

(2013) 04 MAD CK 0124

In the Madras High Court

Case No : C.R.P. (PD) No. 4357 of 2012 and M.P. No. 1 of 2012

Sri. Aurobindo Ashram Trust and Others

APPELLANT

Vs

S. Ramanathan and Others

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 4 CTC 566 : (2013) 5 MLJ 744

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Judgement

R.S. Ramanathan, J.—Defendants in O.S. No. 15 of 2011 on the file of the II Additional District Judge, Pondicherry are the revision

petitioners. Respondents filed the suit u/s 92 of the CPC praying for removal of the present Trustees viz., revision petitioners 2 to 6, appointing

new trustees who have firm faith in the philosophy of Sri Aurobindo and the Mother, settling a scheme for the administration of Sri Aurobindo

Ashram Trust, for formulating a court supervised process to be instituted to look into inter alia, to take steps to ensure withdrawal of the book and

to take systemic corrective steps to ensure that such blatant violation of the trust's objectives do not repeat themselves. They also filed I.A. No.

474 of 2010 to seek leave of the court to institute the suit and after hearing the revision petitioners herein, an order was passed in I.A. No. 474 of

2010 granting the leave and the same was challenged in C.R.P. PD No. 949 of 2011 before this court and this court dismissed the revision holding

that the grant of leave by filing the suit is an administrative act against which no revision will lie and also observed that the revision petitioners can

file an application for revoking the leave granted in I.A. No. 474 of 2010 on the

basis of acceptable documents and materials. Thereafter, the suit filed by the respondents was numbered as O.S. 15 of 2011 and in that suit, the revision petitioners filed I.A. No. 494 of 2011 to revoke the leave and that application was dismissed and aggrieved by the same, this revision is filed.

2. Mr. Sriram Panchu, learned Senior Counsel appearing for the revision petitioners submitted that the suit was filed with the intention to vindicate

the personal rights of the plaintiffs/respondents herein and no allegation of breach of trust was made in the plaint and the allegation made in the

plaint would not bring the suit within the ambit of section 92 of the CPC and therefore, the court should not have granted leave and the leave has to

be revoked. The learned Senior Counsel further elaborated his arguments that a reading of the plaint would make it clear that one Mr. Peter Heehs

has published a Biography of Sri Aurobindo called ""The Lives of Sri Aurobindo"" through Columbia University Press in the United States in May

2008 which contains deliberate and baseless distortions relating to the life of Sri Aurobindo and the author of the book without any factual basis or

authenticity described Sri Aurobindo had romantic affairs with Mother involving veiled tantrik sexual practices that Sri Aurobindo was a frequent

liar and lied about his spiritual experiences, that Sri Aurobindo's spiritual experiences were based on sexual and schizophrenic stimuli, and that Sri

Aurobindo was the initiator of the Hindu-Muslim divide and was responsible for the partition of the country. It is further alleged in the plaint that

though the book was not published in India, the book was made available through internet and many people had read and were misled and formed

a wrong opinion about Sri Aurobindo and the author of the book claimed that he was one of the founders of the Ashram Archives to give

credibility to the remarks and foundation of the book and though this was brought to the knowledge of revision petitioners 2 to 6, no action was

taken by them either to evict Mr. Peter Heehs, who was residing within the Ashram and on the other hand, the revision petitioners herein provided

financial guarantee for the extension of stay of Mr. Peter Heehs and also sponsored for his stay in Indian and therefore, the revision petitioners

were acting against the interest of the Trust and therefore, they must be removed and new trustees have to be appointed for the effective

management of the trust. He, therefore, submitted that the main allegations made against the trustees are allowing Mr. Peter Heehs to stay inside

the Ashram and no action has been taken for the ban of the book and such allegations will not be brought within the ambit of mismanagement of

the trust and even if such allegations are found to be true, the trustees cannot be removed for permitting Mr. Peter Heehs to reside in the Ashram

for publishing a book on the lives of Sri Aurobindo and the book was published in May 2008 in the United States of America and it has not been

published in India and it is not the case of the plaintiffs that the Ashram sponsored the book or the Ashram published the book written by Mr.

Peter Heehs and therefore, merely because one of the inmates has written a book about Sri Aurobindo which alleged to have contained some

derogatory comments on Sri Aurobindo, the trustees cannot be removed in the absence of any breach of trust and therefore, the leave ought not to

have been granted u/s 92 and the same has to be revoked. He, relied upon the decision in Vidyodaya Trust Vs. Mohan Prasad R. and Others, .

3. On the other hand, Mr. A.L. Somayajee, learned Senior Counsel appearing for the respondents/plaintiffs submitted that the application filed by

the petitioners for revoking of leave is not maintainable as the leave was granted in I.A. No. 474 of 2010 after hearing the revision petitioners and

the same was confirmed by this court in C.R.P. PD No. 949 of 2011 and therefore, the same cannot be re-agitated. The learned Senior Counsel

further submitted that having regard to the objectives of the Trust, the acts of the revision petitioners in permitting Mr. Peter Heehs to reside inside

the Ashram as inmate and permitting him to have access to the Archives of the Ashram which enabled him to write such a book about Sri

Aurobindo who is held in esteem by the followers and disciples, the revision petitioners have committed breach of trust and therefore, the suit was

filed u/s 92 of the CPC to remove them. He further submitted that Sri Aurobindo Ashram was established under the faith and guidance of the

Mother for the exclusive purpose of helping the devotees towards their educational and spiritual upliftment in conformity with the ideal and

teachings of Sri Aurobindo and when a book containing derogatory remarks against Sri Aurobindo is written by one of the inmates and no action

has been taken by the trustees to prevent the publication of that book, the trustees failed in their duties and therefore, they are guilty of protecting

the interest of the Ashram and therefore, they are liable to be removed and hence, the suit was filed and leave was granted after hearing both the parties and therefore, the present application for revoking the leave was rightly dismissed by the court below and therefore, there is nothing to interfere with the said order. The learned Senior Counsel Mr. Somayajee, in all fairness, submitted that the Honourable Supreme Court dealt with this aspect in Vidyodaya Trust Vs. Mohan Prasad R. and Others, and also relied upon the judgment of the Honourable Supreme Court in R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others, , the decision in G.R. Govindarajulu and Sons Charities, Coimbatore and two others Vs. R. Sethurao and 12 others, and the decision in Raju Pillai and Others Vs. V.P. Paramasivan and Others, in support of his contention.

4. Before going into the merits of the case, we will have to see the law on this subject. The object of section 92 of the CPC has been highlighted in the judgment reported in Vidyodaya Trust Vs. Mohan Prasad R. and Others, as under:-

The object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of public trusts.

Thus, there is need for scrutiny.

5. In the judgment reported in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, , the Honourable Supreme Court held that only the allegations in the plaint should be looked into in the first instance to see whether the suit falls within the ambit of section 92 and if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in fact or reason but, is made only with a view to bring the suit under that section, then the suit purported to be filed u/s 92 must be dismissed.

6. Further, it is also held in Vidyodaya Trust Vs. Mohan Prasad R. and Others, , that to find out whether the suit was filed vindicating public rights, there is necessity to go beyond the relief and to focus on the basis on which the suit was filed. It is the object and purpose and not the relief which is material. Bearing these principles in mind, the plaint allegations have to be looked into to find out whether the suit was filed to vindicate the personal rights of the plaintiffs or the suit was filed alleging breach of trust or seeking for direction to be given by the court for the proper administration of the Trust.

7. As stated supra, the main allegations in the plaint is about the book published by Mr. Peter Heehs who is allowed to reside inside the Ashram and who is also allowed to have access to the Ashram Archives. The main grievance of the plaintiffs is that despite the complaints given by the plaintiffs as well as other interested persons requesting the revision petitioners to take action against Peter Heehs and evict him from the Ashram premises, no action was taken and he was allowed to stay inside the Ashram and his Visa was also extended and the revision petitioners helped him to extend the Visa by giving finance guarantee to him and also support for his stay in India.

8. According to me, for the purpose of deciding the issue involved in this revision, there is no necessity to go into the veracity of the contents of the book. Admittedly, the plaintiffs have not filed the copy of the book and it is their allegation that the book has not been published in India and it will be available for access only through the Internet. In my opinion, in the absence of producing the book before this court, it is not possible to comment on the statements made in the book about Sri Aurobindo. Even assuming that in the said book, derogatory remarks are made against Sri Aurobindo and his relationship with the Mother, in my opinion, the revision petitioners cannot be held responsible for the same as admittedly, the revision petitioners have not sponsored the book nor published the book under the Aegis of Aurobindo Ashram. The only allegation made against the revision petitioners is that they have not taken any steps to remove such a person from the Ashram. According to me, such inaction on the part of the revision petitioners cannot be brought into the caption of breach of trust. Nevertheless, having regard to the scope of section 92 of the CPC

and as per the law laid down by the Honourable Supreme Court, Vidyodaya Trust case, the court has to go beyond the relief and focus on the

basis for which the suit was filed to find out whether a suit can be entertained u/s 92 of the Code of Civil Procedure.

9. In my opinion, the suit can be entertained u/s 92 of the Code of Civil Procedure. Admittedly, the plaintiffs are inmates of the Ashram and are

disciples of Sri Aurobindo and the Mother for more than 30 years and they are interested in protecting the philosophy and ideology of Sri

Aurobindo and the Mother and having realised that one of the inmates of the Ashram had published a book about Sri Aurobindo containing

derogatory remarks about Sri Aurobindo and the Mother, they were agitated and they wanted to take some action against the author of the book

and therefore, they wrote to the revision petitioners for evicting such person from the Ashram. Therefore, it cannot be stated that the suit was filed

by the plaintiffs to vindicate their private interest as they had no personal grudge against Mr. Peter Heehs or against the revision petitioners who are

the Trustees and their only grievance is the book written by Mr. Peter Heehs and being an inmate of the Ashram, he should not have written such a

book against Sri Aurobindo. Therefore, the plaintiffs are not having any personal interest and they did not file the suit to vindicate their personal

interest. Therefore, the plaintiffs have locus standi to file a suit u/s 92 of the Code of Civil Procedure.

10. The next question that arises for consideration for revoking the leave is whether the suit is filed for alleged breach of any trust or the suit is filed

seeking the direction of the court for administration of the said Trust. There are three conditions to invoke the jurisdiction u/s 92 and they are: 1)

There is a trust created for public purpose of a charity or a religious interest 2) There is a breach of such trust or the direction of the court is

necessary for the administration of the trust and 3) the relief claimed is one or the other of the reliefs mentioned in section 92 of the Code of Civil

Procedure. Admittedly, Sri Aurobindo Ashram is a public trust and I have already held that for publication a book by one of the inmates containing

derogatory remarks about Sri Aurobindo, the Ashram has nothing to do with and it cannot be stated that there is a breach of trust. Nevertheless,

having regard to the prayer in the suit viz., steps to be taken to ensure withdrawal of the book, the plaintiffs seek a direction of the court for the

administration of the trust. Therefore, having regard to the intention of the plaintiffs in directing a ban on the book which contained derogatory

remarks against Sri Aurobindo and having regard to the fact that no action has been taken by the trustees to secure the ban or take any action

against the author of the book, in my opinion, the plaintiffs have made out a case to bring the suit within the ambit of section 92 of the CPC and

therefore, the court below has rightly rejected the application to revoke the leave.

11. The contention of the learned Senior Counsel Mr. A.L. Somayajee that the present petition to revoke the leave is not maintainable having

regard to the dismissal of I.A. No. 474 of 2010 cannot be accepted. As per section 104(1)(ffa), an appeal shall lie from an order u/s 92 refusing

to grant leave to institute a suit and therefore, against the grant of relief, no appeal lies. Further, granting leave is an administrative act even though

the defendants were heard while granting the relief and the same has been held in the judgment reported in R.M. Narayana Chettiar and another

Vs. N. Lakshmanan Chettiar and others, . In the said judgment, the scope of section 104(1)(ffa) of the CPC was also considered by the

Honourable Supreme Court and it has been held as follows:-

17. A plain reading of section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit

against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without

leave, it would not be maintainable at all. Having in mind, the objectives underlying section 92 and the language thereof, it appears to us that, as a

rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before

granting leave u/s 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are

frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave u/s 92 are doing so merely

with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice

being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave u/s 92 can be granted as

that would lead to unnecessary delay and, in a given case, cause considerable

loss to the public trust. Such a construction of the provisions of section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.

18. We may mention that although clause (ffa) of a section 104(1) of the Code provides that an appeal shall lie against the refusal of grant of leave, that cannot lead to the conclusion that it is obligatory on the part of the court to give notice to the proposed defendants before granting leave because an appeal lies only against the refusal of leave and not against the grant of leave. Before refusing leave the proposed plaintiffs are bound to be heard and it is the plaintiffs and not the defendants who could be prejudiced by refusal to grant such leave.

12. Further, in C.R.P. PD No. 949 of 2011, this court dismissed the revision filed by the revision petitioners against the grant of leave only on the ground that grant of leave is an administrative act and the same cannot be challenged in the revision and also observed that the defendants viz., revision petitioners can file an application to revoke the leave by producing sufficient materials. In the other judgments submitted by the learned Senior Counsel Raju Pillai and Others Vs. V.P. Paramasivan and Others, and G.R. Govindarajulu and Sons Charities, Coimbatore and two others Vs. R. Sethurao and 12 others, , the same principle has been reiterated by this court. Therefore, it cannot be contended that once leave was granted after hearing both the parties, later, the defendant cannot file an application to revoke the leave.

13. According to me, different criteria has to be followed while granting the relief and to revoke the leave and therefore, merely because leave was

granted after hearing the defendants, it cannot be a ground to deny the right to the defendants to file an application for revocation of leave. As I

have held, the plaintiffs have not sued for vindicating their personal rights and they are having interest in the Ashram and they wanted to prevent the

sale of book authored by Mr. Peter Heehs containing derogatory remarks against Sri Aurobindo and the Mother and seek for a direction for the

ban of such a book, the plaint has been rightly filed u/s 92 of the CPC and hence, the leave was granted and I do not find any ground to revoke the

leave.

In the result, the revision is dismissed. No costs. The connected miscellaneous petition is also dismissed.