

Rt.Rev.Dr.V.Devasahayam Vs. St.George Cathedral Trust

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Court : Chennai

Decided On : Dec-12-2013

Judge : R.Subbiah

Appellant : Rt.Rev.Dr.V.Devasahayam

Respondent : St.George Cathedral Trust

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

12. 12.2013 CORAM : THE HONOURABLE MR.JUSTICE R.SUBBIAH
A.Nos.1174 and 2870 of 2013 in C.S.No.731 of 2013 THE
RT.REV.DR.V.DEVASAHAYAM BISHOP IN MADRAS, CHURCH OF SOUTH
INDIA, NO.226, CATHEDRAL ROAD, CHENNAI86P-2 THE DIOCESE OF
MADRAS REP.BY ITS SECRETARY, CHURCH OF SOUTH INDIA, NO.226,
CATHEDRAL ROAD, CHENNAI86... Petitioners Vs. R-1 ST. GEORGE
CATHEDRAL TRUST REP.BY ITS SECRETARY, ST. GEORGES CATHEDRAL
COMPOUND, NO.224, CATHEDRAL ROAD, CHENNAI86R-2 REV. S
IMMANUEAL DEVAKADATCHAM PRESBYTER IN CHARGE ST GEORGES
CATHEDRAL224CATHDRAL ROAD CHENNAI86... Respondents For Petitioner :
M/S.D.PRABHU MUKUNTH ARUNKUMAR N.R.NARAYANAN For Respondents :
M/S.D.MOSES JEYAKARAN B.PRIYA

ORDER

: R.SUBBIAH, J The application in A.No.1174 of 2013 has been filed by defendants 1 and 2 for rejection of the plaint in C.S.No.731 of 2013 under Order VII Rule 11 read with Section 151 C.P.C.

2. Application in A.No.2870 of 2013 has been filed by the plaintiff trust under order XIV Rule 8 of the O.S.Rules read with Order I Rule 8 C.P.C. and order 3 Rule 2 of O.S.Rules to grant leave to file the suit as against the second respondent.

3. For the sake of convenience, the parties will be referred to as per their ranking in the suit.

4. The plaintiff St.George's Cathedral Church, rep. by its Secretary filed the suit in C.S.No.731 of 2013 as against defendants 1 to 3 viz., (i) Rt.Rev.Dr.V.Devasahayam, Bishop in Madras, (ii) The Diocese of Madras, rep. by its Secretary and (iii) Rev.S.Immanuel Devakadatcham, Presbyter in Charge for the following reliefs:- (i) For a declaration declaring that the appointment of the third defendant by the first defendant as Clergy Trustee of the plaintiff Trust is invalid and null and void, (ii) For a permanent injunction restraining the third defendant or anyone claiming any right under him from acting as Clergy Trustee of the plaintiff Trust. (iii) For a permanent injunction restraining the defendants or their men or agents or anyone claiming any right under them from interfering with the plaintiff trust's management and administration of the suit schedule property; and (iv) for costs of the suit.

5. The brief averments made in the plaint are as follows:- (a) The plaintiff is a public religious and charitable Trust having been created by the deed of Trust dated 9.2.1821 by the United Company of Merchants of England for the purpose of possessing and maintaining the church and other buildings in respect of St. George's Church, which later became St. George's Cathedral Church in the land situated in Old Survey No.3414, Mylapore Village, later R.S.No.63 and now T.S.No.63/1 and 63/2, Block No.3 measuring totally about 684000 sq.ft. or 111-1/4 cawnies or about 285 grounds. The trustees of the plaintiff Trust have been rendering sincere service for the past nearly two centuries to the Church and its properties and they have been functioning as per the rules for the administration of the plaintiff trust which came to be adopted by the Trust at their meeting held on

2.2.1991. The present trustees of the plaintiff Trust are (i) M.M.Rajendran, Senior Trustee, (ii) D.S.Luther, Secretary (iii) M.E.Felix, Trustee and (iv) Lalitha Sukumar, Trustee. (b) The trustees have been functioning independently as the suit property has been vested with them by the Trust Deed and they have to fulfil the objects of the Trust Deed in administering and managing the said properties for the benefit of the Church. The trustees are also maintaining separate books of accounts relating to the Trust properties and its income and expenditure and its accounts are annually audited and income tax returns are filed in the name of the plaintiff Trust. Though the members of the congregation belonging to St. George's Cathedral Church are members of the Church of South India and coming under the second defendant, the plaintiff Trust is an independent body vested with the suit property and the trustees act in the interest of the Trust to safeguard its properties from profane or common use. (c) Patta for the suit land stands in the name of the plaintiff Trust as issued in 1993. When the plaintiff Trust decided to restore their church building, which is a heritage building for the bi-centenary celebration to be held in 2015, they sent a letter dated 16.11.2011 to the first defendant informing about the steps taken by the plaintiff for restoration of the church building and also seeking financial assistance from the second defendant of which the first defendant is the head as the finance required was huge and seeking the guidance and co-operation of the first defendant. But, there was no reply from the first defendant. Subsequently, the plaintiff has also sent a reminder to the first defendant informing about the formation of the restoration committee to restore the church building and also creating a separate fund called St. George's Cathedral Restoration Fund and also sought for financial help from the second defendant. (d) At this juncture, in April 2012, the plaintiff came to know that the second defendant under the leadership of the first defendant during 1999-2001 has changed the name in the revenue records of the Government regarding the ownership of the land in respect of T.S.No.63/1, Block 3 of Mylapore Village, Triplicane Mylapore Taluk without any notice to the plaintiff Trust which has been the owner of the said land by getting a patta in the name of Madras Diocesan Trust Association. The illegal act on the part of the defendants 1 and 2, who had changed the name in the revenue records surreptitiously was objected to by the plaintiff Trust and hence, they have filed a revision petition before the DRO for effecting the rectification of

name to the plaintiff Trust for T.S.No.63/1. The act of the plaintiff Trust going to the revenue department for such rectification has become the root cause for the present dispute on the functioning of the plaintiff Trust. At the instance of the first defendant, the defendants are colluding to act against the Trust and questioning the powers and functions of the trustees as though they are subordinates and do not have any power vested with them under the Trust Deed in respect of the suit property. (e) By letter dated 10.5.2012 sent to the first defendant, the Trust demanded arrears of rent to be paid by the second defendant to the Trust and also requested them to hand over vacant possession of the premises to the Trust. But, there was no response for the same. Subsequently, the first defendant called for a meeting with the trustees of the plaintiff on 24.5.2012 and in the said meeting, the first defendant expressed displeasure with the trustees especially the senior trustee in going to the revenue department relating to the patta and writing of letter to the American Consulate by the Trust. (f) By letter dated 2.7.2012, the first defendant questioned the appointment of M.M.Rajendran as Senior Trustee by the Trust saying that it was against the constitution of the Trust and called for some information. By reply dated 5.7.2012, the Trust explained to the first defendant that the trustees had unanimously elected M.M.Rajendran as the Senior Trustee and the first defendant himself had requested the same to the Secretary of the Trust in view of his experience and stature and that the first defendant had announced before the Cathedral congregation after the installation of M.M.Rajendran as trustee that he was happy that the trustees have agreed to make him the Senior Trustee. But the first defendant, who was having a personal vendetta against the Senior Trustee of the Trust and the third defendant at the instance of the first defendant removed the designation of Senior Trustee against the name of M.M.Rajendran and put his name in the last in the Cathedral Chimes of August 2012 with a mala fide intention to insult and defame his name. The first defendant has also instructed the third defendant not to transfer the funds resolved at the Special General Body Meeting on 22.4.2012 to the restoration fund account of the plaintiff Trust in order to stall the said work in spite of reminders by the members of the church and the plaintiff Trust. (g) Since the trustees of the plaintiff Trust were firm in retaining M.M.Rajendran as Senior Trustee, the first defendant only with a view to jeopardize the smooth functioning of the plaintiff Trust has unilaterally sent

a letter dated 6.10.2012 to the third defendant appointing him as Clergy Trustee of St. George's Cathedral with immediate effect by virtue of his office as Presbyterian-in-charge of the said church and marked a copy to the plaintiff. The appointment of the third defendant is in total violation of Rules 5.a to 5.c of the Trust Rules and the first defendant has no authority whatsoever to make such appointment without looking into the eligibility criteria and the consultation required to be made with the existing trustees for appointing a new trustee and due weightage being given for the opinion of the existing trustees. (h) The plaintiff, at their meeting held on 11.10.2012, considered the said letter dated 6.10.2012 sent by the first defendant to the third defendant for appointing the third defendant as clergy Trustee and passed an unanimous resolution as follows:- ". Unanimously resolved to inform the Bishop that the Rules for Administration of St. George's Trust do not provide for a Clergy Trustee and the rules for the appointment of the trustees set out under rule 5 have not been followed in this appointment. Besides Rev. Immanuel Devakadatcham does not satisfy the qualifications prescribed in Rule 5(a). The appointment is therefore invalid and ab initio void. It was decided unanimously to inform the Bishop that the existing trustees object to this appointment under Rule 5(c) and request that the appointment should be cancelled with immediate effect.". The said resolution was communicated to the first defendant by letter dated 11.10.2012 and the first defendant sent a letter dated 12.10.2012 stating that the Rules of the Trust do not apply in the case of appointment of ex officio Clergy Trustee and that it stands and that the third defendant will preside over the meetings of the plaintiff Trust. The plaintiff by their letter dated 16.10.2012 have once again reiterated that there is no such provision for ex officio clergy Trustee under the rules and it is a clear violation of the rules and so the Trust Board decided not to accept the said appointment. The plaintiff has been informed that the second defendant at the instance of the first defendant is contemplating removal of the existing trustees on the ground that they have unanimously objected to the appointment of the third defendant as Clergy trustee and for not acting under the control of the defendants but independently. Hence, the suit has been filed for the reliefs set out earlier.

6. On appearance, defendants 1 and 2 have filed the present application in A.No.1174 of 2013 for rejection of the plaint. In the affidavit in support of the

application for rejection of the plaint, it has been stated as follows:- The second defendant in the suit viz., the Church of South India, Madras Diocese is an unregistered body. The Church of South India, Madras Diocese is one of the dioceses under the control of the Church of South India. The Church of South India is also an unregistered body and all the properties of the Church of South India are vested in the Church of South India Trust association, a company registered under Section 25 of the Companies Act . Since the Church of South India, Madras Diocese being an unregistered body, the suit as filed without leave under Order I Rule 8 C.P.C. read with Order 3 Rule 2 of the Original Side Rules is not maintainable. The plaint is liable to be rejected since the second defendant who is an unregistered body, is not impleaded in the suit in the manner known to law. Though defendants 1 and 2 do not admit the existence of the plaintiff Trust, the plaintiff claiming to be a public charitable Trust has not filed the suit as stipulated under Order 31 Rule 2 C.P.C. and other provisions of C.P.C. and therefore, the plaint is liable to be rejected.

7. Counter affidavit was filed on behalf of the plaintiff Trust, wherein the following facts have been set out:- (a) Only when an unregistered body wants to file a suit or wants to defend itself before this Court, then the person claiming to represent the unregistered body must seek leave of this Court under order 1 Rule 8 of C.P.C. read with Order 3 Rule 2 of the Original Side Rules. Now, since the plaintiff has filed the suit as against such body viz., the second defendant, it is not required to obtain leave under Order 1 Rule 8 C.P.C. Even assuming that the leave under Order 1 Rule 8 C.P.C. is required in respect of the second defendant, such leave can be obtained even after filing of the suit, if this Court is of the opinion that the proceedings in the above suit are to be made known to the persons interested in the said reliefs. (b) The alleged ground of filing the suit without leave under Order 1 Rule 8 C.P.C. cannot be sustained and it cannot be a ground for rejection of plaint. As per the provisions of Order 31 Rule 2 C.P.C., if anyone files a suit as against the Trust, then apart from the Trust all the trustees have to be made as parties in that suit and it is not required under the provisions of C.P.C. that when Trust files a suit, all the trustees must be made as co-plaintiffs. The Secretary of the plaintiff Trust has been duly authorised and the concerned Trust Resolution dated 7.11.2012 has also been filed as plaint document No.32. Defendants 1 and

2 have failed to raise any ground for rejection of the plaint as provided under Order VII Rule 11 C.P.C. The present application filed under Order VII Rule 11 C.P.C. is a clear abuse of process of law. Thus, the plaintiff sought for the dismissal of the application in A.No.1174 of 2013.

8. Apart from filing counter affidavit in A.No.1174 of 2013, by way of abundant caution, the plaintiff Trust has also taken out an application in A.No.2870 of 2013 under Order 1 Rule 8 C.P.C. to grant leave to file a suit as against the second defendant. In the affidavit filed in support of the said application, the plaintiff has stated as follows:- The present suit has been filed by the plaintiff to declare the appointment of the third defendant made by the first defendant as Clergy Trustee as null and void and to restrain the third defendant by permanent injunction from acting as Clergy Trustee of the plaintiff Trust and also to protect the plaintiff's right of management and administration relating to the Trust property against the defendants. At the time of filing of the suit, the plaintiff Trust was not aware that the second defendant is an unregistered body. Further, the suit is not a representative suit filed by the plaintiff Trust, but to protect its own property and therefore no leave was sought for under Order 1 Rule 8 C.P.C. Further, in the plaint, it has been stated that it is only the Secretary of the second defendant, who is colluding with the first defendant to interfere with their management of the Trust property and not the members of the Diocese. However, by way of abundant caution, the present application has been filed seeking leave of this Court to file the suit as against the second defendant. Thus, he prayed for granting leave of this Court.

9. The said application was opposed by the second defendant by filing a counter stating that the application is not maintainable as it is not in conformity with the provisions under which the application is filed. Hence, the application is liable to be dismissed.

10. (A) Learned counsel appearing for defendants 1 and 2 by inviting the attention of this Court to the averments made in the plaint, submitted that at the time of filing of the suit, there are four trustees viz., (i) M.M.Rajendran, Senior Trustee, (ii) D.S.Luther, Secretary (iii) M.E.Felix, Trustee and (iv) Lalitha Sukumar, Trustee. In

the plaint, it has been stated that the trustees have been functioning independently as the suit property has been vested in them by the Trust deed. The suit filed by the St. George's Cathedral Trust, rep. by its Secretary is not legally maintainable since all the trustees were not made as parties to the suit as required under Order 31 Rule 2 C.P.C. In this regard, learned counsel appearing for defendants 1 and 2 by relying upon the judgment reported in AIR1938 Madras 982 Vedakannu Nadar and ors. vs. Nanguneri Taluk Singikulam Annadana Chatram through its huktdars Medai Dalavoi Ranganatha Mudaliar and Ors., submitted that only if all the trustees are before the Court, the suit filed by the trust is maintainable. In the instant case, the suit has been filed by the Secretary of the trust and the trustees are not parties before this Court. Therefore, the suit as framed is not maintainable and the same is liable to be rejected. (B) Further, the learned counsel appearing for defendants 1 and 2 has also relied upon the judgment reported in MANU/DE/8558/ 2006:

129. (2006) DLT638 2006(89) DRJ417 Shri Golesh Kumar v. Ganesh Dass Chawla Charitable Trust (Regd) and submitted that in the said judgment, the Delhi High Court has relied upon the judgment of this Court reported in the above referred to judgment viz., AIR1938 Madras 982 and held that if there are several trustees of the Trust and if it is a registered Trust and has number of trustees, there was no escape for the plaintiff but to join / implead all these trustees as defendants in the suit. For the same proposition, learned counsel for defendants 1 and 2 has also relied upon the judgment reported in (2011) 1 Supreme Court Cases 623 Sainath Mandir Trust v. Vijaya and others, wherein it has been held that the suit was bad for non-joinder of necessary parties in terms of Order 31 Rule 2 C.P.C. as all the trustees of the Trust were not joined parties. (C) Further, it has been submitted by the learned counsel appearing for defendants 1 and 2 that the second defendant is an unregistered body and hence, the plaintiff ought to have obtained leave of this Court under Order 1 Rule 8 C.P.C. to file the suit as against the second defendant. Therefore, on this ground also, the plaint is liable to be rejected.

11. (A) Per contra, learned counsel appearing for the plaintiff submitted that it is well settled principle of law that while dealing with the application for rejection of

plaint, the averments made in the plaint alone have to be taken into consideration. Now, the present application for rejection of the plaint has been filed stating that the plaintiff has not obtained leave under Order 1 Rule 8 C.P.C. to file a suit as against the second defendant who is an unregistered body. The suit was filed mainly on the allegation that the suit property has been vested with the plaintiff Trust by Trust Deed and the trustees are administering and managing the said property for the benefit of the church. But, the first defendant, who is the Bishop in Madras, Church of South India, without the knowledge of the trustees, changed the name in the Government revenue records regarding the ownership of the land in favour of Madras Diocesan Trust Association during 1999-2001. When that was questioned, the third defendant at the instance of the first defendant removed the designation of Senior Trustee and put his name in the last in the Cathedral Chimes of August 2012 with a mala fide intention to insult and defame his name. Further, with a view to jeopardize the smooth functioning of the plaintiff Trust, the first defendant has unilaterally sent a letter dated 6.10.2012 to the third respondent appointing him as Clergy Trustee of St. George's Cathedral with immediate effect by virtue of his office as the Presbyter-in-charge of the said Church. The said appointment is in total violation of Rules 5.a to 5.c of the Trust Rules since the first defendant has no authority whatsoever to make such appointment. Hence, the present suit has been filed only questioning the appointment of the third defendant and also to restrain the third defendant from acting as Clergy Trustee and to restrain the defendants from interfering with the peaceful and enjoyment of the plaintiff Trust over the suit property. All these prayers made in the plaint are individual in nature i.e., between the Trust and the defendants and only when the interest of numerous persons is involved, then only the question of obtaining leave under Order 1 Rule 8 C.P.C. will arise. However, by way of abundant caution, now the plaintiff has filed an application under order 1 Rule 8 C.P.C. In this regard, the learned counsel appearing for the plaintiff has also relied upon the judgment reported in (1996) 3 Supreme Court Cases 149 Singhai Lal Chand Jain (Dead) vs. Rashtriya Swayamsewak Sangh, Panna and others and submitted that since the second defendant was shown in the plaint represented by its Secretary, that is suffice to take interest of the members of the society also. (B) Learned counsel appearing for the plaintiff has further submitted that obtaining leave under Order 1

Rule 8 C.P.C. is only procedural in nature and the same can be obtained even at the appellate stage. Therefore, non-obtaining of leave under Order 1 Rule 8 C.P.C. is not a ground for rejecting the plaint. Further, the learned counsel appearing for the plaintiff has also relied upon the judgment reported in AIR 2005 GAUHATI54 Nakuleswar Paul v. State of Tripura and others and submitted that even no separate application is required under law for obtaining permission under order 1 Rule 8 C.P.C. Further, the learned counsel appearing for the plaintiff has also relied upon the judgment reported in CDJ 2013 MHC2623 Royal Villa Residents Association, represented by its President v. The Project Management Committee, Kotturpuram Officers Co-operative Housing Society, represented by its Authorised persons & Others and submitted that the application under Order 1 Rule 8 C.P.C. can be decided even during the course of trial by framing necessary issues. (C) With regard to the other submission of the learned counsel for the defendants 1 and 2 that the plaintiff has not impleaded all the trustees as defendant, learned counsel appearing for the plaintiff submitted that only in the event of filing a suit as against the Trust showing the trust as defendant, all the trustees have to be impleaded. Here, the suit was filed not against any trust. But, it is the suit filed by the trust by passing a resolution authorising the Secretary of the plaintiff Trust to represent the suit. Therefore, non-impleading of all the trustees in the suit is not a ground for rejecting the plaint. With regard to this contention, learned counsel appearing for the plaintiff has relied upon the judgment reported in 2003 (3) CTC209 Kishorelal Asera v. Haji Essa Abba Sait Endowments, rep. by its Trustees, Ibrahim Sait and others. (D) Further, the learned counsel appearing for the plaintiff submitted that so far as the rejection of the plaint is concerned, only if the plaint does not disclose any cause of action, the same can be rejected. In this regard, the learned counsel appearing for the plaintiff relied upon the judgments reported in 2009-2-L.W.460 V.K.John vs. 1.W.S.Seetharam, 2. Prema Chandrasekhar, 3.T.R.T.Thirumalvasi and (2005) 7 Supreme Court Cases 510 Popat and Kotecha Property v. State Bank of India Staff Association.

12. I have heard the submissions on either side and perused the materials available on record.

13. The application for rejection of the plaint under Order VII Rule 11 C.P.C. has been filed mainly on two grounds viz., (i) The Diocese of Madras, Church of South India is an unregistered body and hence, the suit as filed without leave under Order 1 Rule 8 C.P.C. read with Order 3 Rule 2 of the Original Side Rules is not maintainable. (ii) The suit was filed by the Trust represented by its Secretary. Since all the trustees were not shown as plaintiffs in the suit as required under Order 31 Rule 2 C.P.C., the suit as framed is not maintainable.

14. With regard to the first ground viz., not obtaining leave of this Court under Order 1 Rule 8 C.P.C., it is the submission of the learned counsel appearing for defendants 1 and 2 that since the second defendant is an unregistered body, the plaintiff ought to have obtained leave from this Court under Order 1 Rule 8 C.P.C. But, it is the contention of the learned counsel appearing for the plaintiff that only when numerous persons are having the same interest in one suit, the question of obtaining leave under Order 1 Rule 8 C.P.C. will arise. In the instant case, the plaintiff Trust sought for declaration and also for permanent injunction restraining the defendants from interfering with the management and administration of the suit schedule property by the plaintiff Trust since defendants 1 to 3 are interfering with the affairs and management of the plaintiff Trust. Therefore, absolutely there is no need to seek permission under Order 1 Rule 8 C.P.C. However, by way of abundant caution, the plaintiff has filed an application in A.No.2870 of 2013 seeking leave of this Court to file a suit as against the second defendant. On the contrary, it is the submission of the learned counsel appearing for defendants 1 and 2 that the injunction prayer as sought for by the plaintiff would have a bearing on the members of the diocese. Therefore, an application under Order 1 Rule 8 C.P.C. is necessary.

15. But, irrespective of the submissions made on either side, I am of the opinion that an application under Order 1 Rule 8 C.P.C. is only procedural in nature and the same could be obtained at any stage of the suit proceedings. The plaintiff has not sought for any prayer as against the members of the second defendant diocese. The prayers made against defendants 1 to 3 are individual in nature since according to the plaintiff, it is the Secretary of the second defendant who is interfering with the affairs of the trust on the instigation of the first defendant and

not the members of the second defendant Diocese. Therefore, the question as to whether the relief sought for by the plaintiff is an individual in nature or it will have a bearing on the members of the second defendant, cannot be decided at this stage and the same has to be decided only during the course of trial by framing necessary issues to that effect. Further, since it is not mandatory that an application under Order 1 Rule 8 C.P.C. has to be filed only before the filing of the suit, I am of the opinion that the plaint cannot be rejected for non-filing of the application under Order 1 Rule 8 C.P.C.

16. The next fold of submission made by the learned counsel appearing for defendants 1 and 2 is that the suit has been filed by the plaintiff claiming to be a charitable Trust as stipulated under order 31 Rule 2 C.P.C. Since the all trustees of the Trust were not shown as plaintiffs, the suit is liable to be rejected. In this regard, it would be appropriate to extract Order 31 Rule 2 c.P.C. and the same is extracted hereunder:- ".2. Joinder of trustees, executors and administrators:- Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them: Provided that the executors who have not proved their testator's will and trustees, executors and administrators outside India, need not be made parties.". The learned counsel appearing for defendants 1 and 2 has relied upon the judgment reported in MANU/DE/8558/2006:

129. (2006) DLT638 2006(89) DRJ417 Shri Golesh Kumar v. Ganesh Dass Chawla Charitable Trust (Regd) in support of his contention that unless all the trustees of the trust are not made as parties, the suit as framed is not maintainable. But, I find that in the said judgment, the suit was filed as against the Trust and not by the Trust. It is the submission of the learned counsel appearing for the plaintiff that Order 31 Rule 2 C.P.C. is applicable only to the suits against the Trust and not to the suits filed by the trustees, executors or administrators. In this regard, learned counsel appearing for the plaintiff has also relied upon the judgment reported in 2003 (3) CTC209 Kishorelal Asera v. Haji Essa Abba Sait Endowments, rep. by its Trustees, Ibrahim Sait and others. The relevant portion of the said judgment is usefully extracted hereunder:- ". 14.....The suit was filed on 25.2.1983 and the evidence was taken some time in September, 1986. Order 31

Rule 1 C.P.C. dealing with the representation of beneficiaries in suits concerning property vested in Trustees says that the Trustee shall represent the persons so interested. This provision does not disentitle a person who happens to be a Trustee for suing for and on behalf of the Trust. A Trust not being a legal person is not entitled to sue in its own name. Therefore, in a suit for evicting the tenant from the Trust premises, the Trustees jointly or any one of them, when authorized in that behalf by the rest of them, can maintain the suit. Rule 2 of Order 31 C.P.C. says that where there are several Trustees, they shall all be made parties to a suit against one or more of them. There is a distinction drawn between a suit filed by the Trust and the suit against the Trustees. Therefore, if the objection of the appellants/defendants is to be sustained, then their appeal not being against all the Trustees must fail. The appellants had not sought for the particulars from the Trust as to the Trustees as on the date of filing of the appeal. The Trust Deed, Ex.A1 recognizes five Trustees. The Memorandum of Association also consists of a Governing Body consisting of five members. There is no dispute as to the fact that at the time when the suit was instituted then, all the existing five Trustees were representing the Trust. However, any change of the Trustee when the office falls vacant would not mean that the Trust is not represented properly for want of correct cause title. The Court has the power to accept any of the Trustees to represent the Trust in a suit concerning the property vested with the Trust. ". The dictum laid down in the above said judgment would go to show that there is a distinction between the suit filed by the Trust and the suit filed against the Trust. Therefore, I am of the opinion that if the suit is filed against the Trust, then all the trustees must be shown as defendants. In the case of filing a suit by the Trust, since one trustee can authorise other trustee to act on his behalf, that suit can be maintained even without the presence of all the trustees as the plaintiffs. In the instant case, all the trustees of the plaintiff Trust jointly passed a resolution authorising the Secretary to represent the suit. By the power given by all the trustees, the present suit has been filed by the Secretary of the trust. Therefore, I am of the opinion that the present suit is maintainable. Even assuming for a moment that the suit is not framed as required under order 31 Rule 2 C.P.C., the same cannot be served as a ground to reject the plaint.

17. So far as the rejection of the plaint is concerned, only if the averments made in the plaint do not disclose any cause of action as against the defendants, then it can be rejected. In this regard, a reference could be placed in the judgment reported in (2005) 7 Supreme Court Cases 510 Popat and Kotecha Property v. State Bank of India Staff Association and the relevant portion of the said judgment is usefully extracted hereunder:- "

14. In Saleem Bhai V. State of Maharashtra ((2003) 1 SCC557 it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purpose of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In I.T.C. Ltd. V. Debts Recovery Appellate Tribunal ((1998) 2 SCC70 it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code. 16. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (see T.Arivanandam v. T.V.Satyapal ((1977) 4 SCC467. 17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill ((1982) 3 SCC487 only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. ". The dictum laid down in the above judgment would clearly show that the basic question to be decided is whether a real cause of action has

been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 C.P.C. But, in the instant case, I find that a clear cause of action has been made out to sustain the suit as against the defendants.

18. Further, the contention of the learned counsel appearing for defendants 1 and 2 that the suit is not maintainable without leave under Order 1 Rule 8 C.P.C. read with Order 3 Rule 2 of Original Side Rules, will not serve as a ground to reject the plaint. Therefore, I am of the opinion that the application under Order VII Rule 11 C.P.C. to reject the plaint is liable to be dismissed and accordingly, dismissed.

19. In fine, the application in A.No.1174 of 2013 is dismissed. As observed above, the application in A.No.2870 of 2013 filed by the plaintiff under Order 1 Rule 8 C.P.C. can be decided at the time of trial by framing necessary issues. No costs.
12 .12.2013 Index:Yes/No Internet:yes/No sbi R.SUBBIAH, J Pre-delivery order in A.Nos.1174 and 2870 of 2013 in C.S.No.731 of 2013 DATED:

12. 12.2013

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