

**(2007) 09 MAD CK 0192**

**In the Madras High Court**

**Case No :** Appeal Suit No's. 49 to 64 of 2006 and M.P. (MD) No. 4 of 2007 in A.S. No. 49 of 2006 and C.M.P. No's. 2366 and 2367 of 2006 and MP (MD) No's. 1, 2, 3, 4, 5, 6, 7, 8 and 9 of 2006 and M.P. (MD) No's. 1 to 3 of 2007 in A.S. No. 49 of 2006

Sinnainani and G.M. Senthil

APPELLANT

Vs

G. Vettivel, 2 to 16 - omitted

RESPONDENT

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**Date of Decision :** 01-09-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 48 Rule 1(a), Order 6 Rule 1, Order 6 Rule 16, Order 6 Rule 17, Order 6 Rule 3  
Representation of the People Act, 1951 — Section 87  
Succession Act, 1925 — Section 295  
Trusts Act, 1882 — Section 34, 49, 59, 61, 62

**Citation :** (2007) 09 MAD CK 0192

**Hon'ble Judges :** S. Nagamuthu, J

**Bench :** Single Bench

**Advocate :** R. Subramanian, for the Appellant; Nalini Chidambaram, for Mr. R. Vijayakumar in A.S. No. 49/06, Mr. K.M. Vijayan, for Mr. G.R. Swaminathan in A.S. Nos. 53, 55, 56, 61/06 and No Appearance in A.S. Nos. 50 to 52, 54, 57 to 60 and 62 to 64/06, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

S. Nagamuthu, J.—The petitioners in Trust OP. No. 96 of 2002, on the file of the learned Principal District Judge, Thoothukudi, have come forward with these appeals challenging the order dated 17.10.2005 made in the said Trust O.P., and in fifteen interlocutory applications. The respondents herein are the respondents in the said Trust O.P. The 11th respondent in the Trust O.P., has come forward with M.P. No. 4 of 2007 questioning the very maintainability of the above appeal suits. The above Trust O.P., relates to six private Trusts created in the year 1996, on various dates. "Senthil Benefit Trust" and "Senthil Welfare Trust" were founded by one S. Kalidasan by means of two different deeds dated 19.11.1986, making G. Vetivel, the first respondent herein and one G. Padmavathi as

Trustees. "Sinnamani Welfare Trust" and yet another "Sinnamani Benefit Trust" were founded under two different deeds dated 17.12.1986 by S. Kalidasan making G. Vetivel and Sinnamani as Trustees. "Rajakumari Welfare Trust" and another "Rajakumari Benefit Trust" were founded on 19.11.1986 by means of two different deeds making G. Padmavathi and G. Vettivel as Trustees. In all the six trusts, the first respondent was the managing trustee and he was managing affairs of the trusts. The appellants are the beneficiaries of all the six trusts. In all the above six trusts, the period of trustees is only 12 years and the said period got expired in the month of November and December 1998.

2. As per the terms of the trust deeds, the trustees shall transfer, hand over, deliver and pay the assets and properties, representing the Trust Fund to the beneficiaries on the "vesting date" or as soon thereafter as may be. The vesting date as per the deeds means the date of expiry of 12 years period. The trusts shall be deemed to have been completed, when the trust fund has been transferred in accordance with the provision of the deeds. As stated above, the first respondent was managing the affairs of the trusts all these years.

3. The appellants who are the beneficiaries of all the six trusts have filed Trust O.P. No. 96 of 2002, before the learned Principal District Judge, Thoothukudi, under sections 61, 62, 65, 66 & 92 of Trust Act r/w Order VI Rules 1 to 3, 5 to 7 and 26 C.P.C., seeking for the following relief"s:-

a. To call upon the respondents 1 to 12 to restore the corpus and accretions gained by the six trusts detailed in the schedule from the date of their incorporation till the date of realization.

b. To trace the dissipation effected on the Schedule Trusts by the I defendant and his associate companies.

c. To appoint a receiver for all the properties of the I defendant and through lifting the corporate veil on the company held by the I defendant including Mountain Spinning Mills.

d. To trace the dissipation on the schedule Trusts and bring the properties and monies to the petitioner"s Court account from whichever source they are available.

e. To call upon the I defendant to account from the date of creation of the six schedule trusts as to bring the proceeds to the court.

4. The respondents 2 to 16 have been added as parties in the said Trust O.P., on the allegation that those companies were floated by the first respondent and the corpus and accretions gained by all the six trusts are in the hands of the respondents 2 to 16 also.

5. During the pendency of the said O.P., the respondents 1 to 14 and 16 have filed 15 Interlocutory Applications separately under Order VII Rule 11 C.P.C., requesting the Court to reject the said Trust O.P. In all the interlocutory

applications, the grounds raised are more or less the same. The sum and substance of the grounds raised in all these interlocutory applications were:-

- (a) there is no cause of action disclosed against the respondents,
- (b) the said Trust O.P., is barred u/s 9 of the Code of Civil Procedure, since the relief sought for are to be agitate only by means of a suit,
- (c) the relief's prayed for in the Trust O.P., is barred by limitation and
- (d) lastly, the said Trust O.P., is liable to be rejected on the ground that the same has not been properly valued for the purpose of paying the Court Fees.

6. During the pendency of all these interlocutory applications, admittedly the first respondent filed a petition before this Court for transfer of the said Trust O.P., itself making certain allegations against the learned Principal District Judge, Thoothukudi who was trying the said O.P., and the same was dismissed. Challenging the same, the first respondent filed a SLP before the Hon"ble Supreme Court and the same was also dismissed. However, the Hon"ble Supreme Court has given a direction to the learned Principal District Judge, Thoothukudi, to decide the maintainability of the Trust O.P., and to dispose of all the 15 interlocutory applications first. In pursuant to the said direction, the learned Principal District Judge, by a common order dated 17.10.2005, has allowed all the interlocutory applications holding that the Trust O.P., is not maintainable and consequently, rejected the Trust O.P. No. 96 of 2002. Challenging the same, the petitioners in the Trust O.P., have come forward with these appeals.

7. Heard Mr. Subramanian, learned counsel for the appellants, Mr. K.M. Vijayan learned Senior Counsel for Mr. G.R. Swaminathan in A.S.Nos.53, 55,56 & 61 of 2006 and Mrs. Nalini Chidambaram, learned Senior Counsel for Mr. R. Vijayakumar in A.S. No. 49 of 2006 appearing for the respondents. No representation on behalf of the respondents in other Appeal Suits.

8. The submissions of the learned counsel for the appellants are as follows:-

- (i) Trust O.P. No. 96 of 2002 is very much maintainable before the lower Court in order to settle the questions involved in the same.
- (ii) The lower Court was not right in allowing the interlocutory applications under Order VII Rule 11 C.P.C. since, the said provision is applicable only in respect of suits and not in respect of original petitions.
- (iii) Since the orders made in all these interlocutory applications are without jurisdiction, they are to be treated as nonest in the eye of law.
- (iv) Since the orders under challenge have been purportedly made under Order VII Rule 11 C.P.C., they are to be treated as decrees as defined in Section 2(2) C.P.C., and so, these appeals are maintainable.
- (v) Even, if it is held that these appeals are not maintainable, still this Court

should treat all these appeals as revisions and pass appropriate orders.

(vi) According to Section 49 of the Trust Act, the District Judge has got the primary duty to protect the interest of the Trusts and their beneficiaries and therefore, the lower Court ought not to have rejected the plea regarding maintainability and should have acted suo motu to grant the relief.

(vii) The reasons stated by the lower Court that the Trust O.P., is barred by the Indian Trust Act, is not correct.

9. The submissions of the learned counsel for the respondents are as follows:-

(i) The present appeals u/s 96 C.P.C., are not at all maintainable since the orders under challenge are not decrees as defined in Section 2(2) C.P.C.

(ii) The question of maintainability of these appeals should be decided first and in the event of this Court deciding that these appeals are not maintainable then the Court is precluded from going into the other questions involved in these appeals.

(iii) The interlocutory applications filed before the lower Court under Order VII Rule 11 C.P.C., in the said Trust O.P., for rejection of the original petition are maintainable in view of Section 141 C.P.C., and Rule 45(2) of the Civil Rules of Practice.

(iv) In the event of this Court coming to the conclusion that these appeals are not maintainable under law, it is not within the power and jurisdiction of this Court to treat these appeals into revisions either u/s 115 C.P.C, or under Article 227 of the Constitution of India.

10. The learned counsel appearing for both parties advanced elaborate arguments and cited number of judgments to establish their respective points. In order to answer all these legal issues raised in these appeals, it is incumbent on the part of this Court to analyse the various provisions of the Indian Trust Act, as well as the Code of Civil Procedure.

11. One of the vital questions involved in these appeals is in respect of the maintainability of these appeals u/s 96 C.P.C. The learned counsel for the respondents would urge that the question of maintainability should be decided first and in support of the said contention, he would rely on the judgment of the Hon'ble Supreme Court in T.K. Lathika v. Seth Karsandas Jamndas (1996 (6) SCC 632) and in Minakshi Naidu v. Subramanya Sastri (1888 ILR 26). A perusal of these two judgments would show that this Court is required to answer the question of maintainability first. Therefore, I now proceed to decide the said question.

12. At the outset, let me analyse the scheme of the Code of Civil Procedure. Section 96 C.P.C, deals with appeals from original decrees and Section 104 C.P.C, deals with orders from which appeal lies and Section 105 deals with other orders.

13. A close scrutiny of Section 96 C.P.C, would show that it deals with appeals

against "decrees" passed by any Civil Court. The term "decree" has been defined in Section 2(2) C.P.C., which reads as follows:-

2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [\*\*\*] section 144, but shall not include-(a)any adjudication from which an appeal lies as an appeal from an order, or (b)any order of dismissal for default. Explanation: A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

14. A close look into the above definition would show that it contains three main ingredients viz.,

- (a) formal expression of an adjudication
- (b) conclusively determining the rights of the parties
- (c) in a suit.

15. Unless all the above ingredients are satisfied, a decision made by a Court cannot be called as a decree. Let me now consider whether all the above three ingredients are satisfied in the instant case.

16. Now, the foremost important question for consideration is as to what a suit is. The term "suit" has not been defined anywhere in the Code of Civil Procedure. However, Section 26 C.P.C., would give an indication as to what a suit is Section 26 C.P.C., is reproduced below:-

26. Institution of suits.- [(1)] Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

[(2) In every plaint, facts shall be proved by affidavit.]

17. A plain reading of the above provision would show that a suit has to be instituted only by presentation of a plaint, since no other manner has been so far prescribed in this regard.

18. Now, the next question is as to what a plaint is. Order IV and VII C.P.C, deal with the presentation of plaint and the contents of the plaint. Chapter I of the Civil Rules of Practice deals with the form of a plaint. A careful reading of these provisions would give a clear understanding as to what a plaint is.

19. Keeping in mind, the above provisions, if the Trust O.P., filed by the appellants herein before the lower Court is perused, it would leave no doubt that it is not a plaint.

20. At this juncture, it is also to be seen as to what a original petition is The term

original petition has not been defined anywhere in the Code of Civil Procedure. However, the same has been defined in Rule 3 (9) of the Civil Rules of Practice, which reads as follows:

3(9). "Original petition" means a petition whereby any proceeding other than a suit or appeal or a proceedings in execution of a decree or order, is instituted in a court;

21. Section 2(14) C.P.C, defines the term "order" which is as below:-

2(14). "order" means the formal expression of any decision of a Civil Court which is not a decree;

22. A comprehensive reading of all the above provisions would lead to the irresistible conclusion that the Trust O.P., filed by the appellants before the lower Court cannot be either construed or equated to a suit at all. As a corollary, the final decision made by the lower Court that the Trust O.P., is not maintainable, cannot be construed to be a decree as defined in Section 2(2) C.P.C., and it is only an order as defined in Section 2(14) C.P.C, against which an appeal shall not lie.

23. Mr. Subramanian, learned counsel appearing for the appellants would contend that since the final order passed in the Trust O.P., rejecting the same, is only a dependent order on the main orders passed in the interlocutory applications, if the interlocutory applications are found to be not maintainable under Order VII Rule 11 C.P.C., then the orders made in the interlocutory applications are nonest in the eye of law and consequently, the dependent order made in the Trust O.P., is liable to be set aside. The learned counsel would advance his arguments extensively in respect of the maintainability of the interlocutory applications. According to him, if the argument of the learned Senior Counsel Mr. K.M. Vijayan, that the Trust O.P., cannot be construed or equated to a suit is accepted, then the interlocutory applications filed under Order VII Rule 11 are not maintainable and therefore, the lower Court ought to have dismissed all the interlocutory applications since, Order VII Rule 11 is applicable only to Suits.

24. Per contra, Mr. K.M. Vijayan, learned Senior Counsel appearing for the respondents would contend that though the Trust O.P., cannot be equated or treated as a suit, still Order VII Rule 11 C.P.C, is applicable and the interlocutory applications were rightly entertained by the lower Court. He would rely on Section 141 C.P.C, and Rule 45(2) of the Civil Rules of Practice to substantiate his claims. The said provisions are as follows:-

141. Miscellaneous proceedings.- The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. Rule 45(2)Hearing.- Original petitions shall be heard and determined in the same manner as original suits.

25. Relying on these provisions, Mr. K.M. Vijayan, learned Senior Counsel would

submit that though the Trust O.P., is not a suit, the procedure for hearing the same shall be like that of a suit and therefore, all the provisions which are applicable for hearing of the suit shall be applicable to the original petitions also. He would further submit that since Order VII Rule 11 C.P.C, is a provision relating to hearing of a suit, the same is applicable to the original petitions also. He would further rely on a judgment of the Hon''ble Supreme Court in Azhar Hussain Vs. Rajiv Gandhi, wherein in paragraph No. 8 it has been held as follows:-

8. ...Now it is not disputed that the CPC (CPC) applies to the trial of an election petition by virtue of section 87 of the Act. Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a)....

26. In paragraph Nos. 10 and 11 of the said judgment, it has been held as follows:-

10. ...Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the CPC 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed.

11. In view of this pronouncement, there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the CPC can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with....

27. In the above cited case, the Hon''ble Supreme Court has dealt with the power of the High Court to dismiss an Election Petition by invoking Order VII Rule 11 C.P.C., and also referred to Section 87 of the Representation of the People Act, 1950. Section 87 of the said Act, has been provided as follows:-

87. Procedure before the High Court.-(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits.

28. The Hon''ble Supreme Court has held that while trying an election petition, the High Court has to follow the procedure applicable under the CPC which also includes the power to reject an election petition summarily under Order VII Rule 11 C.P.C.

29. There is no such analogous provision in the Indian Trust Act. But, Section 141 C.P.C, provides that all original petitions shall be heard and determined in the same manner as original suits. This provision is analogous to Section 87 of the Representation of the People Act. Therefore, while hearing any original

petition, the Court has to follow the procedure applicable under the Code of Civil Procedure, in respect of the suits which includes the power to deal with a petition under Order VII Rule 11 C.P.C. Therefore, there cannot be any second opinion that while trying the Trust O.P., the trial Court has got power to entertain a petition under Order VII Rule 11 C.P.C, and thus, in the instant case, the lower Court was right in entertaining the interlocutory applications filed by the respondents.

30. The next contention of the learned counsel for the appellants is that, if it is so held that a petition under Order VII Rule 11 C.P.C, is maintainable in a Trust O.P., the final decision should then be construed to be a decree as defined in Section 2(2) C.P.C, because, the term "decree" as defined in Section 2(2) C.P.C, includes the rejection of a plaint. Countering the said argument, Mr. K.M. Vijayan, learned Senior Counsel would rely on the judgment in Venkata Reddi and Others Vs. Ventrapragada Ramabrahmam and Another, wherein this Court after analysing Section 141 C.P.C, and other provisions has held as follows:-

The learned counsel has, in my opinion, rightly maintained that the right of appeal is not a matter of procedure but a substantive right which...expressly given by the statute cannot be held to be available to the litigant. The interpretation to be placed upon the language in Order 48 Rule 1(a) is, in my opinion, this namely, that if under Order 7 Rule 10 an order for the return of a plaint has been made, that will certainly be appealable. I am inclined to think that the right of appeal under that provision cannot stand treated to orders made in connection with matters other than suits or plaints merely because of S.141 Civil P.C. which can only imply and involve that the mode of trial laid down by the Code in regard to suits will be available in the case of all original petitions as well.....

31. A close reading of the principles laid down in the said judgment would show that the ultimate decisions made in the original petitions or in the interlocutory applications cannot be either treated or equated to decrees simply because, the procedure for hearing of suits is followed while hearing the original petitions also. If it is the intention of the legislature that the final decisions made in the original petitions should also be treated as decrees, because the procedure for trial is one and the same, then the legislature would not have had two separate definitions one dealing with decree and other dealing with order and also separate forums of appeals, revisions etc. Therefore, in my considered opinion, the decisions made in the interlocutory applications are only orders against which no appeal shall lie u/s 96 C.P.C.

32. Since I have held supra that these appeals are not maintainable before this Court u/s 96 C.P.C, the next question arises for consideration is whether this Court can treat these appeals into revisions as prayed for by the learned counsel for the appellants

33. Mr. Subramanian, learned counsel for the appellants would contend that

since this Court has got the dual powers namely to entertain appeals u/s 96 C.P.C, and also to entertain revisions u/s 115 C.P.C, and since these impugned orders are revisable if not appealable, this Court in the interest of justice can treat these appeals as revisions and decide the other issues involved in this case. The learned counsel would rely on the judgment in Smt. Sadiqua Begum and Others Vs. Board of Revenue, Madhya Pradesh and Another, wherein the Hon''ble Supreme Court while dealing with the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, and M.P. Land Revenue Code, in paragraph No. 6, has held as follows:-

6. In the instant case, we find that both the Commissioner and the Board of Revenue had appellate as also revisional powers. Both these powers being conferred on the same authority, the difference between the exercise of a revision or appeal was a mere idle formality and was of no consequence.

34. The learned counsel for the appellants would also rely on the judgment in R.N. Jodi and Brothers and Others Vs. Subhashchandra, wherein, in paragraph No. 9, the Hon''ble Supreme Court has held as follows:-

9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.

35. But the learned Senior Counsel Mr. K.M. Vijayan and Mrs. Nalini Chidambaram appearing for the respondents would strenuously argue that such a course should not be adopted in this case going by the conduct of the appellants. According to them, though, it was brought to the notice of the appellants at the initial stage itself that the Trust O.P., is not maintainable and suit alone is maintainable to seek for the relief's claimed in the Trust O.P., still, the appellants persisted that Trust O.P., alone is maintainable and they have been all along pursuing on the footing that the original petition is maintainable and such conduct of the appellants would dis-entitle them for any such relief to treat the appeals into revisions.

36. At this juncture, it is relevant to rely on a Full Bench judgment of this Court in Ramayya v. Venkanraju (A.I.R. 1954 Madras 864) wherein, it has been held as follows:-

11. ...

In the circumstances, this is a fit and proper case for us to set aside the order of the learned District Munsif of Tenali in exercise of our revisional jurisdiction. The

powers of the High Court, under S. 115, Civil P.C., are very wide. Under that section the High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto and make such order in the case as it thinks fit. Under this section, therefore, the High Court may of its own motion call for any record or may do so at the instance of a party. It does not preclude the High Court from exercising its powers of revision "suo motu" if the other conditions laid down in the section are satisfied. A Divisional Bench of this Court laid down the scope of the corresponding section of the CPC as early as 1881 in - "Andrew Anthony v. The Rev. M. Dupont", 4 Mad 217 (V). The learned Judges observed:

The question then arises whether this Court cannot interfere under S.622, C.P.C., without an application from a party. In all probability the party aggrieved has abstained from action owing to the action taken by the Judge. There is nothing to limit the power conferred by S.622 to cases in which there is an application by a party.

This view has never been questioned and indeed there are innumerable decisions wherein the High Court had interfered "suo motu" against orders of the subordinate tribunals when an appeal filed was held to be not maintainable.

37. Following the said Full Bench judgment, a Division Bench of this Court in Shri. R.S. Pillai Vs. Smt. M.L. Peratchi @ Selvi and 10 others, , in paragraph Nos. 31 and 32 has held as follows:-

31. In this view of the matter, we are of the view that with reference to the present case only a revision will lie and not an appeal.

Whether this appeal can be treated as a revision petition ?

32. Learned counsel appearing for the appellant submitted that in fact earlier, as against the impugned order, he filed a revision and when the matter came up before the learned single Judge, it was pointed out that there was a right of appeal and only thereafter he withdrew the civil revision petition to file the present Appeal.

We are fully satisfied that in the interest of justice this is a fit case where we have to deal with the matter treating it as a revision.

38. In the above said case, originally an appeal was filed and since it was found that the appeal was not maintainable, the same was withdrawn and later on a revision was filed. Ultimately, it turned out that revision is not maintainable and appeal alone is maintainable. While dealing with such a situation, the Division Bench of this Court has held that the High Court has got power to treat the appeal into one of a revision and to grant appropriate relief. From a perusal of the judgments cited supra, there can be no doubt that, it is well settled that this Court has got power to treat appeals into revisions with a view to avoid multiplicity of proceedings and to render substantial justice. I am also conscious, that the procedure should not be allowed to have precedence over justice. So, in

my opinion, in an extraordinary situations, this Court has to treat an appeal as a revision. So, in the case on hand, it has to be seen whether such a situation warranting to treat the appeals into one of revisions u/s 115 C.P.C., exists or not.

39. In the present case, a perusal of the records would show that when these appeals were filed, the Registry had raised a doubt whether these appeals are maintainable and therefore, the matter was listed before a learned single Judge of this Court to decide the question of maintainability. After hearing the arguments of the learned counsel for the appellants, the learned Single Judge has directed the Registry to number the appeals. This would show that the learned single Judge was prima facie satisfied with the maintainability of these appeals before this Court. As directed by the learned single Judge, these appeals have been entertained and that is how now they are before me for consideration. At this length of time, as I have already held, it has now turned out that the appeals are not maintainable. In my considered opinion, it is an extraordinary situation, impelling this Court to treat these appeals as revisions. Accordingly, I treat these appeals as revisions and proceed to decide the other questions involved in the matter.

40. The fundamental question involved in this case is whether the Trust O.P., itself is maintainable or not. Since all the subsequent proceedings came to be initiated only on the basis of the said fundamental question, the said question needs to be answered carefully. The Trust Act, contains 9 Chapters. Chapter 1 deals with Introduction, Chapter 2 - creation of Trusts, Chapter 3- duties and liabilities of trustees, Chapter 4-rights and powers of trustees, Chapter 5-the disabilities of trustees, Chapter 6-The rights and liabilities of the beneficiary, Chapter 7-vacating the office of trustee, Chapter 8-the extinction of trusts and Chapter 9 - obligations in the nature of trusts.

41. A close analysis of Chapter 6 would show that the beneficiaries of Trust have been given various rights and those rights are enforceable under law. Now the question is as to what is the procedure to be followed and what is the forum having jurisdiction through which those rights are to be enforced. Section 59 of the said Act, confers a right upon the beneficiaries to sue for execution of the trust. It says that the beneficiaries may institute a suit for execution of the Trust in the circumstances stated in the said provision. A close scrutiny of this provision would show that in order to execute the trust, the right is only to file a suit and not any original petition. Here the said provision is very silent about the Court before which the suit is to be laid. Therefore, applying Section 17 C.P.C., it has to be necessarily held that such a suit is to be filed before the Court of the lowest grade competent to try the same.

42. The next provision is Section 63 in the same Chapter. Here again, right has been conferred upon the beneficiaries to institute a suit for declaration that a particular property in dispute is comprised in the trust and such suits should also be filed before the competent Court of lowest grade. Except these two sections, the other sections in Chapter 6, do not make provisions for a suit. This would

make it manifestly clear that in order to enforce the rights conferred upon a beneficiary to compel the trustees to perform any particular act or his duty as such and to restrain the trustees from committing any breach of trust, a suit alone needs to be filed. In the case on hand, according to the appellants, the Managing Trustee namely the first respondent has committed several irregularities and he has failed to return the trust fund to the beneficiaries with appropriate accounts even after the expiry of the period of trust i.e., 12 years. A close reading of the Trust O.P., would show that the appellants are trying to compel the Managing Trustee to perform his duties under the Trust deeds, for which, in my considered opinion, the remedy available for the appellants to enforce their right is only to file a suit.

43. Under the Trust Act, for certain other purposes, original petitions can be filed. Section 72 of the Trust Act, provides for a trustee to apply to a principal Civil Court of original jurisdiction by way of petition to get himself discharged from his office. Similarly Section 73 of the Trust Act, empowers, the Principal Civil Court of original jurisdiction to appoint new trustees. Likewise, Section 74 of the Trust Act, provides that a beneficiary may, without instituting a suit, apply by petition to a Principal Civil Court of original jurisdiction for the appointment of a trustee. These provisions fall within Chapter 7 dealing with vacating the office of trustees. Thus, in respect of appointment of a new trustees and discharge of the trustees, power has been conferred upon the Principal Civil Court of original jurisdiction and the same is to be exercised not on a suit but on a original petition. Thus, a close scrutiny of Chapters 6 and 7 would show that for some purposes suits are contemplated and for the other purposes, original petitions are contemplated. This reflects the intention of the legislature to have two different kinds of proceedings.

44. The learned counsel for the appellants would rely on Section 49 of the Trust Act, to submit that it is for the Court to exercise its power to control the trustees whenever the discretionary power conferred on him is not exercised correctly and such power has been given to the Principal Civil Court of original jurisdiction. The learned counsel would further submit that to invoke Section 49 of the Act, the Court should not stick on to hyper technicalities in respect of forms and procedures, as it is the duty of the Principal Civil Court to act suo motu whenever it is brought to the notice of the said court that there is a misconduct or any other mal practice committed by the Trustees. The learned counsel would rely on the judgment in *Fathima Fauzia v. Syed Ul-Mulk* (AIR 1979 Andhra Pradesh 229). According to the learned counsel, though the original petitions had been filed u/s 74 of the Act, a Division bench of the Andhra Pradesh High Court has gone deep into the various provisions and has held that u/s 49 of the Act, the Court has got the duty to protect the interest of the beneficiaries whenever the discretionary power of the trustees have not been exercised with due care as envisaged. But in my view, the said legal dictum laid down by the Andhra Pradesh High Court which was latter confirmed by the Hon"ble Supreme Court has no application to the facts of the present case. In the reported case, the period of trust was not

mentioned and the trustees were exercising their discretionary power under the deeds conferred on them in violation of the Trust Act, and therefore, it was held that the Court has to use its suo motu power in those circumstances. But, in this case, admittedly, the period of trust is only 12 years and the same expired even in the year 1998 and after that, the Managing Trustee namely, the first respondent has no occasion at all to exercise his discretionary power and he has also got no legal right to continue to manage the trust for the benefit of the beneficiaries as it is his duty to return the trust fund to the beneficiaries which he has not done so far. In a case where, the discretion is used in a questionable manner, then the Court has to exercise its suo motu power u/s 49 of the Trust Act, to see whether the discretion has been exercised in a proper manner or not. But the said question does not arise at all in the case on hand, since as stated above, there is no discretion available as of now at all for the Managing Trustee and what remains is only his burden to return the trust fund to the beneficiaries which can be compelled only by filing appropriate suit.

45. The learned counsel for the appellants would further contend that in the event of this Court, coming to the conclusion that by some improper advise given, the appellants have misdirected themselves to file Trust O.P., the same may be converted into a suit. The learned counsel would submit that keeping in mind, the object of the Act, which aims at the protection of the rights of the beneficiaries, the settled legal position is that the procedure is only a handmaid of justice and without sticking as to the procedure, considering that the original petition has been pending for such a long time, at this length of time, instead of driving the appellants to go for a fresh suit, they may be permitted to convert the trust O.P., into a suit and to proceed in accordance with law.

46. The learned counsel for the respondents would vehemently oppose the said argument of the learned counsel for the appellants stating that it is not permissible under law. In support of the said contention he would rely on a judgment in P.A. Ahammed Ibrahim Vs. The Food Corporation of India, wherein, while dealing with Section 20 C.P.C., the Hon"ble Supreme Court in paragraph No. 8 of the judgment has held as follows:-

8. Further, before applying the provisions of Order VI Rule 17, there must be institution of the suit. Any application filed under the provisions of different statutes cannot be treated as a suit or plaint unless otherwise provided in the said Act. In any case, the amendment would introduce a totally new cause of action and change the nature of the suit. It would also introduce a totally different case which is inconsistent with the prayer made in the application for referring the dispute to the arbitrator. Prima facie, such amendment would cause serious prejudice to the contention of the appellant that the claim of the respondent to recover the alleged amount was barred by the period of limitation as it was pointed out that the cause of action for recovery of the said amount arose in the year 1975 and the amendment application was filed on 30-3-1986. Lastly, it is to be stated that in such cases, there is no question of invoking the

inherent jurisdiction of the court u/s 151 CPC as it would nullify the procedure prescribed under the Code.

47. However, the learned counsel for the appellants would rely on the judgment of this Court in *Wilson v. Stella Mary Joy* (2000 (1) M.L.J. 495) wherein, a Single Judge of this Court after referring to various judgments of the Hon'ble Supreme Court and the High Courts, while dealing with conversion of original petition into that of a suit, has held as follows:-

18. In my view, there is no escape from the position that when once it becomes contentious, the application has got to be registered as a suit. When once it becomes suit, the order passed becomes a decree and if it is decree, then it can be only an appeal and not a miscellaneous appeal....

48. But, in my considered opinion, the principle evolved in the said Judgment has got no application to the facts of the case on hand especially with regard to the Trust Act. It is to be seen that, it was a case filed under the Indian Succession Act, and which dealing with the same, this Court has held as follows:-

Where there is contention, the proceedings must take the form of a regular suit according to the Civil Procedure Code. There was certainly contention in this case and the learned District Judge could not proceed to decide the matter in a summary fashion, leaving his decision subject to modification in a suit to be filed afterwards....

49. In view of the specific enabling provision contained in Section 295 of the Indian Succession Act, for conversion of original petition into a suit, the learned Single Judge after relying on various judgments on the same subject has held that such a conversion is to be made whenever, the original petition becomes contentious. But so far as the Trust Act, is concerned, there is no such enabling provision in the Act, to convert a original petition into a suit, when it becomes contentious.

50. The learned counsel for the appellants would further rely on the judgment in *Changiah, A. etc., -Petitioners* (1997 (3) L.W. 537) wherein, K. Sampath, J. (as he then was) had an occasion to decide a similar question under the Trust Act. That was a case filed u/s 34 of the Trust Act, seeking permission to sell the trust property. Section 34 of the Trust Act, provides for making an application to the Principal Civil Court of original jurisdiction for its opinion, advice or discretion on any present questions respecting the management or administration of the trust property. Though the said provision provides for making an application without instituting a suit, the learned Single Judge has held as follows:-

Since the proceedings u/s 34 are intended to be summary, the Court would not be exercising a proper discretion if it disposes of matters of vital importance such as involving the conversion of a trust property when there is no question of emergency and when it is open to the trustees at all times to file a regular suit.

Indeed, there appears to be an absolute necessity to dispose of the scheduled

mentioned property for the purpose of remodeling the existing building where the funeral and other rites by the Brahmin community are being performed. It is also necessary that the existing amenities should be improved. It is also made out that there is threat of encroachment of the schedule mentioned property by antisocial elements. The property is in a dispatch dated condition and it is not worthwhile to invest any money in repairing or remodeling that property. "I however, by reason of the ratio of the decision in *In re Madras Doveton Trust Fund* (ILR 18 Madras 443). I leave the trustees to file a plaint if they should be so advised to obtain the sanction of the Court. The petition is ordered accordingly.

51. In the case cited *supra*, the learned Single Judge has only advised the parties to file a suit by withdrawing the original petition since the questions involved in the said case had become contentious which could not be decided in the summary proceedings as required u/s 34 of the Trust Act. The learned Judge has discussed all the possibilities to order for conversion of the original petition into one of a suit. But the learned Judge has not ordered for conversion, probably because there is no enabling provision to convert the original petition into a suit as it is available in the Indian Succession Act. That is why the learned Judge has only advised the parties to file a suit by presenting a plaint.

52. In view of the above positions and in view of the law laid down by the Hon"ble Supreme Court, in *P.A. Ahammed Ibrahim v. Food Corporation of India*, (cited *supra*), I have no hesitation to hold that the present original petition cannot be allowed to be converted into one of a suit at all. At the same time, it is to be pointed out that the rejection of the Trust O.P., under Order VII Rule 11 C.P.C., shall not operate as a bar for the appellants to file a fresh suit as it has been clarified in Order VII Rule 13 C.P.C. So, it is needless to say that if so advised, the appellants are at liberty to file a fresh suit before the appropriate Court. In the result, all the Appeal Suits treated as Civil Revision Petitions are dismissed. M.P. No. 4 of 2007 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.