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K. Rajamanickam (D) and anr. Vs. Periyar Self Respect Propaganda Institution and ors.

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Court : Chennai

Decided On : Apr-13-2006

Reported in : AIR2007Mad25

Judge : S.R. Singharavelu, J.

**Acts : [Societies Registration Act, 1860](#); [Code of Civil Procedure \(CPC\) , 1908](#) -
Sections 32 and 92**

Appeal No. : Civ. Revn. Petn. (PD) No. 2487 of 1999

Appellant : K. Rajamanickam (D) and anr.

Respondent : Periyar Self Respect Propaganda Institution and ors.

Advocate for Def. : B.Rajendran, Adv.

Advocate for Pet/Ap. : M.S. Balasubramanian, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.R. Singharavelu, J.

1. This civil revision petition arises against the order and decretal order dated 26.4.1999 made in LA. No. 511 of 1996 in O.S. No. 556 of 1991 on the file of the Principal Sub-Judge, Tiruchirapalli.

2. The plaintiffs 1 and 3 are the Revision Petitioners in a suit filed by them against the respondents 1 and 2 (a) for the removal of the second Respondent/second defendant (Thiru. R. Veeramani) as the Secretary of the first Respondent/first defendant institution (Periyar Self Respect Propaganda Institution, Tiruchirapalli) and to appoint a new Secretary in his place; (b) vesting all properties of the first respondent Institution detailed in the schedule with the new management; (c) directing accounts and enquiries; (d) to settle a scheme for the proper conduct of the institution and have the same administered under the control of the Sub-Court, Trichy.

3. The said suit was filed under Section 32 of C.P.C.; construing the first respondent/first defendant as a Trust.

4. Section 92, CPC will be applicable in case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature or where a. direction of the Court is deemed necessary for the administration of any such trust. In that event, the Advocate General or two or more persons in the Trust and having obtained the leave of the Court may institute a suit under that provision for similar remedies provided thereunder; for example removing any Trustee, appointing a new Trustee, vest any property in a Trustee, directing the removed Trustee to deliver possession of any Trust property, directing accounts and enquiry and also settling scheme etc.

5. As a matter of fact, leave was originally granted for instituting the suit, on the ground that the first defendant/Institution was a Trust. As against the said granting of leave by order of Court in I.A. No. 567 of 1988, this Respondents preferred Revision is C.R.P. No. 2386 of 1991, which was dismissed by this Court by its order dated 15.6.1992.

6. Thus it is that the following was observed in the order of the above said C.R.P.:

Thus, even from the stand taken by the Petitioners/defendants, it had been accepted that the 1st Petitioner/first defendant is a public trust and as pointed out earlier, the objects are charitable and the 1st petitioner would undoubtedly fall within the scope of a public trust for charitable purposes as contemplated under Section 92 of the Code'. It was also found that the Respondents/plaintiffs were persons interested in the proper administration and management. And therefore the revision against the order of granting of leave was dismissed.

7. The learned Counsel for the Revision Petitioners/Plaintiffs submitted that nowhere it has been admitted that the first Respondent/first defendant Institution is a Trust. It was further submitted that the order in the above C.R.P. was only in respect of the correctness of the leave granted under Section 92, CPC; but what we are now dealing with is about the maintainability of the suit. According to the counsel, any order in respect of the issue of leave to grant may not form an impediment on the principle of res judicata in respect of the question regarding the maintainability of the suit. For this purpose, reliance was made upon in a case law reported in *Mitsubishi France v. Nyveli Lignite Corporation Ltd.* : AIR1985 Mad300 . In that case the Division Bench observed that the initial plea of the defendant that the High Court had no territorial jurisdiction as the defendant was a Foreigner and the findings thereon will never act as a bar by principle of constructive res judicata by the defendants subsequent plea of want of jurisdiction. The following observation was made therein.

The plea of res judicata is a wholesome plea in order to avoid multiplicity of proceedings and is based on the principle that no party shall be vexed over die same cause of action twice. The principle of res judicata would apply not only to successive suits but also to the successive stages in the same proceedings. However, where in the suit to recover sum as damages for breach of contract instituted in the High Court on its original side the defendant in response to suit summons entered appearance under protest and raised the plea that the defendant being foreigner the Courts in India, including the High Court had no territorial jurisdiction to entertain the suit and the plea was negatived by the High Court on the ground that part of cause of action arose within its local limits, the defendant is not barred by the principle of constructive res judicata contained in

Section 11. Explanation IV. from raising the plea in the written statement as one of the defences that in view of the clause in the suit contract the High Court had no jurisdiction to entertain the suit on its original side because such a plea could not have been raised at the earlier stage when the plea of want of territorial jurisdiction was raised because the defendant could not file the written statement at that stage and had entered appearance under protest.

8. It was also held at para 47 in *Guhan S. v. Rukmini Devi Arundale* 1987 100 LW 182 that 'The fact that leave had been already granted would not stand in the way of raising this vital point regarding the maintainability of their appeal itself.'

It was observed in that case as follows:

Having taken the view that any decision arrived at in an order granting leave would not prevent the Court while disposing of the suit or appeal to go into the merits of the case and that maintainability of the suit or appeal itself could be agitated; this point is taken into account.

For this reason, I find that the Order of this Court in its C.R.P. No. 2986 of 1991 may not be a bar for this new plea of the Revision Petitioners that the suit is not maintainable; further, nowhere the defendants do admit that the first defendant is a Trust as was solely based for the order in the above civil revision petition.

9. In order to maintain the suit under Section 92 CPC the petitioners/plaintiffs should show the existence of a Trust and the alleged breach of the terms of the Trust; besides which the interestedness of the petitioners/plaintiffs in the running the Trust shall also be made known.

10. But as seen from the Memorandum of Articles of Association of the Periyar Self Respect Propaganda Institution (first defendant), Tiruchirapalli, it is found that it was incorporated and found to have been registered under the Societies Registration Act 21/1860. That Certificate number is 13/1952 with a Memorandum of Articles of Association containing 13 life members and 30 Rules; according to Clause 22, the life members of the Executive Committee alone shall be the Trustees of the properties already purchased. According to Clause 23, the

properties of the Institution shall be in the names of the President and the Secretary and they shall have to power to purchase and sell the properties on behalf of the Institution. If it is a Trust Property, there will not be a clause empowering the President to sell the properties. That itself indicates that it is not a Trust. The fact that it was registered under the Societies Act may also lend support to the above view.

11. In fact, it was held in *The Advocate General v. Bhartiya Adam Jati Sewak Sangh* 2002 (1) CCC 122 (HP) 'that even though the formation of society to carry out a charitable or useful or social purpose, it could not be regarded as amounting to creation of a Trust and especially when none of its funds shown to have been collected from general public. The same view as taken in *Travancore-Cochin Literary v. J.A. Raheem* : AIR2005 Ker233 . It was held that:

The learned District Judge allowed the original petition on a wrong assumption that the 1st petitioner society is a Trust. There is absolutely no material to show prima facie that 1st petitioner is a trust, either public or private. There is also no material to show that there was a Trust of Public nature, which subsequently got registered under the provisions of Act XII of 1955. Since there is no material to make out a prima facie case that the 1st petitioner is a public Trust and any person had settled any properties for the benefit of the beneficiaries, the provisions of Section 92 of CPC cannot be invoked. So, the impugned order is illegal, unsustainable and liable to be set aside.

12. Again in *Guhan, S. v. Rukmini Devi Arundale* (1987) 100 LW 182 it was found in para 53 of its judgment as follows:

Hence, even in a suit filed under Section 92, CPC, whether the properties included in the schedule to the plaint belong to the Trust or not would be a relevant aspect and when such a point is taken in the appeal, it has become obligatory on the part of the respondents to show to the Appellate Court that the properties belong to the trust, which is distinct and different from the society.

It was further held in that case that if it was shown that the properties of the defendants was owned by a society then a suit under Section 92, CPC is not

maintainable.

13. In this case also the property vest with the President and Secretary of the first defendant as per Clause 23 of the Memorandum of Articles of Association of the first defendant Institution, which was registered under the Societies Registration Act 21/ 1860. Therefore, the property is vested with a society and not with a Trust and as per the observations made in the above cited case a suit under Section 92, CPC is not maintainable, (to) which Societies Registration Act is applicable, proceeding with a suit under Section 92, CPC was deprecated in Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik : [1984]1SCR767 . There is also no interestedness shown upon the plaintiffs in the running of the Trust.

For all the reasons above mentioned, I find no merit in this Civil Revision Petition. This Civil Revision Petition fails and is dismissed. The order and decretal order dated 26.6.1999 made in I.A. No. 511 of 1996 in O.S. No. 556 of 1991 on the file of the Principal Sub Judge, Tiruchirapaili is confirmed. No costs.

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