
(2008) 04 MAD CK 0201

In the Madras High Court

Case No : C.R.P. (PD) No"s. 2745 of 2007 and 115 of 2008 and M.P. No. 1 of 2007

Sri Jeyaram Educational Trust and 3 others

APPELLANT

Vs

A.G. Syed Mohideen, Trustee Sri Jeyaram Educational Trust,
36, Sonagar Street, Cuddalore O.T. and A. Haseena Begum

Vadalur Madhargal Thiru Arutpa Parayana Nilayam
Trust, Vadalur and 4 others Vs Smt. V. Senthamizhselvi and 3
others

RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Criminal Procedure Code, 1973 (CrPC) — Section 15, 6, 92

Hindu Succession Act, 1956 — Section 29(1)

Citation : (2008) 04 MAD CK 0201

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : R. Muthukumarasamy, for Mr. A. Jenasen in C.R.P.PD No. 2745 of 2007 and Mr. G. Anabaya Chozhan in C.R.P.PD No. 115 of 2008, for the Appellant; Hema Sampath, for Mrs. R. Meenal in C.R.P.(PD) No. 2745 of 2007 and Mr. K. Kannan for Mr. R. Sunilkumar in C.R.P.(PD) No. 115 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—The question that arises for consideration in these Revisions is whether the suits u/s 92 C.P.C. have to be filed in the District Court or in the Subordinate Courts? C.R.P.(PD) No. 2745 of 2007 is directed against the order of the learned Principal District Judge, Cuddalore dated 1.8.2007 rejecting the Memo filed by petitioners/defendants 1 to 3 and 5 in O.S.No.13 of 2006 for transferring the suit to the file of Subordinate Judge, Cuddalore on the ground that the suit u/s 92 has to be filed only before Subordinate Courts.

2. C.R.P.(PD) No. 115 of 2008 is directed against the order dated 3.12.2007

made in I.A.No. 61 of 2007 in unnumbered O.S. of the learned Principal District Judge, Cuddalore allowing the application seeking permission to file the suit u/s 92 C.P.C.

3. The short facts in nutshell in C.R.P.(PD) No.2745 of 2007 are as follows:- The petitioner Trust was formed in the year 1999. Originally the Trust was formed with the family members of one J. Sekhar and subsequently others have been included as Trustees. The respondents had filed the suit u/s 92 of C.P.C. before the District Judge, Cuddalore seeking various relief. Pending the suit, the respondents herein had filed I.A.No. 20 of 2006 seeking leave of the District Court to institute the suit u/s 92 of C.P.C. Counter had been filed by the petitioners in the said application. By an order dated 4.4.2006 the learned District Judge allowed the said I.A. granting leave for filing the suit. Aggrieved against this order, a Revision has been filed by the petitioners herein and this Court held that the Revision is not maintainable on the ground that granting leave is not a judicial or a quasi judicial or administrative function, but however made it clear that it is open to the petitioner to approach the trial Court to take out appropriate application, if it is aggrieved over the order made in I.A.No.20 of 2006. In the meantime, the suit has been numbered as O.S.No.13 of 2006. The petitioners thereafter filed I.A.No.446 of 2006 for revoking the leave granted in I.A.No. 20 of 2006 and the same is pending before the Principal District Court, Cuddalore. Thereafter, the petitioners filed a memo before the said Court seeking to transfer the suit from the file of the Principal District Judge, Cuddalore to the file of the Principal Subordinate Judge, Cuddalore on the ground that as per the Government Order NO.727 dated 8.3.1960 the suit u/s 92 C.P.C. Can be filed only before the subordinate courts. However, the said memo has been dismissed. Aggrieved over the same, the petitioner has come forward with the present Revision.

4. The short facts which are necessary for the disposal of the later Revision in C.R.P.PD.No.115 of 2008 are as follows:-

The respondents 1 and 2 filed an application u/s 92 of C.P.C. before the Principal District Judge Cuddalore seeking permission to institute a suit against the petitioners herein and others u/s 92 of C.P.C in I.A.No.61 of 2007 in unnumbered suit. Though counter had been filed in the said application, the learned Principal District Judge, Cuddalore had allowed the said application. Hence challenging the same, the present Revision had been filed.

5. Thus in the first revision the case of the petitioners is that the Principal District Judge, Cuddalore had no jurisdiction to decide the suit filed u/s 92 C.P.C. and that only the Subordinate Court alone is vested with such power. The petitioners thus have come forward with the present Revision challenging the order made by the learned Principal District Judge, Cuddalore dismissing the memo filed for transferring the suit from the file of the Principal District Judge, Cuddalore to the file of the Principal Subordinate Judge, Cuddalore. In the other Revision, the petitioners are aggrieved over the orders of the learned Principal District Judge,

Cuddalore in allowing the application preferred by the respondents seeking leave to file the suit before the said Court u/s 92 C.P.C. Thus the case of the petitioners is that the Principal District Judge has no jurisdiction to entertain the suit, which has been filed u/s 92 of C.P.C. Therefore, the point involved in both the Revisions are one and the same. The parties in both the Revisions will hereinafter be referred to only by the nomenclature made in C.R.P.(PD).No.2745 of 2007.

6. In both the Revisions learned Senior counsel/counsel appearing for the petitioners contended that the Principal Subordinate Judge, Cuddalore alone has got jurisdiction to decide the suit filed u/s 92 C.P.C. and the Principal District Judge, Cuddalore has no jurisdiction to decide those suits. However, the learned Senior Counsel/counsel appearing for the respondents in both the Revisions contended that the Principal District Judge, Cuddalore is vested with power to decide the suit filed u/s 92 C.P.C.

7. Mr. R. Muthukumarasaamy, learned Senior Counsel appearing for the petitioners in C.R.P.(PD)No. 2745 of 2007 and the learned counsel appearing for the Revision Petitioner in C.R.P.No. 115 of 2008 mainly relied on the decision of the Madurai Bench of this Court reported in 2007 (2) TCJ 54 (P.S. Subramanian vs. K.L. Lakshmanan and another) and contended that only the Subordinate Judges are competent to entertain the suits filed u/s 92 of C.P.C. Relying on the said judgment, the learned Senior Counsel/Counsel appearing for the petitioners have contended that the Principal District Judge, Cuddalore has no jurisdiction to entertain the suit and the orders passed thereon by the learned Principal District Judge, Cuddalore holding that it has got jurisdiction to decide those suits have to be set aside.

8. The learned Judge of the Madurai Bench of this Court had extensively dealt with several judgments and came to the conclusion, as stated already, that only the Subordinate Judges have got exclusive jurisdiction to grant leave and to entertain the suit u/s 92 of C.P.C.

9. Before dealing with the matter in issue, it would be useful to extract Section 92 of C.P.C. which reads as follows:-

(92) Public charities :- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the (leave of the Court) may institute a suit whether contentious or not, in the principal Civil Court, of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate to obtain a decree ...

10. A reading of the said provision will make it clear that a suit of that nature has to be instituted in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits

of whose jurisdiction, the whole or any part of the subject matter of the Trust is situate, to obtain a decree.

11. Originally, there was a notification issued by the Judicial Department dated 17.10.1910 published at page 1657 of Part I of Fort St. George Gazette dated 25.10.1910 empowering the Courts of Subordinate Judges to exercise the jurisdiction u/s 92 of the Code. Subsequently, in suppression of the said G.O. the Government of Tamil Nadu had issued G.O.Ms.No.727 Home, dated 8.3.1960 which reads as follows:-

In exercise of the powers conferred by clause (1) of Section 92 of the Code of Civil Procedure, 1908 (Central Act V of 10.8) and in suppression of Judicial Department Notification No.719 dated the 17th October 1910, published at page 1657 of Part I of Fort St. George Gazette, dated the 25th October 1910, The Governor of Madras hereby invests all Courts of Subordinate Judges in the State of Madras with jurisdiction under the said Act in respect of suits relating to trusts created for public purpose of a charitable or religious nature.

The said notification spells out that the Government of Tamil Nadu has empowered all the Subordinate Judges in the State of Tamil Nadu with jurisdiction under the Code in respect of suit relating to Trusts created for public purposes of a charitable or religious nature.

12. While interpreting Section 92 C.P.C. along with the above notification, Justice Nagamuthu has held that the word "or" used in the said provision shall mean only the subordinate Judges and does not mean the concurrent jurisdiction of both Principal District Judge and the Subordinate Courts in the State of Tamil Nadu. Thus, the conclusion that has been arrived at by the learned Judge in the said judgment is that the Principal Civil Court of Original jurisdiction stands deprived by implication, by the act of the Government, empowering the Courts of Subordinate Judges in the State of Tamil Nadu to exercise the power u/s 92 of the Code. With great respect to the learned Judge, I am unable to agree with the said reasoning. The reasons are set out henceforth.

The judgment of S. Nagamuthu, J. shall be understood as confined to a case not governed by the effect of Tamil Nadu Civil Courts Amendment Act. However, the correct legal position arising u/s 92 shall be as follows:-

(a) The jurisdiction of the hierarchy of the subordinate courts is regulated by the provisions of the CPC and by the respective State enactments constituting the civil courts. In Tamil Nadu the law that was passed to consolidate and amend the law relating to civil courts of the State of Tamil Nadu subordinate to the High Court was the (Madras) Tamil Nadu Civil Courts Act 1893 (hereinafter called as "the Act"). The Act has been amended from time to time, changing as it were, the pecuniary jurisdiction of the subordinate courts. The Act has been lastly amended by Tamil Nadu Act 1 of 2004.

(b) Sections 10 and 12 of the said Act deals with territorial and pecuniary

jurisdiction empowering the State Government to fix and vary the limits of the District and Subordinate Courts in original suits. Sections 10 and 12 are reproduced hereunder:-

10. Local limits of jurisdiction of District Court or Subordinate Judges :- The State Government shall fix, and may from time to time vary, the local limits of the jurisdiction of any District Court or Subordinate Judge's Court under this Act;

12. Jurisdiction of District Judge or Subordinate Judge in original suits:-The Jurisdiction of a District Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a civil nature, of which the amount or value of the subject matter exceeds five lakh rupees. The jurisdiction of a Subordinate Judge extends, subject to the rules contained in the Code of civil Procedure, to all like original suits and proceedings, of which the amount or value of the subject matter exceeds one lakh rupees but does not exceed five lakh rupees.

(c) When G.O. 727 was passed in the year 1960, Section 12 as it stood on the date of the G.O., the sub-courts were vested with unlimited pecuniary jurisdiction to try the suits of civil nature. Hence, the Sub-Courts had jurisdiction to try the suits u/s 92 because by application of Section 15 CPC the Sub-court being the lowest court was the only competent court to try the suits u/s 92.

(d) After amendment to Act 1 of 2004, the Sub-Courts are vested with the power to decide the suits of the value of the subject matter thereon exceeding Rs. One lakhs but not exceeding Rs. 5 lakhs and the District Courts are empowered to decide the suits of the value of the subject matter exceeding Rs.5 lakhs. Since it is a new provision, the G.O. of the year 1960 shall be understood in relation to the amended provisions as enabling the Sub-courts also to have jurisdiction along with the District Court in respect of the matters competent to try the same. In this connection, it has to be noted that the unlimited jurisdiction, which was available to the sub courts, which made possible the interpretative exercise of the word "or" u/s 92 as substitutive now obtains a different meaning as being alternative.

(e) In matters relating to the suits u/s 92 CPC, the principal court of original jurisdiction shall be the District Court. But, by virtue of G.O. in respect of value of the subject matter, which is less than Rs. 5 lakhs and by application of Section 15 of the C.P.C, the Sub-courts alone will have jurisdiction.

(f) In respect of the suits, the value of which is more than Rs. 5 lakhs the G.O. will not apply at all since the G.O. being a subordinate legislation must give place to the principal enactment which determines the competency of the court as regards pecuniary jurisdiction. Consequently, for value of suits above Rs.5 lakhs, the District alone shall have jurisdiction.

13. The above proposition finds favour in the Full Bench decision of this Court in V. Ramamirtham, Sole Proprietor, Glorious Pictures Vs. Rama Film Service,

wherein the question that has been referred to the Full Bench were:

1. Whether S.15, Civil P.C. Governs Chartered High Courts and whether in view of it all suits below Rs. 10,000 in value should not be instituted direct in the City Civil Court ;

2. Whether the City Civil Court is competent to try or dispose of suits filed in the High court below Rs. 10,000/- in value which were instituted prior to the enhancement of its jurisdiction from Rs. 8000 to Rs. 10,000; if so, can such transfers be legally made either under S.16, proviso (2), Madras City Civil Court Act or under S.24 (1) civil P.C.

14. Para 26 of the said Judgment gives the following answers:-

26. The object of S.15, C.P.C. is to prevent superior Courts, being flooded or overcrowded with suits triable by Cts. Of inferior grade. The section merely regulates procedure & not jurisdiction. It does not deprive Cts. Of superior pecuniary grade of their jurisdiction to try suits which should ordinarily be tried by Cts of inferior grades. Sections 12 and 13, Madras Civil Courts Act (III (3) of 1873) do not fix the lower limit of the pecuniary jurisdiction of Dist. Munsifs, Subordinate Judges and Dist. Judges. Section 6, C.P.C. Merely deprives a Ct of an inferior grade, of jurisdiction to try a suit the subject matter of which exceeds the pecuniary limit of its jurisdiction, this limit being imposed under the Madras Civil courts Act & the Madras City Civil Court Act. Section 15 itself recognises that Cts. Of more than one grade would have jurisdiction to try a suit by the use of the expression "Court of the lowest grade" which would have no meaning if only one it had exclusive jurisdiction to try the suit. Consequently, it has been held that a Ct of a superior grade does not act without jurisdiction in trying a suit which, under S.15 might & ought, by reason of its valuation to have been tried by an inferior act.

15. In R. Rama Subbarayalu Reddiar Vs. Rengammal, while dealing with Section 29(1) of the Hindu Succession Act 1925, the Full Bench has held as follows:-

But this conclusion does not dispose of the appeal. Vesting of authority in a subordinate Judge to entertain and dispose of contentious applications for probate, etc. under S.29(1) of Madras Civil Courts Act cannot take away the jurisdiction of the District Tudge over such matters. The result is that both the subordinate judge and the District Judge will have concurrent jurisdiction to take cognizance of contentious applications for probate etc., relating to matters arising within the jurisdiction of the former. Under S.15 of the Civil Procedure Code, where more than one court has a jurisdiction over a matter, the case should be instituted only in the court of the lower grade competent to try it. The Sub Court being a court lower to the District court in the heirarchy of courts the application for grant of probate or letters of administration will have to be instituted only in that Court. But this is only a rule of procedure. Therefore, S.15 of the CPC does not deprive the District Court of its jurisdiction. As observed by Petheram C.J in Nidhi Lal Vs. Mazhar Hussain, ILR 7 All 230 at p.233 (FB).

The word "shall" is in my opinion imperative on the suitor; the word is used for the purpose of protecting the courts. The suitor shall be obliged to bring his suit in the court of the lowest grade competent to try it. The object of the legislature is that the court of the higher grade shall not be over-crowded with suits;.... The proviso is for the benefit of the court of the higher grade and it is not bound to take advantage of it. If it does not wish to try the suit it may refuse to entertain it. If it wishes to retain the suit in its court it may do so. It is not bound to refuse to entertain it.

.. The matter will however be different if the District Judge had no concurrent jurisdiction with the Subordinate Judge. In such a case he would certainly be justified in refusing to entertain the application for probate. The District Judge therefore having jurisdiction concurrent with that of the subordinate judge should have the stage at which the application came to him, entertained it and disposed of it himself or transferred the same to the file of the Sub Court for disposal.

16. The matter in issue came up for consideration before the Delhi High Court and the same is reported in Bakshi Lochan Singh and Others Vs. Jathedar Santokh Singh and Others, are usefully extracted hereunder.

9. The first contention that has been raised by Mr. Vohra learned counsel for the appellants, is that this Court has not jurisdiction to entertain this suit. The argument is that a suit as authorised by Section 92 of the CPC has to be filed in the principal Civil Court of original jurisdiction which in Delhi is the Court of the District Judge, Delhi, by reason of Section 24 of the Punjab Courts Act which provides that the Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district. On this question, it is relevant to mention that the valuation of the suit was fixed in the plaint at Rs. 2,50,000/- and no plea has been raised in the written statement objecting to this valuation. This question, has, therefore, to be decided on the basis that the valuation of the suit has been fixed correctly at Rupees 2,50,000/-.

10. If only Section 24 of the Punjab Courts Act were to be taken into consideration. Then there will be no doubt that the principal Civil Court of original jurisdiction to try this suit would be the Court of the District Judge, Delhi, But a change was brought about by the Delhi High Court Act, 1966, as amended, by sub-section (2) of Section 5 which provides that notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the territory of Delhi ordinary original civil jurisdiction in every suit the value of which exceeds fifty thousand rupees. This subsection starts with a non-obstante clause and is applicable to "every" suit the value of which exceeds fifty thousand rupees. This being a suit the value of which excess fifty thousand rupees would be covered by this sub-section. The argument of Mr. Vohra is that there cannot be two principal Civil Courts of original jurisdiction within the meaning of Section 92 of the Code of Civil Procedure. It is difficult to accept this contention. After the coming into force of the Delhi High Court Act, 1966, as amended, this Court has become the principal Civil Court of original

jurisdiction with respect to every suit the value of which exceeds fifty thousand rupees. In view of the non-obstante clause contained in sub-section (2) of Section 5 of the Delhi High Court Act, 1966, the Court of the District Judge, Delhi has ceased to remain the principal Civil Court of original jurisdiction with respect to any suit the value of which exceeds fifty thousand rupees. Full effect has to be given to the language employed in sub-section (2) of Section 5 "notwithstanding anything contained in any law for the time being in force: and that can be done only by saying that for purposes of Section 92 of the Code of Civil Procedure, the Court of the District Judge, Delhi will be the principal Civil Court of original jurisdiction in every suit the value of which does not exceed fifty thousand rupees but in other suits the value of which exceeds fifty thousand rupees, this High Court will be the principal Civil Court of original jurisdiction. It cannot be disputed that if original jurisdiction had been completely taken away from the Court of the District Judge, Delhi and conferred upon this High Court, then notwithstanding Section 24 of the Punjab Courts act, this High Court will be the principal Civil Court of original jurisdiction irrespective of the valuation of the suit as in the case of what are called the Presidency High Courts. Reference in this connection may be made to *Fazlehussein Haiderbhoy Buxamusa and Others Vs. Yusufally Adamji and Others*, *Fazlehussein Haiderbhoy Buxamusa V. Yusufally Adamji* where it has been held that the Bombay High Court in the City of Bombay is the principal Civil Court of original jurisdiction. The original jurisdiction of this High Court is in every suit the value of which exceeds fifty thousand rupees and therefore, this High Court is the principal Court of original civil jurisdiction of the Court of the District Judge, Delhi has been conferred upon this High Court and therefore, with respect to such part, this High Court will be live principal Court of ordinary original civil jurisdiction notwithstanding Section 24 of the Punjab Courts Act. We, therefore, agree with the learned Single Judge that for the purpose of this suit the value of which exceeds fifty thousand rupees, this High Court is the principal Civil Court of original jurisdiction as contemplated by Section 92 of the Code of Civil Procedure.

17. In *Dakor Temple Committee Vs. Shankerlal*, when a similar question came up for consideration it has been held that the jurisdiction originally existing in the District Court cannot be said to be affected by having been further conferred (by the amendment) on the First Class Subordinate Judge's Court Both the District Court and First Class Subordinate Judge's Court, therefore, would have, under the said section, a concurrent jurisdiction to try the suit.

18. The decisions referred to above have not been placed before the learned Judge, perhaps which made the learned Judge to decide that the Subordinate Courts alone have got exclusive jurisdiction to grant leave and to entertain the suits u/s 92 C.P.C.

19. Considering the above facts and circumstances, and also considering the judgments referred to above, it is clear that the suit u/s 92 of the Code can be instituted both in the principal Civil Court of Original jurisdiction as also in any

other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate to obtain a decree. The word "or" used in the said provision has to be construed both the District Court and the Subordinate Courts. When the section is very clear there need be no interpretation of the said proviso. This Court can interpret a provision, if the language of the provision is such that it requires some interpretation. But when the language of a particular provision is very clear then the interpretation of the provision is not required at all. Thus, if the words of any statute are themselves clear, precise and unambiguous, the words themselves in such cases will declare the intention of the legislature. While so, there need be no interpretation of the provision of the said statute. In this connection, it will be useful to refer the decision of the Apex Court reported in Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, of the said judgment is usefully extracted here under:-

Crawford on "Statutory Construction" (Edn.1940, Art.261 p.516) sets out the following passage from an American case approvingly:

The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other". Thus, the governing factor is the meaning and intent of the legislature, which should be gathered not merely from the words used by the legislature but from a variety of other circumstances and considerations. In other words, the use of the word "shall" or "may" is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature.

20. In both the Revisions, the value of the suits is more than Rs. 5/- lakhs and there cannot be any objection for the Principal Judge, Cuddalore in trying the suits.

21. Considering the totality of the circumstances, I am of the considered opinion that the learned Principal District Judge, Cuddalore is right in rejecting the memo filed by the petitioners in O.S.No.13 of 2006 (value of which suit is Rs. 10,00,000/-) holding it has power to decide the suit u/s 92 C.P.C and equally the order of the said learned Judge dated 3.12.2007 made in I.A.No.61 of 2007 in unnumbered O.S.No. of 2007 (value of which suit is Rs. 54,00,375/-) is also to

be confirmed. In the result, the order of the learned Principal District Judge, Cuddalore made in the memo in O.S.No.13 of 2006 dated 1.8.2007 does not require any interference and the Civil Revision Petition in CR.P.(PD)No.2745 of 2007 stands dismissed. The order of the learned Principal District Judge dated 3.12.2007 made in I. A.No. 61 of 2007 in unnumbered O.S. allowing the application filed for leave to sue u/s 92 of C.P.C. also stands confirmed and the Civil Revisions Petition in C.R.P.(PD)No.115 of 2008 is, therefore, dismissed. Consequently, the connected M.Ps are closed.