

**Krishnappa Setty Vs. Ramakrishnappa**

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**Court :** Karnataka

**Decided On :** Mar-15-1993

**Reported in :** ILR1993KAR1580

**Judge :** Murgod, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 92

**Appeal No. :** R.F.A. No. 34 of 1992

**Appellant :** Krishnappa Setty

**Respondent :** Ramakrishnappa

**Advocate for Def. :** B.V. Acharya, Sr. Adv. for ;S.V. Shastry, Adv. for R-14 and ;H.K. Shetty, Adv. for R-16

**Advocate for Pet/Ap. :** S. Vijayashankar, Sr. Adv. for ;M.N. Pramila and ;K. Suresh, Advs.

**Disposition :** Appeal rejected

**Judgement :**

**Murgod, J.**

1. At the stage of Admission the learned Counsel for the appellant and the learned Counsel appearing for the caveators are heard at length.

2. This Appeal is filed against the decree of dismissal of the suit O.S.No. 294/1983 on the file of the VIII Additional City Civil Judge. Bangalore. The suit was filed for permanent injunction only. The impugned order dismissing the suit discloses that a preliminary issue regarding maintainability of the suit was framed on the basis of the grounds urged by defendant No. 14 in his written statement. The said issue reads as under:

'Whether the suit as brought is not maintainable for any of the grounds urged by defendant No. 14 in his written statement?'

The two grounds on which the suit came to be dismissed are that no leave was obtained to institute the suit under Section 92 C.P.C. and the leave to institute the suit under Section 92 C.P.C. refused to Putta Rudra and others in Misc. No. 42/1985 on 27.6.1990 was binding on the present appellant and secondly the plaintiff did not claim any personal or individual interest in the suit property and his request to prosecute the suit in the representative capacity had been rejected by the trial Court and the said order had been confirmed by this Court.

3. The facts leading to the impugned order are as under:

The property involved in the litigation is described in the plaint schedule as property belonging to Sri Kunnappa Krishnappa Chowltry (now called Arasappa Choultry) bearing Municipal Nos. 852, 852/1, 853 and all the properties connected therewith situated in O.T.C. Road, Nagarathpet, Bangalore-2.

4. The material averments making out a case for the relief of permanent injunction are found in the paragraphs 3, 4, 5 and 7 of the plaint which read as under:

'The plaintiff above named is the President of Nagaritha Sangha an association formed by the Nagaritha community people, for the welfare of the said community and their development in the State and their office is situated at Nagarathpet, Bangalore-2. Besides, the plaintiff is one of the Dharmadarsi of Sri Venkataramanaswamy Temple situate at Nagarathpet which was originally known as Sri Adinarayanaswamy Temple and he is also concerned with Sri Srinagareswaraswamy Temple, Nagarathpet, Bangalore. There is also a choultry

called Doddamainna Choultry morefully described in the schedule. The said property originally belonging to one Smt. Venkatamma who died issueless and the said Smt. Venkatamma by a registered will dated 22.8.1902 had left the above choultry among other two properties dedicating the said properties for running a choultry and for the purpose of running choultry. She made arrangements by means of other properties and cash and her object was to see that in the said choultry five persons must be fed from belonging to her community. In other words it was for the benefit of the students. That in the said registered deed she had appointed two persons as the Executors namely one Sri Arasappa and another by name Laxmana. In the said deed it was the intention of the Donor that her mother-in-law Smt. Amachamma must manage the properties and the other two executors Sri Arasappa and Laxmana besides one Appajappa was to manage the trust. A copy of the said deed is produced herewith and marked as Document No.

1. That by a subsequent deed dated 2.11.1903 the said Smt. Venkatamma left nine more items of property and out of which 9th item the money should be utilised for the benefit of choultry while the other items were to be utilised for the Deeparadhana in the three temples namely

(1) Sri Adinarayana Swamy Temple, now called Sri Venkataramana swamy Temple,

(2) Srinagareswaraswamy Temple and

(3) Sri Chennakeshavaswamy Temple situated at Nagarthpet, Bangalore.

4. In the said deed the said Venkatamma appointed four persons as the Executors including Arasappa and Laxmana and three others to manage and supervise. Items involved in this deed are nine items of properties. The said Smt. Venkatamma must have died some time in the year 1903 or so and after her death as per her wish-the said Arasappa and Laxmana who were the executors purports to have fulfilled her wishes and was running the choultry and also fed the poor people. The said Arasappa referred above has since deceased leaving behind no heirs. The other executors in the two deeds apart from Arasappa and Laxmanappa have also since deceased and their heirs are not known. The said Arasappa

purports to have died in the year 1938 leaving behind his only daughter and her son by name D.K. Murthy. The mother-in-law of Smt. Venkatamma predeceased. After the death of Arasappa his wife continued and fulfilled the wishes of the deceased Smt. Venkatamma till 1960. Now either Arasappa nor his wife are alive. After the death of Arasappa his wife purports to be got a for stated son by name Appajappa who filed a suit against one L. Ramakrishna who is the son of Laxmanappa for the management of the property and the said litigation after a long time purports to have been settled between themselves. Now the said S.D. Arasappa's daughter's son by name D.K. Murthy among others have been trying to knock of the property with ulterior motives among others.

5. The plaintiff further submits that the said Ramakrishna has sold away all the properties referred to in both the documents referred to above though he has no right or title. To the knowledge and information of the plaintiff the only property left is the schedule property i.e., Chowltry. As things stood like that it appears that with a view to knock of the property and to make gains, defendants 1 to 6 created a so called Trust Deed dated 3.10.1981 calling themselves as self-styled trustees. The said document is produced and marked as Document No. 3. Further said trust was created by defendants 1 to 6 who wanted to alienate the property in favour of seventh defendant by creating a lease deed whereupon defendants 8 and 9 have filed a suit in this Honourable Court in O.S.No. 3236/81 and had obtained an order of injunction restraining defendants 1 to 8 from alienating the property in favour of defendant No. 7 herein. But ultimately, now it is transpired that all the defendants including defendants 8 and 9 have managed to see that the suit is withdrawn and now all the defendants have joined hands in alienating the schedule property for a paltry sum to the 7th defendant.

7. The plaintiff further submits that the defendants 1 to 6 are not working in the interest of the Chowltry and they are deviating from the purpose for which the Trust is formed. The plaintiff submits that the defendants 1 to 6 are not carrying out the wishes of the Testator late Smt. Venkatamma with regard to certain rights and ceremonies which are deemed to be conducive to the spiritual welfare of the founder and her family. The trust is a religious institution and the wishes of the testator has to be meticulously carried out and there was no impediment for the

same with regard to the finance or any other thing since ample provision was made by the Testator'.

5. The defence among other contentions put forth by the caveator respondent/defendant No. 14 was that the property was not a public trust property and that it was the private property of first defendant and his predecessors-in-title and that having regard to the averments made in the plaint the suit is bad for not invoking Section 92 C.P.C. or the provisions of Order 1 Rule 8 C.P.C.

6. After hearing the learned Counsel on both sides, the Trial Court upheld these contentions and dismissed the suit as not maintainable. Being aggrieved by that order, the appellant has approached this Court.

7. The submissions made on behalf of the appellant are two fold. Firstly, it is submitted that a suit for permanent injunction even though in respect of the property which is the subject matter of public trust is not governed by Section 92 C.P.C. and therefore the plaintiff/ appellant cannot be forced to seek remedy within the four corners of Section 92 C.P.C. Secondly, with regard to the refusal to grant permission to sue in the representative capacity, it is submitted that the order passed is unsustainable.

8. The exhaustive reproduction of paragraphs 3, 4, 5 and 7 of the plaint discloses that the grievance of the appellant is with regard to the breach of the terms of the trust allegedly constituted by Venkatamma under her Wills of 1902 and 1903 and the plaint schedule property is being dealt with as if it is a private property and in violation of the objects of the trust viz., the benefit to the community people. It is also made out that the two Wills of Smt. Venkatamma have provided certain properties to be utilised, for carrying out the religious and charitable activities of feeding and carrying on 'Deeparadhana' (lighting) activities in certain temples and these objects of trust are sought to be defeated by dealing with the property as if it is the private property of defendant No. 1 and others.

9. To have remedy in such cases it is contended that the provisions of Section 92 C.P.C. are to be availed.

10. The Supreme Court in R. VENUGOPALA NAIDU AND ORS. v. VENKATARAYULU NAIDU CHARITIES AND ORS., : AIR 1990 SC444 has held in para-9 as follows:

'The legal position which emerges is that a suit under Section 92 of the Code is a suit of a special nature for the protection of Public rights in the Public Trusts and Charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 of the Code and the suit-title in that event would show only their names as plaintiffs'.

In MAHANT PRAGDASJI GURU BHAGWANDASJI v. PATEL ISHWARLALBHAI NARSIBHAI AND ORS., : [1952]1SCR513 the Supreme Court has held 'that a suit under Section 92, Civil Procedure Code, is a suit of a special character which presupposes the existence of a public trust of a religious or charitable character'. Following this Decision, the High Court of Punjab and Haryana in JATHEDAR SADHU SINGH AND ORS. v. CHARAN SINGH AND ORS., has held in para-7 that 'as observed by the Hon'ble Judges of the Supreme Court in : [1952]1SCR513 , the suit under Section 92 is a special remedy. It would follow that where resort could be had to the special remedy, the general remedy would be impliedly barred'.

12. Having regard to the statement of law found in the Decision of the Supreme Court, it is clear that the special remedy provided under Section 92 CPC excludes the general remedy available under the law. No doubt, Section 92(1) CPC categories the following 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 to obtain a decree -

(a) removing any trustee;

- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

It is true that the suit filed by the appellant is only for a bare injunction and not for any of the purposes mentioned in any of the Clauses (a) to (h) referred to above. On these facts, it is contended that the appellant's suit being one for bare injunction is not hit by Section 92 CPC and he cannot be forced to frame his relief under the four corners of Section 92 CPC, When the appellant contends that the property involved in the suit is a trust property dedicated for the benefit of the community he has to seek relief in respect of such property by invoking provisions of Section 92 CPC as special remedy is provided in that Section and that remedy excludes the recourse to general remedy as stated in the Decision of the Supreme Court. Therefore, the contention of the learned Counsel for the appellant that it is the choice of the plaintiff-appellant to seek other reliefs as mentioned in Section 92 CPC having regard to the averments in the plaint and the legal position pointed out is unsustainable in law. It is in that view the conclusion of the trial Court that the suit is not maintainable needs to be upheld by invoking Section 92 CPC.

13. Further it is admitted by the parties as per the submissions made at the Bar that before the passing of the impugned order, the present appellant and others

have filed O.S.No. 2407/1991 in the Court of the City Civil Judge, Bangalore invoking the provisions of Order 1 Rule 8 C.P.C. The relief sought in that suit is similar to the relief sought in the suit out of which the present appeal arises. The parties are also same. Therefore, when the appellant is pursuing the same remedies in O.S.No. 2407/1991 which is filed before the impugned Judgment came to be passed and which is stated to be a comprehensive suit there is no need to restore the suit 294/1983 for being clubbed with O.S.No. 2407/1991 as submitted on behalf of the appellant.

14. At page 528 of the C.P.C. 14th Edition, Vol. 1 by Mulla under the Heading 'Application of the Section' it has been held as follows:

'Application of the Section:- This Section has no application unless three conditions are fulfilled: the suit relates to a public, charitable or religious trust; it is founded on an allegation of breach of trust or the direction of the Court is required for administration of the trust and the reliefs claimed are those which are mentioned in the Section (s). Such a suit is one of a special nature and therefore if the allegation of breach of trust is not substantial or if the plaintiff fails to make out a case for a direction for proper administration, the very foundation of the suit would fall (t). It being a special remedy, where resort could be had to it, the general remedy of an ordinary suit is impliedly barred (u). And whether the suit falls within the Section must be decided on the allegations in the plaint as on the date of its institution (v). The fact that the defendant does not admit that the trust is a public charitable or religious trust will not take out the case from the ambit of this Section (2)'.  
(2)'

The plaint averments reproduced above disclose that the grievance is with respect to a public trust and it is alleged that the objects of the trust are disregarded and the property is being appropriated for personal use by defendant No. 1 and others. In respect of these averments the suit is sought to be filed on behalf of the Nagartha community. The appellant does not invoke the provisions of Section 92 for seeking appropriate relief. Therefore, the suit filed only for permanent injunction without invoking provisions of Section 92 C.P.C. is not maintainable and the order passed dismissing the suit is affirmed.

15. The learned Counsel for the appellant submits that there was a breach of an undertaking by defendant No. 1, in that he had alienated the property contrary to the undertaking and the orders passed by the Trial Court and also by this Court in Misc. First Appeal No. 1452/1988. If the appellant has got any right against respondent/ defendant No. 1 or any other person for violation of that order, it is open to him to pursue the same according to law.

16. In view of the finding that the suit is held as barred for failure to obtain relief under Section 92 CPC there is no need to consider the validity of refusal to grant permission to sue in representative capacity under Order 1 Rule 8 CPC. The Appeal is rejected at the stage of Admission.

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