

(2015) 01 KL CK 0261
In the High Court Of Kerala
Case No : C.R.P. No. 168 of 2011

Valiamoonambaikkulam Sree Bhadrakali, Temple and Others	APPELLANT
Vs	
Rajendran and Others	RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2015) 01 KL CK 0261

Hon'ble Judges : P. Bhavadasan, J

Bench : Single Bench

Advocate : K. Gopalakrishna Kurup, Senior Advocate, N. Raghuraj, Sergi Joseph Thomas and S. Ajay Kumar, for the Appellant; P. Gopakumaran Nair and C.S. Dias, Advocates for the Respondent

Judgement

P. Bhavadasan, J—This Civil Revision Petition is directed against the order dated 4.3.2011 in O.P. 285 of 2010 whereby the District Court, Kollam has granted leave to institute a suit under Section 92 of the Code of Civil Procedure.

2. The facts necessary for the disposal of this revision petition are as follows: The matter relates to Valiakoonambaikkulam Sree Bhagavathy Temple, the history of which is seen well narrated in the petition for leave to institute the suit. It is unnecessary to extract them in this order.

3. The history is that the temple belonged to four karas, namely, Mulluvila, Manakkad, Ayathil and Punthalthazham. As per the averments in the petition for leave, the temple was renovated during 2002 with public funds. Thereafter a General Body Meeting was convened on 13.1.2003 and on 16.2.2003 a 15 member committee was elected for the administration of the temple. As desired by the General Body meeting, Trust Deed No. 5751 of 2003 was registered on 8.12.2003. Subsequently, the Society was registered on 2.4.2008 as Valiya Koonambaikkulam Sree Bhadrakali Shethra Samrakshana Samithi for the administration of the temple.

4. In the petition for leave, it is stated that the temple is a public trust and persons of all communities worship as of right and the temple draws huge income.

5. The allegation in the petition is that the present Committee consisting of defendants is mismanaging the affairs of the temple and is misappropriating the funds of the temple. The specific allegation is that on 13.1.2003 the defendants issued a notice to convene a General Body Meeting on 16.1.2003. The so-called Committee, for the sake of convening a meeting, convened a meeting and after rushing through the accounts got the accounts passed. It was averred in the petition that when demand was made, that was brushed aside and the meeting was abruptly ended. The petitioners in detail mention about the Committees formed for the various purposes and also in detail mention about the various ill-acts of the Committees including allegations of mismanagement and misappropriation. There are allegations against the College being run by the Trust and also about the properties said to have been acquired by the Trust. Specific allegation is that the amounts far less than what have been shown in the documents have been expended thereby misappropriating lot of money.

6. It is also averred in the petition that formation of the third defendant Committee is with ulterior motive and it is not in the spirit of the Committee as drawn up by the decision of the General Body.

7. There are allegations of want of proper accounting and also favouring the kith and kin of the members of the Trust for various purposes in the temple. The income of the temple, according to the petitioners, are not properly accounted for and there is no proper scrutiny of the accounts or auditing of the accounts. There is no transparency in the affairs of the temple and acquisitions are made at the whims and fancies of the members of the Trust. Suffice to say that there are specific allegations of mismanagement and misdeeds by the members of the Committee of the temple.

8. Ultimately the petition ends up by saying that under the circumstances mentioned in the objection, it becomes necessary to draw up a proper scheme for the administration of the temple and it is necessary to remove defendants 2 to 6 from the status of trustees of the temple. It is also claimed that proper accounts are to be taken and the trustees be made liable for any loss caused to the Trust.

9. Resisting the petition for revocation of leave, the contesting respondents pointed out that there is absolutely no merit in any of the contentions raised in the petition for leave and the action has been initiated in collusion with respondents 7 and 8. In fact, a similar petition had been filed before another court and while that is pending, the present petition has been laid with ulterior motive. In the light of the fact that there is already a petition pending, the present petition for leave is misconceived being almost on similar lines as that of the petition which is already pending consideration.

10. The specific contention is that it is not due to any mal administration or mismanagement of the temple that the present petition has been filed. But it is only due to vengeance as the petitioners were not successful in getting elected in the election conducted. It is averred that the administration of the temple is being done properly and the accounts which are presented in the meeting was approved and there is no mismanagement or maladministration as alleged in the petition.

11. According to the respondents, the allegations are figments of imagination of the petitioners without any substance and is only to upset the smooth administration of the temple that the petition has been filed. The allegation, according to the respondents, are vague and general in nature and they do not merit consideration. On the basis of these contentions, they prayed for a dismissal of the petition.

12. The court below by the impugned order granted leave to institute the suit under Section 92 of the Code of Civil Procedure.

13. Assailing the sanction so given, Shri. Gopalakrishna Kurup, learned Senior Counsel appearing for the petitioners, pointed out that mere averments are not sufficient to attract Section 92 C.P.C., but the court should be satisfied that there is real and substantial interest as far as the persons concerned to institute the proceedings. The court is not to be confined to the reliefs sought for in the petition, but should go behind to the reliefs sought for and ascertain whether the averments are genuine and bonafide. Such an exercise has not been undertaken in the case on hand. For the above proposition, learned counsel relied on the decisions reported in *Vidyodaya Trust Vs. Mohan Prasad R. and Others*, AIR 2008 SC 1633 : (2008) 2 CLT 44 : (2008) 2 CLT 315 : (2008) 3 CTC 868 : (2008) 3 JT 119 : (2008) 3 SCALE 273 : (2008) 4 SCC 115 : (2008) AIRSCW 1817 : (2008) 2 Supreme 264 , *Church of South India Vs. John*, (2012) 2 KLJ 529 : (2012) 2 KLT 606 and *Ramlath Memorial Charitable Trust and Others Vs. Peerukannu and Others*, (2009) 3 KLJ 712 : (2009) 4 KLT 848 . Elaborating on the principle laid down in the above decisions, it was contended that except the vague allegations, there are no materials to warrant a conclusion that the Trust is being mismanaged. There is nothing to show that any clause in the trust deed is being misused or that there is any specific instance of misappropriation or violation of rules. It is significant to notice, according to the learned Senior Counsel, that the accounts were passed by the General Body and there is nothing to show that any amount had been misappropriated by the Board of Trustees. Learned Senior Counsel went on to emphasis that it is not sufficient that mere allegations are made to attract Section 92 of C.P.C. While considering such a case, the court should be careful enough to see that there is bona fide interest that is being agitated and that it is not personal vengeance that is being sorted out by way of such a petition. There has been no such scrutiny to ascertain whether the petition is a bona fide one or is merely a petition to wreak personal vengeance. An enquiry in that regard has not been undertaken by the court below and

therefore, it is contended that the leave granted cannot be sustained.

14. Shri. P. Gopakumaran Nair, learned counsel for the respondents contended that an in depth enquiry is not warranted at this point of time and all that is required is to look into the averments in the plaint and see whether there are sufficient averments or assertions regarding the breach of trust and other allegations necessary to attract the ingredients of Section 92 of C.P.C. It cannot be disputed, according to the learned counsel, that the Trust in question is a public trust though right of management may be confined to a section of society. There are specific allegations of mismanagement and maladministration, details of which have been given by the petitioners. An examination of truth of those allegations are not warranted at this point of time. All that is required is to see whether the persons who have instituted the petition are interested in the affairs of the Trust or whether they are bona fide litigating for a just cause. Applying that test available in such a case, learned counsel went on to say that it can be seen that in the case on hand, there are no sufficient averments and indications to the effect that there has been breach of trust. Emphasizing on the point, at this point of time, the objections taken to the petition are of little consequence. Learned counsel went on to point out that no grounds are made out to interfere with the leave granted by the court below.

15. It is true that in the decision reported in *Vidyodaya Trust Vs. Mohan Prasad R. and Others*, AIR 2008 SC 1633 : (2008) 2 CLT 44 : (2008) 2 CLT 315 : (2008) 3 CTC 868 : (2008) 3 JT 119 : (2008) 3 SCALE 273 : (2008) 4 SCC 115 : (2008) AIRSCW 1817 : (2008) 2 Supreme 264 it is held as follows:

"18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act, 104 of 1976, the expression used was "consent in writing of the Advocate-General". This expression has been substituted by the words "leave of the Court". Sub-section (3) has also been inserted by the Amendment Act. 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. In the suit against public trusts, if on analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in *Swami Parmatmanand's case* (supra) a suit under Section 92 CPC is a suit of special nature, which pre-supposes the existence of a public trust of religious or charitable character. When the plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they

are interested, Section 92 has no application."

16. Similar observations are seen made in the decision reported in *Church of South India Vs. John*, (2012) 2 KLJ 529 : (2012) 2 KLT 606 wherein it is observed as follows:

"6. Under the English Law, a suit similar to one under S. 92 of the Code demands that the plaintiffs must have a direct interest in the trust. That position prevailed in India also in the Code of 1877. But, later, the word "direct" has been omitted by the Amendment Act of 1888, and, presently, the petitioners need only satisfy that they have interest in the trust. Omission of the word "direct" from the Code does not indicate that mere averment that he is interested would suffice, nor that a person having some remote interest in the trust can institute a suit under S. 92 of the Code. The interest contemplated under the S. 92 of the Code must be a real, substantive and existing interest in the particular trust. Whether he has got such an interest to maintain an action under S. 92 of the Code seeking leave for institution of such suit has to be determined on the basis of evidence and also with reference to the allegations raised in the draft plaint produced with the application for leave. Persons seeking leave should have real, substantial and existing interest in the trust. A mere statement in the petition or in the draft plaint that they are well wishers and beneficiaries or worshippers would not suffice, to show that they have real and substantive interests."

17. Similar observations are seen made in the decision in *Ramlath Memorial Charitable Trust and Others Vs. Peerukannu and Others*, (2009) 3 KLJ 712 : (2009) 4 KLT 848 , which reads as follows:

"But the larger question remains whether the petitioners have any interest in the trust. True, they need not show "a direct interest", but, their interest in the trust should be real, substantial and existing. Petitioners are members of the minority community residing at the places in which the trust carries its objectives or envisages of putting up institutions for the upliftment of the weaker sections of that community, is not sufficient to show that they have an interest in the trust in the petition. A mere statement that the petitioners are well wishers and beneficiaries of the trust without anything more, is not sufficient to show that they have any interest in the trust to obtain leave for instituting a suit for the relief under S. 92 of the C.P.C.. The question whether a person has a real, substantive and existing interest in a particular trust so as to maintain an action under S. 92 of the C.P.C. has to be determined factually on acceptable evidence and also with reference to the trust in relation to which the suit is instituted. In case, the assertion of the petitioners that they are beneficiaries and well wishers of the trust as averred in their petition is taken as sufficient to show their interest in the trust to seek permission to sue, then, needless to point out, any one in the locality where the trust operates, who are members of the minority community, can come forward and seek permission to institute suits against the trust. Such a situation is wholly undesirable. Object of S. 92 of the C.P.C. is to prevent people from interfering with the administration of the public trust of a

charitable or religious nature by instituting frivolous suits."

18. There can be no dispute regarding the fact that mere assertion of allegations attracting clauses on Section 92 C.P. C by itself may not be sufficient to grant leave. As noticed in the above decisions, the persons who are litigating for a cause under Section 92 C.P.C. must show sufficient interest in the affairs of the Trust.

19. There is a claim made in the present proceedings that the Ezhavas of the four localities are beneficiaries of the temple. The above assertion may not be capable of acceptance going by the averments in the petition. Even assuming that the members of a particular community alone are entitled to be in management of the Trust, that does not mean that it is not a public trust or members of other communities are not entitled to involve in the affairs of the temple. It is not in dispute that funds are being collected from members of all communities.

20. Learned counsel for the petitioners may be justified in his submission that mere allegations by themselves are not sufficient to attract Section 92 C.P.C. to grant leave for instituting the suit under Section 92 C.P.C.

21. Here one has to notice the purpose and object of Section 92 C.P.C. That is intended to prevent public trust being drawn into unnecessary litigations. Religious trust should be left free to function so that they cannot go against the public or contrary to the terms of the trust. It must be shown that the persons who institute proceedings under Section 92 C.P.C. are champions of a public cause. To that extent, learned Senior Counsel for the petitioners may be justified in his submission.

22. It is also true that an enquiry in that direction has not been undertaken by the court below before granting leave to institute the suit. The court below has merely narrated the statements contained in the plaint and also the reliefs sought for and being satisfied that that constitute sufficient ingredients to attract Section 92 C.P.C., went on to grant leave to institute the suit.

23. It is here that the specific contention put forward by the respondents before the court below will have to be taken note of. They say that no specific provision in the trust deed is being assailed and there is no averment in the petition to the effect that Trust Board is acting contrary to the trust deed. The contesting respondents do have a case that the petitioners are those persons who were unsuccessful in the election held on 11.5.2008 and who had walked out of the meeting unable to succeed in their attempt to manipulate the election.

24. As already stated, the petition does contain serious allegations. As to what is the nature of the enquiry under the circumstances is well settled in the light of the three decisions referred to earlier. If the principle in those decisions are to be applied, it can be found that there are no sufficient materials to show that the petition contained averments sufficient to attract Section 92 C.P.C. The decision

goes on to say that something more is required and the court should satisfy that there is no personal vendetta or ill-motive behind the petition, but real public interest that is being agitated. If that test is to be applied, the order of the court below cannot be sustained. A re-thinking or reconsideration of the matter becomes absolutely necessary.

For the above reasons, the impugned order is set aside and the matter is remanded to the court below to consider the issue afresh in terms of the decisions referred to above.

There will be no order as to costs.