

(1999) 11 KAR CK 0027

In the Karnataka High Court

Case No : Civil Revision Petition No. 3489 of 1997

Sri Ranganatha Swamy Prasanna Kaveri Trust and Others

APPELLANT

Vs

K.V. Ramesh Kumar and Others

RESPONDENT

Date of Decision : 23-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104, 115, 2 (14), 92

Citation : (2000) ILR (Kar) 2556 : (2000) 3 KarLJ 361 : (2000) 2 KCCR 1176

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri L.S. Venkatakrishna, for the Appellant; Sri S.V. Shastri, for the Respondent

Judgement

1. Heard Sri L.S. Venkatakrishna, Counsel for the revision petitioners and Sri S.V. Shastri, learned Counsel for the respondents.

This Civil Revision Petition arises from the judgment and order dated 19th September, 1997 in Miscellaneous Case No. 1094 of 1994, whereby the respondents sought the leave of the Court to institute the suit in question u/s 92, Civil Procedure Code, as according to plaintiff/applicant, the property was a public trust property. The Court below came to the conclusion that there cannot be any doubt that the 1st respondent-trust is constituted, as public trust and not a family private trust and it granted the leave.

2. The opposite party, defendant mentioned in the plaint, feeling aggrieved from the order have come up before this Court by petition u/s 115.

3. Learned Counsel for the revision petitioners contends that the Court below acted illegally in granting the permission for leave to sue u/s 92.

Learned Counsel for the revision petitioners further contended that the Court below erred in recording the finding that the 1st respondent is a public trust and on that basis, illegally granted the permission. Learned Counsel further contended that the order in question will have the effect of jeopardising his

defence if and when raised denying nature of trust to be public trust and the trial and disposition or decision thereof. So he has come up with this revision. Learned Counsel for the petitioner in support of his contention that revision is maintainable made reference to the decision of this Court in *D. Achariah Setty and Others v D. Adinarayana Setty and Others*, learned Counsel also made reference to another decision, namely decision of Punjab and Haryana High Court in the case of *Ram Parkash Vs. Dayal Chand and Others*, . On the question whether a trust is a public trust or a private trust, learned Counsel for the petitioners invited my attention to the decision of the Supreme Court in *Deoki Nandan Vs. Murlidhar*, , as well as to the decision of their Lordships of the Supreme Court in *The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das*, , and lastly to two other decisions of their Lordships of the Supreme Court in the case of *Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another*, , and to the decision of the Supreme Court in *Charan Singh and Another Vs. Darshan Singh and Others*, .

4. On behalf of the respondents Sri Shastry, learned Counsel submitted that so far as granting leave to sue u/s 92, firstly cannot be said to amount to be a case decided. He submitted that a case, where leave to sue u/s 92 is refused, it may amount to a case decided, and even u/s 104 of Civil Procedure Code, it is appealable, but an order granting leave to sue cannot be said to be a case decided, because by the granting of leave, no right of the defendant nor right inter se between the parties to the suit is decided or determined at all. He submitted, that in case leave to sue u/s 92, CPC is rejected, no doubt the right of a person to obtain a remedy is denied, that order may amount to be a case decided, but a case, where no relief is granted to the plaintiff and when all the issues have to be tried in the suit and when the suit is to be tried and all pleas are open and have got to be considered and decided, no interest of defendant-applicant is going to be jeopardised. The Court has only to look into the plaint allegations and the allegations in the application and if the plaint and application clearly reveal that ingredients of Section 92, CPC are contained and prima facie show to exist as per plaint allegation therein, the leave is to be granted, and if application does not contain or prima facie satisfy the necessary ingredients required for leave being granted for filing of a suit u/s 92, the application may be rejected. He submitted, as the leave has only been granted to sue and it is open to the defendant to agitate all his pleas and rights, as said plea and rights have not been decided finally at the stage of grant of leave to sue, the order impugned cannot be said to be a case decided. He further submitted that so far as the question: Whether the said trust is a private trust or public trust, and as per the yardsticks to be determined are the questions of fact to be determined in course of trial finally when such dispute arises or is raised in pleadings. That in order to find out a prima facie case for granting leave, only plaint allegations had to be looked and not the written statement. Learned Counsel contended, in the present case plaint allegations clearly specify the requirements of Section 92, as a fact to be established, when challenged as regards those facts the findings may have to

be recorded, so he submitted the decisions relied by the learned Counsel for the revision petitioners are not much relevant for the purpose of this revision. He submitted that, as the order in question does not amount to determine the rights of the parties, the order cannot be said to amount to a case decided, and as such revision in question is misconceived.

5. I have applied my mind to the contentions raised by the learned Counsels for both the parties.

The first question to be considered is:

Whether the order granting leave to sue u/s 92, for the reliefs mentioned in Section 92, can be said to be a case decided, because sine qua non for exercise of jurisdiction u/s 115 are that the order challenged in proceedings u/s 115, CPC is to be case decided and should amount to a case decided, then Court has to examine another aspect: Whether the Court below has committed any error which may be said to come within the framework of either of the clause (a), (b) or (c) of Section 115 of the Code of Civil Procedure. Once these ingredients are specified, then no doubt Court has to consider: whether an appeal did lie to either to this Court or to subordinate Court, because Section itself directs, that if order is appealable, ordinarily this Court should not interfere with the order and further whether if the order is allowed to stand, whether it is going to cause irreparable loss or injury to the revision petitioner.

Keeping these yardsticks, I have to proceed what is the meaning of case decided, has been the subject-matter of consideration of various High Courts and also of their Lordships of the Supreme Court.

6. In the case of Major S.S. Khanna Vs. Brig. F.J. Dillon, , no doubt their Lordships of the Supreme Court have been pleased to lay down that expression "case", as a word of comprehensive import, it includes all civil proceedings, even other than the suit and does not stand restricted by anything contained in the section to the entirety of the proceedings in a Civil Court.

But what is the case decided and what are the yardsticks to determine, have been further laid down by the Supreme Court in the case of Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, .

7. No doubt legislature has also put an explanation to Section 115 of the Civil Procedure Code, where it has been provided, the expression "any case" which has been decided, includes any order or any order deciding an issue in the course of suit or other proceedings. What is the meaning of the order. The expression "order" has been defined by the Court vide Section 2(14). A distinction has been indicated between decree and the order.

"Order" means a formal expression of any decision of Civil Court which is not a decree or for the purpose of Section 115. Routine order cannot be taken to be order. The order means expression of any decision, decision means decision on a point in dispute relating to right or affecting the right. If any right of a party has

been determined, then no doubt order may amount to a case decided, but if order has not been the effect of deciding the rights of the parties, then it may not amount to a case decided.

8. In the case of Baldevdas Shivilal, supra, their Lordships of the Supreme Court in paragraph 10, in particular have made observations which observations are worth being quoted herewith:

"It may also be observed that by ordering that a question may properly be put to a witness who was being examined, no case was decided by the Trial Court. The expression "case" is not limited in its import to the entirety of the matter in dispute in an action. This Court observed in Major S.S. Khanna's case, supra, that the expression "case" is a word of comprehensive import; it includes a civil proceeding and is not restricted by anything contained in Section 115 of the Code to the entirety of the proceeding in a Civil Court. To interpret the expression "case" as an entire proceeding only and not a part of the proceeding imposes an unwarranted restriction on the exercise of powers of superintendence and may result in certain cases in denying relief to the aggrieved litigant where it is most needed and may result in the perpetration of gross injustice. But it was not decided in Major S.S. Khanna's case, referred to supra, that every order of the Court in the course of a suit amounts to a case decided. A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy; every order in the suit cannot be regarded as a case decided within the meaning of Section 115 of the Code of Civil Procedure".

A reading of this decision clearly reveals that, an order may be said to amount to a case decided, provided it determines or adjudicates some of the rights and obligations of the parties. For this view, I further find support from the decision of the Allahabad High Court in the case of The State of Punjab Vs. Sri R.P. Kapoor and Others, .

8-A. The order impugned: whether it amounts to a case decided, has to be determined on the above yardsticks. It is well-settled principle of law, that in case of breach of express or constructive trust of a public nature, whether it is charitable trust or religious trust or, in cases where some directions of the Court are necessary to be obtained for administration of such a trust, vide Section 92 of Code, specific mode for instituting the suit is prescribed and the mode prescribed is that suits can be instituted in such cases for the reliefs mentioned in Section 92, either by the Advocate General or by two or more persons having interests in the trust, but only after they have obtained the leave of the Court to sue. In case there is a private trust, there may not be any need for permission, as the suit would not be covered by Section 92. Prima facie, as per plaint allegations, if the trust in question was alleged to be public nature trust and plaintiff wanted to obtain the relief in the nature of either of the reliefs mentioned in Section 92, recourse is to be had to suit u/s 92, CPC and leave is necessary but where the relief is not in the nature of reliefs mentioned in Section

92, as sought in plaint, it may be said that seeking leave is not necessary, but where the suit is in respect of a public trust and the suit has been filed with allegations to the effect that either the trustee is committing the breach of trusts or it is alleged that some direction is needed and some relief is to be sought, which is covered by reliefs, as mentioned in Section 92, then without compliance of Section 92 suit cannot be entertained. Now when the leave is to be granted what has to be looked into, learned Counsel contended that it had to be prima facie seen, found determined: Whether trust is a public trust or not. The learned Counsel urges that they had denied that it is a public trust, but it is a private trust when the leave to file the suit u/s 92 has applied for.

It is well-settled that the Court is to look to the prima facie allegations made in the plaint and the application for leave. When I so observe, I find support from one of the two citations referred by the learned Counsel for revision petitioner, one of which is the Punjab High Court's case, namely Dr. Ram Parkash's case, *supra*.

9. In the case of Dr. Ram Parkash, *supra*, Hon^{ble} Sodhi, J. observed:

"A reading of the provisions of Section 92 of the Code would show that two of the essential requirements thereof are one that the person applying for permission to institute the suit must have an interest in the Trust and second, that the Trust must be for a public purpose of a charitable nature.

There was no mention in the body of the application, filed by the respondents, of the Trust here being of the nature specified in Section 92 of the Code. It was only in the heading thereof that it was described as a Public Trust, but that too without there being any indication of the nature thereof".

In paragraph 8 of the same decision, it is observed, that:

"In the present case, interference in revision is clearly warranted, there being no material on record to show that the Trust in question was of the type and nature which could attract the provisions of Section 92 of the Code".

He observes, in the present case, (that is the case before the Punjab High Court) that the requirement was to show existence of this prima facie from the application's allegations or the like.

10. In Swami Parmatmanand Saraswathi's case, *supra*, their Lordships observed:

"It is, no doubt true that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92 (See Association of Radhaswami Dera Baba Bagga Singh and Another Vs. Gurnam Singh and Others, , Sohan Singh Vs. Achhar Singh and Others, and AIR 1948 203 (Oudh) ").

But, if after the evidence is taken and it is found that the breach of trust, as alleged has not been made out, or prayer for direction of the Court is vague and is not based on valid foundation of facts and reasons, but it is only to make the

suit u/s 92, then suit purporting to be brought u/s 92, must be dismissed. These observations clearly indicate a distinction between two stages. At the stage when the leave is granted, the Court has to look into the allegations contained in the plaint and application and the allegations therein if made out a prima facie case u/s 92, then the leave is to be granted as the suit could not be instituted if it is refused. In such a case, where it is a case of public trust and breach of trust, and reliefs claimed appear to be covered by Section 92 of the Code, the Court has to grant permission. So once permission has been granted, suit has to be entertained, then the stage of evidence being furnished and led, has to come on record, thereafter the Court has to examine and decide on merits, if the necessary ingredients have been established, and if it is not established that trust is a public trust or it is found that no breach of trust or terms of trust were being committed etc., then that stage will be of final decision and then suit may have to be dismissed on the ground of failure of suit on merits though that suit originally purported to have been u/s 92. We have to make a distinction between two.

10-A. The other cases which have been relied upon by learned Counsel for the petitioner, are those cases where a suit has been instituted and Court found that the Trust was not a private trust, but a public trust, it held that the suit was not maintainable without compliance of Section 92.

In the case of Swami Parmatmanand above the Court found that the Trust was a public temple, allowed appeal and set aside the decree as it appeared, suit was not filed in accordance with the requirement of Section 92.

11. In the case of Charan Singh, supra, their Lordships of the Supreme Court laid down:

"It is well-settled that the maintainability of the suit u/s 92 of the CPC depends upon the allegations in the plaint and does not fall for decision with reference to averments in the written statement".

In Mahant Pragdasji Guru Bhagwandasji Vs. Patel Ishwarlalbhai Narsibhai and Others, , it was pointed out at page 144, by B.K. Mukherjea, as he then was speaking for the Court observed as follows:

"A suit u/s 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there is breach of such trust or that the directions from the Court are necessary for administration thereof. Therefore it must pray for one or other of the reliefs that are specifically mentioned in the section. It is only when conditions are fulfilled that the suit has got to be brought in conformity with the provision of Section 92, Civil Procedure Code".

12. As observed by the Privy Council in Abdul Rahim v Syed Abu Mahomed Barkat Ali Shah, that:

"A suit for a declaration that certain property to be allotted to a religious trust

may be allotted under general declaration but it will be outside the scope of Section 92".

13. Their Lordships also referred the decision, as above in Swami Parmatmanand's case, *supra*, as well.

A reading of the decisions per se reveal, that for determination of the question of maintainability of suit u/s 92 and for grant of leave, it is to be prima facie seen if the suit appears to be fulfilling or covering the necessary ingredients of Section 92, namely prima facie allegations if reveal the case to be that the trust in question is a public trust. That allegation is of breach of trust and, then reliefs claimed are of the nature, as specified in Section 92. Such a suit cannot be instituted, except after fulfilling the requirements of Section 92, if two or more persons want to file a suit the permission is needed. So if prima facie plaint allegations show the case to be covered by Section 92, CPC the Court can grant the permission. The plea of the defence is not to be looked and considered at that stage. It means that no right of the parties which right is lawfully pleaded in the suit or agitated or contested in the suit is decided by the granting of the leave, those questions are yet open to be decided and, as such order granting the leave cannot be said to decide the rights of the parties inter se and when no rights of the parties inter se have been decided, order also cannot be said to amounts to a case decided.

14. I may observe that any finding about public trust is a prima facie finding and the order of the Court below would not have been lengthy, if the Counsels would have applied right test of placing the plaint allegations and would have asked the Court to examine the plaint allegations only. The Counsels in the Court below appear to have argued the matter, as if the suit was being tried and they themselves called upon the findings being recorded at the stage of granting the leave. Anyway I may observe that, as these findings have been recorded at the stage of granting the leave about nature of trust same may be taken to be prima facie findings limited to the purpose of granting leave that plaint allegations made out a case that, there is a case of public trust, allegations of breach of trust and requirements of those directions. So leave was granted, but those findings will not be binding on as *res judicata* or operative as *res judicata*. That as I found that the order impugned does not amount to be a case decided and whatever finding, has been recorded it was and has been only for the purpose of Court's making the mind: Whether to grant leave or not?

Thus considered, in my view the present revision petition is misconceived and has to be dismissed as well as is hereby dismissed subject to above observation, that those findings will not be binding.