make it appear as if the matter is contentious and which had resulted in the institution of the

suit. If unanimously it had been decided upon, then without coming to Court, the necessary document could be brought into existence to preserve,

protect and administer the properties. The Trust had not come before Court and shown that the existing machinery or the bye-laws or the rules

obtaining, do not enable it function effectively and that directions are required from the Court or as to how far the existing arrangement requires to

be replaced by a scheme being framed by a Court. Hence, -being fully conscious of what would be confronted in Court, on being approached

under the said circumstances for a relief, respondents 1 to 3 and 6 and Sundaram had stage-managed to obtain the scheme decree. Even on the day

when the suit was filed into court, defendants 1 and 2 had also signed the vakalat and on the same day itself third defendant had been represented

by his counsel, though his vakalat had been filed on the next day. Hence, as held by the Supreme Court, there had been a secret arrangement

between respondents I to 3 and 6 and Sundaram to institute the suit in this manner i.e., three of them to be ranked as plaintiffs and other two as

defendants I and 3 for obtaining a decision for the sinister purpose of stultifying the functions of a society, which could not in law be wiped out of

existence by resorting to S. 92 C.P.C. At this stage, it is relevant to recollect that respondents have taken up the stand that neither the Executive

Committee nor the General Body of the Society could in propriety or as a matter of fact make a complaint that none mentioned to them about the

filing of the proposed suit. Hence, when the action so taken in this manner had resulted in the Society ceasing to exist as per clause 19 of the

scheme decree, collusion is writ large in the manner as pleaded by appellants.

40. Appellants have pleaded that the suit came to be disposed of hastily, but Mr. Subramaniam would plead that once consent is expressed by

contesting defendants and the 4th defendant being only a formal party, respondents have not abused the process of court. The application for leave

to file the suit was filed on 9-10-1985 and on 10-10-1985 it was taken up for hearing and on 15-10-1985 leave was granted, and thereafter, the

suit was numbered on 18-10-1985. Summonses were issued on 28-10-1985. Thereafter, for the first time, the suit appeared in the list on 30-11-

1985. There was no appearance on behalf of the 7th respondent. Respondents 4 to 6 had filed their written statements on 6-11-1985. In spite of

non-appearance by 7th respondent and there being no plea put forth in the plaint that 7th respondent is only a formal party, and without filing one

of the documents referred to in the plaint like Morand of Association Rules of 4th defendant society and the unanimous resolution claimed to have

been passed or any document to show how the Society is distinct and different from the Trust as claimed by respondent or any other documents or

records maintained to show how during the past 50 years, the Trust was being managed, and how in 1985, all of a sudden the necessity had arisen

for framing a scheme and as to how the time tested arrangement existing was neither conducive nor helpful for the proper administration of the

Trust and requires to be replaced by a Scheme to be framed as proposed; and without, even placing before Court any supporting material to

sustain the claim that first respondent purchased the properties but later on dedicated them to the Trust; by just impleading such of the parties who

have already joined hands with respondents I to 3; and thereby giving the appearance of a consent being given" by those who are defendants, they

have got the scheme framed, as proposed. Even though in the plaint, there is no averment that 7th respondent was a formal party, yet, the Court

was made to believe that he was a formal party. No appearance was made by him nor any written statement filed; and in spite of it, the suit had

been heard as if it was ripe for hearing. The decree proceeds on the basis that pleadings filed and other exhibits referred to and the draft scheme

filed has been considered, but no exhibit had been marked at all. No witness had been examined. According to appellants, 7th respondent had

time to file written statement till 21-11-1985, whereas the suit came to be disposed of on 20-11-1985. The learned Judge in the judgment had

just summarised the pleadings in paragraphs 4 and 5 and the contents of the draft scheme in para 6. There is no discussion of merits of the case.

No records were marked in the suit. In the absence of any discussion of contents of any of them referred to in plaint and also to S. 41 of the Act,

there is some substance in the claim made that it was unusual in a suit of this nature filed on 18-10-1985 getting disposed of within one month i.e.

on 20-11-1985, which was the first hearing date. No valid reason is forthcoming as to why 7th respondent even in the leave to sue application

having taken up the stand that there is need to comply with S. 41 of the Act and hence impleaded as a necessary and proper party; and more so

when clause 19 of the draft scheme has envisaged a total extinction of the Society; and when it had neither entered appearance nor filed vakalat;

respondents have not informed the Court on 20-11-1985, that it would not be proper for them to get the decree as prayed for on that day.

Reliance is placed by respondents on the learned Judge stating that the 7th respondent had been impleaded as a formal party. This is an obvious

error because nowhere in the plaint such a stand had been taken. Rather realising that he is a statutory authority having certain important role to

discharge in bringing the Society to an end, he was impleaded as a necessary party. Respondents 4 and 6 had referred to S. 41, in their consent

written statements. Hence, it would have to be presumed that on that day the Court had been just told that he was only a formal party, and in view

of the consent expressed in the written statements, passing of the decree need not be delayed, though he had not appeared either in person or

through counsel. Merely because arguments have been advanced on this aspect, they are referred to herein, on one more, that on other grounds

the suit is dismissed and not on the plea of haste in disposing of the matter, but more on a decree having been passed in the absence of the

necessary party.

41. The next plea is that, once leave is obtained, the said order dt. 15-10-1985 having become final and no appeal having been preferred against

it, on points which have been decided therein, this appeal cannot be entertained. Mr. V. P. Raman learned counsel for respondents I to 3 and 8 to

12, relied on *New College v. Basheer Mohammed*, (1979) I M U 145, in which it was held that a sanction granted under S. 92 C.P.C. is a

"judgment" and as against it an appeal is maintainable, as contemplated under Cl. 15 of the Letters Patent. Merely because a sanction is granted, it

does not mean that such a suit can be decreed. For the purposes of granting sanction, certain relevant factors are taken into account, and a

conclusion arrived at therein does not preclude the Court either to dismiss a suit or render a different finding on going into the merits of the matter

on the points which were taken into account in the application. Already, how each counsel on behalf of the respondents 4 to 6 have appeared on

the next day itself and stated that they have no objection to sanction being granted, had been referred to. It was only the 7th respondent, who

took time and pointedly relied upon S. 41 of the Act. Most of the points how raised in the appeal were never dealt with in the order dt. 15-10-

1985, but reliance is placed on the last sentence in para 4, wherein the learned Judge has stated that, on going through the averments in the plaint

and the draft scheme, he was satisfied that all the ingredients of S. 92 C.P.C. have been satisfied in this case. This conclusion was for the limited

purpose of granting sanction, but certainly does not prevent the Court from dismissing the suit if on the plaint being filed, it is found that it does not

contain any of the pleas pre-requisite under S. 92, C.P.C.

42. In *Narayana Nair v. Kunham Mannadiar* AIR 1949 Mad 127, on a new plea being raised, and which turned out to be a question of law, it

was held that for the first time in Letters Patent Appeal, such a point could be taken, even though it had not been raised either in the trial Court or

in the lower appellate Court or in second appeal. On leave having been granted, appellants are entitled to raise points as done because as held in

Sundara Ayyar and Others Vs. Morari Varada Ayyar and Others, the powers under Cl. 15 of the Letters Patent are very wide. Hence, the order

passed on 15-10-1985 cannot prevent appellants in this appeal to canvass the points which they have taken.

43. The other contention of respondents is that, the decree as passed being a consent decree, by filing this appeal, it cannot be set aside.

Reference is made to *Raja Sri Sailendra Narayan Bhanja Deo Vs. The State of Orissa*, . It takes the view that "A judgment by consent or default

is as effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case.

44. Kewal Krishan Vs. Shiv Kumar and Others, takes the view that a consent decree could be set aside only on the ground that consent was

obtained by coercion, and the appropriate remedy is to file a separate suit and not an appeal or application for review against the decree or an

application under S. 151 C.P.C.

45. K.K. Chari Vs. R.M. Seshadri, , is a case wherein the defence was withdrawn by the tenant. and therefore, it was held that it tantamounts to

an admission by a tenant of the requirements of the landlord for occupation. of the premises for his own occupation. Based on these decisions, Mr.

Subramaniam would plead that, when contesting defendants, i.e. respondents 4 to 6 having filed written statements expressing consent, neither of

the appeals preferred are maintainable.

46. 7th respondent impleaded as fourth defendant had neither entered appearance nor filed written statement, and even before the time granted for

filing the written statement the suit was disposed of. Hence the necessary and proper party having been thus left out~ the appeal preferred by him

as against the decree to which he had never given consent whatsoever, is maintainable. As for appellants in O.S.A. 113 of 1986 they have secured

leave to prefer an appeal and they were not parties to the consent decree. They have claimed that the society in which they have certain legal rights

had been deprived of its right to exist by actions taken by respondents 1 to 3, 6 and Sundaram stage-managing and securing a collusive consent

decree. Hence, this is not a case wherein any of the parties who gave consent had sought to prefer the appeals. Hence, this point fails.

47. Apart from these points, one of the important contentions raised by respondents 1 to 4, 6 and 8 to 14, is, that, appellants in O.S.A. 113 of

1986 have no locus standi to file an appeal. Mr. V. P. Raman, and Mr. G. Subramaniam, would claim that 4th respondent-Society having been

already impleaded and represented by its secretary, and under Rule 24, when the secretary alone is the proper person to sue and to be sued; those

three appellants have no right to institute any proceedings on behalf of the Society. The fact that leave had been already granted would not stand in

the way of raising this vital point regarding the maintainability of their appeal

itself. Regarding the sanction order dated 15-10-1985, they took up the stand that once a decision is arrived at in the said order, unless it is set aside in appeal, the finding therein would be binding while disposing of the suit. Now they contend that, in spite of leave being granted treating them as persons, who have the locus standi to prefer the appeal, and more so when respondents therein have not raised any objection; in the appeal, the maintainability of the appeal itself could be challenged. Having taken the view that any decision arrived at in an order granting leave would not prevent the court while disposing of the suit or appeal to go into the merits of the case and that maintainability of the suit or appeal itself could be agitated; this point is taken into account.

48. Already, a finding had been rendered that Secretary of the Society, had colluded with respondents I to 3 and 6. Undoubtedly, he is the office-bearer who could be sued and who could take action on behalf of the Society.

When the affairs of the Society is prejudicially dealt with by the named office bearer, who could represent it, the President or the Vice President or

any member of the Executive Committee or any member of the Society could come forward to safeguard the interests of the society. It must be

remembered that this is an action initiated under S. 92 C.P.C. In a matter which falls within the ambit of S. 92 and in which a scheme decree is

passed, there is no dispute raised that any one interested in the scheme could move the Court for modifying the decree or to secure a direction. A

Division Bench of this Court in Kamudavalli and Another Vs. P.N. Purushotham, , held that a resident of the locality, who had some nexus or

connection with the trust in the sense that he is interested in its well-being and prosperity are under certain circumstances, be taken to be a person

having an interest in the trust. The interest called for should be real, substantive, and an existing interest and not a mere remote, fictitious or

contingent one.

49. Mr. Subramaniam relies upon Vallabhaneni Neelakanteswara Rao and Others Vs. Sri Edupuganti Raghavendra Rao Memorial High School

Committee and Another, which holds that, if an Article in the Articles of Association provides for the mode in which a suit could be brought on

behalf the company, then it is not open to a member to vary the procedure indicated therein unilaterally, but this decision would not apply to a case

of this nature wherein the named person had acted against the interests of the Society and on a scheme decree being framed, any person who is

interested could initiate action. Appellants do have a real interest in the affairs of the Society because it had been completely

extinguished by invoking a wrong provision of law. A scheme having come into existence, and on what had been held by Division Bench above

referred to, appellants are vitally interested in establishing that the decree as passed is illegal, in so far as the Society is concerned. Appellants I and

3 are the Executive Committee members and second appellant had devoted her entire lifetime for the advancement of this institution along with her

aunt, the first respondent herein. They are not intermeddlers or third parties or busy bodies having no local interest in the affairs of the Society. Yet,

Mr. Subramaniam, would refer to *Adi Pherozshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, , which takes the view

that the expression person aggrieved has to be construed by reference to the enactment in which it appears, and in interpreting S. 37 of the

Advocates Act, it was held that the Advocate-General of a State taking part in a proceeding before the Disciplinary Committee of Bar Council is

not a person aggrieved and, therefore, he cannot prefer an appeal. This decision can have no application to the facts and circumstances of this

case, on what has been already stated.

50. Yet, another point taken is that, the onus is upon the appellants to establish the claims now made. For this purpose, Mr. Subramaniam refers to

Premier Insurance Co. Ltd., Madras Vs. Swaran Kaur and Others, , which holds that the onus is on the appellant that the decision of the Court

below was wrong and it would not be discharged by merely showing that on the evidence on record, it would be possible to come to a conclusion

in favour of either party.

51. The Privy Council in *Naba Kishore v Upendra Kishore*, AIR 1922 PC 39, also hold that the burden of showing that the judgment appealed

from is wrong lies upon the appellant, and if he is able to only demonstrate that there exists an equal possibility of judgment on either side, then he

cannot succeed. Certainly, appellants alone have to establish the claim. made by them that the scheme decree as passed would not be applicable

to the first defendant society, and its properties cannot form part of the scheme

decree. On what had been stated above, hitherto, they have assumed the burden and discharged it satisfactorily.

52. Yet, another plea put forth is that, in a proceeding filed under S. 92 C.P.C., question of title of the properties cannot be gone into. Mr.

Subramaniam would state that when the schedule mentions certain properties, it would not be open to the Court to find out whether they belong to

the Trust or not. If somebody's property is included, it would not mean that the court should in spite of an opposition raised, proceed to treat the

property only as belonging to the Trust, if ultimately a scheme is framed for the Trust. Appellants have disputed the claim of the respondents that

the properties belong to the Trust. Then onus is upon respondents to show that the properties belong to the Trust, as claimed. No decision is

produced which goes to the extent of holding that on mere inclusion of a property in a plaint filed under S. 92 C. P. C. it would bind the Court to

hold that those properties belong to the Trust, and a scheme decree has to be merely passed, including all those items straightway, in the decree. It

is a primary duty cast upon a plaintiff in a suit under S. 92 C.P.C. to satisfy the Court that the properties mentioned in the schedule to the plaint

belong to the Trust.

53. It is then contended that once a consent is given by impleaded defendants, the Court is bound to pass a decree. Nagindas Ramdas Vs.

Dalpatram Ichharam alias Brijram and Others, is relied upon. It holds as follows :
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26. From a conspectus of the cases cited at the Bar, the principle that emerges is, that if at the time of the passing of the decree, there was some

material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it

will be presumed that the Court was so satisfied and the decree for eviction apparently passed on the basis of a compromise would be valid. Such

material may take the shape either of evidence recorded or produced in, the case, or. it may partly or wholly be in the shape of an express or

implied admission made in the compromise agreement itself. Admissions if true and clear, are by far the best proof of the facts admitted.

Admissions in pleadings or judicial admissions, admissible under S. 58 of the Evidence Act, made by the partner or -: heir agents at or before the

hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes

them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary

admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

He puts forth an illustration of a suit being filed by any one claiming that the State of Tamil Nadu belongs to him, by impleading any one as

defendant other than the State of Tamil Nadu. If the impleaded defendant files a consent written statement, Mr. Subramaniam submits that the

Court is bound to pass a decree as prayed for, based on the consent so expressed, and it is not the duty of the Court to go behind the consent

given and refuse to pass a decree. This Court considers that dark days would engulf the Courts if learned Judges are to pass decrees blindfoldly

without understanding the contents of pleadings and even without knowing what sort of decrees the Courts are passing. Even when a consent

decree is passed, it is obligatory on the part of the court to find out the nature of the decree which ultimately comes into existence. This extreme

contention is least impressive to this Court. Hence, even in a suit filed under S. 92 C.P.C. whether the properties included in the schedule to the

plaint belong to the Trust or not would be a relevant aspect and when such a point is taken in the appeal, it has become obligatory on the part of

the respondents to show to the Appellate Court that the properties belong to the trust, which is distinct and different from the society. For reasons

already stated, they have miserably failed to place any iota of material to show that either the Trust had existed as claimed or that the properties did

not belong to the Society as mentioned in the relevant sale deeds.

54. It is necessary to place on record that Mr. Subramaniam, referred to the decisions in *The Weavers Mills Ltd., Rajapalayam Vs. Balkis Ammal*

and Others, ; *Jagannath v. Perumal*, ILR (1969) Mad 389 : 82 Mad LV 167, *Kadirvelu Nainar v. Kuppuswami Naicker*, (1918) 34 M U 590 :

AIR 1919 Mad 1044 and *Venkatappa Naick v. Subba Naicker*, ILR (1906) Mad 179 on the point relating to plea of fraud and how far a court

would not interfere even if false evidence or suppression of evidence is made out in a case. On the plea of fraud, Mr. Muthanna, learned counsel

for the appellants, having not chosen to go into by stating that they are only interested in safeguarding the rights of the Society to exist and no other,

and that if the proceedings could be concluded without washing dirty linens, it would be in the larger interest of the institution, there is no need to

look into the principles laid down in these decisions because the findings arrived at in these appeals are not based on the plea of fraud.

55. In both the appeals, a point is taken that, unless the procedure prescribed under Act 27 of 1975 is followed, first defendant Society cannot be

extinguished. As the properties belong to the society, a suit under S. 92 C.P.C. was not maintainable at all. The existence of the Society is not

disputed by respondents. They themselves state that Society is a separate legal entity. There is no dispute that the Society was registered under S.

3(1) of the Act. Its membership 112. As required under S. 15, an Executive Committee had been formed consisting of 12 members. S. 18 deals

with vesting of the properties in the trustees, and if not so vested, then they will have to vest in the Committee. Respondents in their counter have

admitted that Rule 24 onwards of the Rules were amended in 1979. The Act came into force on 25-8-1975. Hence to prevent the Registrar from

having control over the properties, if they are to be vested in the Committee, Rule 24 was incorporated so that the properties belonging to the

Society could be vested in the Trust. Mr. Muthanna, learned counsel for the appellants rightly points out that this is the prevalent practice obtaining

in Societies registered under this Act and to keep away the scrutiny of superintendence by the Registrar over the properties, this method is

adopted and which is permissible under the Act. The income derived from the properties is being made part of the statement filed to the Registrar.

Hence, this is not a case where an amazing method has been adopted. If a Society is to be dissolved, S. 41 prescribes the procedure. A

special resolution as defined in S. 2(j) will have to be passed by a majority, of not less than three fourths of such members, of the registered

Society entitled to vote in the general meeting, and thereafter, the procedure prescribed therein will have to be followed. This is what precisely 7th

respondent points out to the court when leave to sue application was filed in the suit. Admittedly no such procedure had been followed. Once it is

held that the Society owns plaintiff schedule properties, a suit under S. 92 C.P.C. is not maintainable. 7th respondent is a statutory authority under

the Act. Hence, he could not have been treated as formal party. Without following a statutory procedure, lawful existence of a body created under

a statute cannot be brought to an end by any Court. The prescribed procedure will have to be first and cannot be made as a follow up step. Cl. 19

of the scheme decree states that "on the adoption of the scheme settled by this Honourable Court,,the Society registered under the Tamil Nadu

Societies Registration Act 1975 shall cease to exist." It does not even state that the scheme decree will come into force after the necessary or

required steps are taken as prescribed under the statute. A patent illegality had come into existence by such a scheme decree being passed,

because of non7compliance with the requirements of Tamil Nadu Act 27 of 1975.

56. On behalf of respondents.1 to3,6and Sundaram and 8 to14 it is contended that even the appeal filed by the 7th respondent is not maintainable.

He is a statutory authority. Who was impleaded because he is a necessary and proper party. Respondents 4 and 0 in their written statements have

referred to S. 41 of the Act, on realising that has a necessary and proper party to the proceedings. When 7th respondent had not even filed a

written statement, and when no counsel had appeared on his behalf, it is unfourtunate that the suit came to be disposed of as if he was a formal

party. Even in the plaint, such a claim has not been made anywhere. On behalf of the 7th respondent, reliance is placed on Chitturi Subbanna Vs.

Kudapa Subbanna and Others, to contend that a question of law can be taken even in an appeal stage and as held in Narayanan Nair v. Kunhan

Mannadiar, AIR 1949 Mad 127, when the point goes to the root of the matter, in the appeal stage a point about illegality thus committed could be

taken. It is contended by appellants that no opportunity having been given to 7th respondent by the trail court, to put forth his objection to the

passing of the scheme desree, he cannot now be prevent from arising these point in his appeal. It, is also contended by 7th respondent that the

practice of the court is not to entertain a, draft scheme even at the time of the filing of the plaint, but first to pass -an order that circumstances are

made out for a scheme to be framed and thereafter call for a draft to be filed by the plaintiff and then hear the defendants and pass orders. It is also

submitted and which impresses this court, that in matter arising under S. 92 C.P.C. when a claim is made that it is a trust of public not sure, and

when all the trustees are not made parties to the proceeding, and when the plaint is not accompanied by any one of the documents referred to therein-, a public notice ought to have been published in "newspapers and on court notice board. Respondents 4 and 6 had referred to in the written statements about S. 41 of the Act, and when clause 19 of the draft scheme says that the Society shall cease to exist; the court ought to have looked into the provisions of Act, and being conscious that the Registrar of Societies as a statutory authority one of the defendants it ought not to have allowed the scheme to be framed, in the matter suggested by respondents. Hence 7th respondent is justified in claiming that the scheme decree as framed and more particularly when it provides for the extinction of the Society, had resulted in an obvious illegality, and therefore, Q. S.A.192 of 1986 has to be allowed.

57. Mr. G. Subramaniam, would submit that obvious omissions in not adhering to the provisions of the Act need not result the suit being dismissed, but the matter could be remanded to the trial Court so that the required procedure could be followed, it being a pre-condition before the Society could be dissolved. would also submit that out of IM members, % are against the action taken in the appeal, and therefore; treating it as an irregularity, the scheme decree should be saved in the interests of the institution. S. 2(j) states that a special resolution has to be passed by three-fourths of such members of the Society who are entitled to vote in the general meeting. Hence, the number of persons who" are claimed to support the cause of respondent cannot be taken note of and to treat what had occasioned as an -irregularity and not an illegality. On each of the points by itself, there is no scope to remand the matter to comply with S. 41 of the Act. This plea itself is an admission, that properties belong to the society and not to any independent trust, which is the basis of suit.

58. A Yet another point Out forth by the appellants in both the appeals is that, when grants have been received both from Central and State Governments the society could not have been dissolved without getting the consent of the. concerned Governments it being a statutory prerequisite. Hence, on this point also, the scheme decree cannot come into existence. S. 41(4) categorically states that a society shall not be dissolved without the consent of Central and State Governments, if the State

Government is a member or a contributory or otherwise interested in the registered society. Therefore this point is also held in favour of the appellants.

59. Pending disposal of the appeals, first respondent had died on 24-2-1986. Counsel appearing for the respondents have not stated as to how in her absence, any revised arrangement has been evolved. Perhaps, because of the matter pending in court and in the light of the opposition raised, they have not taken any step to fill her vacancy in the Board of Trustees constituted by Court. Hence, wherever reference had been made to first respondent, it has been done with reference to the stand taken by her in the counter-affidavit dated 16-2-1986. Other respondents having adopted her stand, for the purpose of convenience, her ranking in the appeal had been referred, to understand the common stand taken by all the respondents.

60. As far as the second defendant is concerned, as already pointed out, the Society which had been impleaded as first defendant was not concerned with the affairs of the second defendant. Further, in the rules of Kalakshetra, Rule 28 contemplates that should the first defendant Society at any time cease to function, its properties are to pass over to the second defendant. It is curious to note that even this Trust had been liquidated by asking for a scheme decree. In any event, these appeals are not concerned with the fate of the second defendant, whose interests are claimed to have been taken over by a trust which has now been found by this Court to be non-existent. In so far as the first defendant is concerned, the so-called trust of which a claim is made was a creation under the Society and not independent of it.

61. Respondents in para 2 of the counter affidavit dated 16-2-1986 had taken up a stand that first defendant in the suit shown as fourth respondent in the petition does not exist now, as it stood superseded by the scheme decree." On behalf of fourth respondent, Mr. G. Subramaniam appears. Having taken up the stand that the society is extinguished as on date, according to the context in which opposition had been raised, any reference made to fourth respondent will have to be taken as the opposition raised by Sundaram, as against whom appellants have alleged acts of collusion and which has been already established. Now that it is made out that in the eye of law the Society had not ceased to exist, and by the

scheme decree being set aside, the illegality which had prevented it to function lawfully having realised to exist automatically the right of the Society

straightway to deal with the management and administration of the institution called "Kalakshetra" is available to it. It is for the Society now to take

a decision about its office bearers for what they have done. Whatever defence that had been put forth by Mr. Sundaram. in these appeals had not

been dealt with as himself representing the Society, because of the stand taken in para 2 of counter-affidavit dated 16-2-1986. Hence, depending

upon. the context in which reference had been made any reference to fourth respondent will have to be treated as taken by him in his individual

capacity and not as the Secretary of the Society.

62. Another aspect is regarding the typed set, minutes file, the file of 7th respondent, the books above referred to and of the typed sets containing

certain communications etc. As already stated, the genuineness of them not being disputed, they are treated as part of the records of these appeals.

63. It is contended that in the interest of the institution, if the scheme decree could be allowed to be in existence after rectifying the omissions under

Act 27 of 1975, it would benefit the institution. It was the first respondent who conceived the idea of starting this institution. In 1936, she started an

Art Academy and she gave the name Kalakshetra only in 1939. After taking the legal assistance of Mr. P. V. Rajamanner, the former Chief Justice

of this Court and who was then an Advocate, she got it registered under the Central Act 21 of 1960. He continued to be associated all through in

one capacity or other as Executive Committee member, Joint President etc. A careful reading of the rules as framed, provides for sufficient

safeguards to preserve, promote and effectively carry out the objects of the Society. She was the President of the Society for 46 years. When

Tamil Nadu Act 27 of 1975 came into force, she has stated in her affidavit that in 1976 to, manage the properties; rules were amended to include

Rule 24 onwards. In the event of her death, she had provided for a Chairman to be elected. Rule 26 states that what is contained in Rule 24

cannot be changed by a resolution of the Society. She has by rule 28 taken care to see that if for any reason, the Society ceases to exist, then the

properties of the Society will go to the 55th respondent. This is a sufficient safeguard taken even for a calamity and is destructive of claims of

respondents I to 3 6 and 8 to 12 and Sundaram that a scheme is necessary and should" continue. The onus is therefore heavy on respondent to

show that in spite of all these safeguards existing, that time had come necessitating extinction of society and for a scheme to be framed. Based on

the rules, along with the other members of the Executive Committee and with the co-opted trustees, who have come into office only under rules of

the Society, she had been managing the affairs of Kalakshetra. No resolution passed at any point of time had been produced by respondents to

show that based on the existing Memorandum of Association and Rules of the Society, the affairs of Kalakshetra could not be effectively and

efficiently managed. Minutes of meetings of Trustees constituted by Society, dated 13-4-1985, is the only one, which states that the idea of

reconstitution of Trust and of a scheme to be approved by court was being contemplated. Hence, no final decision was ever taken. Mr. R.

Venkataraman has asked for proposals to be sent to him. The other meeting relied up on is dated 11-5-1985 which states that Mr. K. Veerasami

had met him in Delhi and that both of them had agreed as envisaged and that finalisation of scheme would be made when Mr. Veerasami would be

visiting Delhi to meet him next week. Meeting was then held on 24-5-1985, and on 6-8-1985, 31-8-1985, meetings were called and on 5-11-

1985, the last meeting was held. Hence, no final unanimous resolution was passed approving the plaint, as claimed in para 8 of counter dt. 16-2-

1986. Further, she had never made any grievance that the method and the system of management which was obtaining for five decades and the

institution which she headed was functioning inefficiently. A close reading of the rules now obtaining would show that it has got an excellence

democratic set up providing for elections to be periodically held. Even though under Tamil Nadu Act 27 of 1975 a member of a committee under

S. 15 could be in -office only for three years, according to Additional Government Pleader, she had been seeking for exemption and had continued

to be its President till she died pending the appeal. Being fully aware that she had formed a Society for the better management of Kalakshetra, it

was unfortunate that, when as claimed by her, her health was failing, this sort of action had been taken. Whatever be the brilliance or greatness or

capability or achievement of a human being during the best part of life; during the last days when health, memory etc are in the declining course, it is

not uncommon for such persons to act at the behest of those who are close, but who by taking undue advantage of that situation, scheme to get at what the dying soul had achieved during its lifetime. Therefore, when there had been a total failure to show as to how the arrangement conceived of by her and time tested for five decades is not in the interests of the institution - any longer; there is no warrant ant existing to interfere, when under rule 24, the Board of trustees, as constituted by her, would subserve the interests of the Society. It has been already found that the Society continues to exist because it had not been dissolved in the manner known to law. Respondents themselves have pleaded that it is a separate legal entity. Therefore, the Board of Trustees appointed by Court are not concerned nor interested in the functioning of the Society. They have come to Office on the basis that a separate trust exists, and it is only its affairs they are taking over, and consequentially, it would result in the Society being superseded. Hence, hitherto as the Society had not ceased to exist the manner known to law, it has the lawful right to carry on the affairs of Kalakshetra, and as provided in Rule 24, its properties would be vested in the trustees. No prejudice could be caused to the institution by the Board of Trustees appointed under the scheme decree being relieved. Out of 9 of them, five will continue under Rule 24. The scheme decree was passed on 20-11- 1985 and a copy of application was filed on that day.) it was made ready on 28-11-1985. Respondents have sworn before Court that on 21-11-1985 it self, they have taken charge of the institution. How and who was authorised by Board to take charge is not explained. Without newly constituted Board meeting, how it took over on the next day without a decree copy are baffling. Therefore, on being held that the suit was not maintainable and that the Society had not ceased to exist as known to law, the Board of Trustees constituted by this Court cannot hold on to the properties or the affairs of the institution called Kalakshetra any longer.

64. Hence, O.S.A. 113 of " 986 is allowed as against all respondents except 5th and 7th respondents in O.S.A. 192 of 1986, is allowed as

against all respondents except 5th respondent. Both the appeals are allowed with costs. Counsel's fees Rs. 1000 in each appeal.

65. Appeals allowed.