

C.R. Shivananda and Another Vs. H.C. Gurusiddappa and Others

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Court : Karnataka

Decided On : Sep-30-2011

Judge : N. Kumar & a.N. Venugopala Gowda

Appeal No. : REGULAR FIRST APPEAL No. 667 of 2001 C/W REGULAR FIRST APPEAL No. 688 of 2001

Appellant : C.R. Shivananda and Another

Respondent : H.C. Gurusiddappa and Others

Advocate for Pet/Ap. : For the Petitioner: C.N. Kamath, A.V. Gangadharappa, Advocates. For the Respondent: R2 - Ashok Haranahalli, Senior Advocate, R3 - H.S. Chandramouli, R4 - Jayakumar S. Patil, Senior Advocate, C.N. Kamath, Advocates.

Judgement :

(Prayer: This RFA filed under Section 96 and Order 41 Rule I of CPC against the judgment and decree dated 28-5-2001 passed in OS No.1/1991 on the file of the Prl. District Judge, Chickmagalur, decreeing the suit for possession and appointment of trustee.

1. These two regular first appeals are filed by defendants 2 and 3 and defendants-5 and 6 in the suit, against the judgment and decree of the trial Court, which has decreed the suit of the plaintiffs, removing second and third defendants from constructive trusteeship, directing them to deliver possession of the property to the

first defendant and appointing the first defendant as the sole trustee.

2. For the purpose of convenience, the parties are referred to as they are referred to in the original suit.

3. The suit schedule property consists of three items, all situated in Chickmagalur Town. Item No.1 is known as 'Uppali Mutt', item No.2 is known as 'Hosmutt' and item No.3 is 'Karisiddeswar Mutt'.

4. The plaintiffs preferred the suit under Section 92 of Code of Civil Procedure. (for short, hereunder referred to as CPC). Their case is that they are Veerashaivas by their religion,. The first defendant is the Mahant of the Kodi Matha Mahasamstana, which is a Veerashaiva Mutt. The said 'Kodi Mutt' has various subordinate branch Mutts and properties attached and owned by such subordinate, branch Mutts. The first defendant and his predecessors have and had not only the right but also the duty to see that the Mutts which are their subordinate and branch Mutts are property looked after and maintained in accordance with the custom and usage of such branch Mutts. The said right and duty also enjoins upon the 1st defendant to appoint heads of such of those Mutts which have lost their respective mahanths, for the proper administration and management of such Mutts and their properties and to take up the administration and management of such Mutts of his own control and management, if such Mutts are not headed by any proper persons, until such heads are appointed by the first defendant. All such subordinate and branch Mutts are constructive trusts created in the hoary past for the charitable and religious purposes of the Veerashaiva Community.5. There are three such subordinate and branch Mutts of the 1st defendant in Chickmagalur City and they are called Uppalli Mutt, Hosa Mutt and Karisidheshwara Mutt, all owning respectively the properties shown in items 1, 2 and 3 of the schedule appended to the plaint. The said Mutts and their properties are constructive trusts created in some ancient times for the public purposes of charitable and religious nature for the benefit of Veerashaiva Community. For reasons not known to these plaintiffs, the 1st defendant and his predecessor in title, have for a few decades, neglected the management of the above said three subordinate Mutts and the management of the properties of the said Mutts shown in the schedule. 6. A society under the

name and style of Veerashaiva Samaj, Chickmagalur, had been formed and registered in the year 1919 for the purpose of serving the Veerashaiva community of the entire Chickmagalur District. Which was then called as Kadur District. The said society had no powers or eligibility to manage, supervise or control the properties under the control of the first defendant or of his subordinate Mutts. The said Veerashaiva Samaja. Chickmagalur, registered in the year 1919 has also become defunct long ago.

7. The second defendant who is also a local politician of Chickmagalur City was the President of the Town Municipal Council. Chickmagalur Town, in which the suit schedule properties are situated. One Sri D.C. Rudrappa was looking after the management of a temple called Sri Basaveshwara Temple situated in the present Mahatma Gandhi Road. Chickmagalur, as per the wishes of the majority of the Veerashaiva people of Chickmagalur Town to whom the said temple belonged. After the death of the said Sri D.C.Rudrappa, who was highly respected member of the Lingayath Community of Chickmagalur, the 2nd defendant, who is the son of the said Late Sri D.C. Rudrappa took over the control and management of the said Sri Basaveshwara Temple and its finances. After the 2nd defendant became the President of the Town Municipal Council, Chickmagalur, taking advantage of the fact that the schedule properties had no one to look after them at Chickmagalur and further taking advantage of the fact that the Veerashaiva Samaj, Chickmagalur, registered in the year 1919 had not been officially wound up, formed a group of his own and named it as the Veerashaiva Samaj of 1919, got himself elected as the President of the Veerashaiva Samaja with the help of a few Lingayath followers of his. In that capacity, he made applications to the Town Municipal Council, Chickmagalur, to get the Khata of the schedule properties changed from the names of the respective Mutts to the name of his own Veerashaiva Samaja and by virtue of his holding the office of the President of the Town Municipal Council, Chickmagalur, ordered in that capacity, the change of the Khata of the schedule properties from the name of the above said three Mutts to the name of the Veerashaiva Samaja of his own making. The said Veerashaiva Samaja of the second defendant is also impleaded in the suit as the third defendant.

8. It is contended that the Samaja could have nothing to do with any of the schedule properties and secondly, the 3rd defendant Veerashaiva Samaja formed by the 2nd defendant has nothing to do with its earlier name sake or with the schedule properties. The 2nd defendant under the guise of the President of the 3rd defendant, is claiming the right of manage all the schedule properties a trustee on behalf of the Veerashaiva Community and has put the schedule properties for purposes altogether other than religious or charitable, in order to have huge gains from the said properties and is appropriating all the income from the said properties to himself. The 2nd defendant has not rendered any accounts even to the alleged Veerashaiva Samaja of which he claims to be the President. The Deputy Commissioner, Chickmagalur by his order dated 2-5-1977 recommended to the Government of Karnataka that the schedule properties along with some other properties including the above said Sri Basaveshwara Temple be taken over to the Government under the provisions of the Karnataka Religious and Charitable Institutions Act, 1927. The Government of Karnataka in its order No. RD. 57 MLD 76 has ordered that the said properties be taken over to the Government, on the ground that the 2nd defendant has not only not rendered accounts and has also mismanaged the affairs of the properties covered by the said order including the schedule properties herein. The 2nd defendant challenged the said order of the Government to prolong the taking over of the schedule properties by the Government for his own benefit. One Sri B. Gurusiddappa Shetty, Chickmagalur who initiated the said proceedings against the 2nd defendant in the meanwhile died. In all probability the said proceedings have abated. The 2nd defendant has no respect or regard for any of the Mutts owning the schedule properties and he has desecrated and demolished the 'Gaddiges' in the schedule properties and has also got the sacred tree of Bilwa that was in the 3rd item of schedule properties, removed and converted into commercial lease hold premised in order to derive for himself, huge income which is not accounted for and is appropriated for himself. The 2nd defendant as the president of the 3rd defendant is claiming trusteeship of the schedule properties for the benefit of the 3rd defendant, which is only the handmade of the 2nd defendant but has abandoned the religious and charitable purposes of the said Uppalli Mutt, Hosa Mutt and karisiddeswara Mutt, which own the schedule properties. By his acts of commission and omission, the 2nd

defendant has rendered himself unfit to be the trustee of the plaint schedule properties, even if he had no right to be so. The plaintiffs are Veerashaivas by community. They are interested in the schedule properties and the Mutts which own the schedule properties and their proper administration and management. They have therefore filed the suit as the representatives of Veerashaiva community and they have filed a separate application in the suit for the permission of the Court to file the suit. They have also filed another application for due publication of the institution of this suit to the members of the Veerashaiva Community by public advertisement, in order to enable all interested members of the said community to get themselves impleaded in the suit as parties hereto. Therefore, they prayed for the direction of the Court for the purpose of the administration of the said trusts in order to rectify the breach therein by the second defendant, which is absolutely necessary. Therefore, they preferred the suit for a decree against the defendants, vesting the schedule properties in the first defendant, by appointing him, if necessary as the sole or the chief trustee for the said properties, for the management and the administration of the said properties according to the tenets of the Veerashaiva Mutts under the first defendant, which includes the appointment of the respective heads to the said mutts, in all manner deemed appropriate by the first defendant.

9. After service of summons, the first defendant entered appearance and filed his detailed written statement. He admits that, he is the Mahant of the Kodi Mutt Mahasamsthana and that it is a Veerashaiva Mutt. He also admits that the said mutt has a large number of subordinate Mutts including Uppalli Mutt, Hosa Mutt and Karisiddevara Mutt of Chickmagalur and that the Kodi Mutt has the paramount right and duty of appointing their heads, when such offices fall vacant. He admits that the said mutts and their properties are constructive trusts of ancient origin and of charitable and religious nature of Veerashaiva community. According to him, due to decadence in religious fervor of the members of the community, the predecessors of this defendant were unable to supervise all the various mutts which are subordinate to the Mutt of this defendant. Without the co-operation of the members of the community it is difficult for this defendant to keep an eye on all the happenings in the various subordinate mutts. Moreover, the previous Mahants of the Mutt of this defendant were more engrossed in their religious pursuits than

in worldly affairs. Due to the said factors, the above said three mutts of Chickmagalur along with several mutts have not been receiving the full attention of this defendant and his predecessors. It is submitted that the 2nd defendant was not entitled to get the Katha of the above said three mutts to the name of the 3rd defendant. Neither the 2nd defendant nor the 3rd defendant have any manner of right to manage the affairs of the said three Shakha Mutts of this defendant. Defendant in his capacity as the Mahanth of Sree Kodi Mutt Mahesamsthana is entitled to be the sole trustee of the said three mutts and the plaint schedule properties. This defendant has already taken over the possession of the western portion of the plaint 'A' schedule property from its tenant, one C.M.S. Sastry by attornment, as the paramount authority over the plaint schedule properties. This defendant is prepared to be the sole or chief trustee of the plaint schedule properties. Thus, virtually the first defendant has joined hands with her plaintiffs and requested for decreeing the suit as prayed for.10. However, defendants 2 and 3 are the contesting defendants in the suit. They have categorically stated that, the first defendant and the plaintiffs are colluding with each other. The first defendant is not at all the head of Kodi Mutt. It is learnt that the 1st defendant claims himself to be the head of Sri Kodi Mutt. The present head of the Mutt is Sri Sri Neelalochana Mahaswamygalu. The first defendant is heir apparent. The first defendant has not at all succeeded to the Mutt.11. They have stated that, the 3rd defendant has obtained a decree for eviction against its tenant C.M.S. Shastry in HRC No.77/1979 which was decreed under clauses 21(1) (f) and (g) of the Karnataka Rent Control Act for immediate purpose of demolition and raising a new structure for Kalyana Mantapa. On 17-12-1984 the said decree was confirmed by District Court in Rev 6/1985 dated 30-11-1987. The High Court in C.R.P. 54/1988 confirmed the decree of eviction on 28-1-1991 and granted time to the tenant to vacate by the end of April 1991. The first plaintiff K.C. Rajappa is one of the unauthorized and illegal sub-lessees of the said tenant C.M.S. Shastry and the 2nd plaintiff is a close relative of the said tenant. 2nd plaintiffs younger sister is married to said tenant's brother-in-law Mariswamy (Retired teacher of Madapura). The tenant C.M. Shastry has filed a suit in O.S. 124/1991 against the 3rd defendant on the file of the Addl. Munsiff, Chickmagalur denying the title of the land-lord after dragging the proceedings for more than 12 years, in spite of principles of

estopped, setting-up title in first defendant. The 1st defendant in collusion with the said Sri C.M.S. Shastry has filed a suit in OS No.185/1991 on the file of the Prl. Munsiff, Chickmagalur falsely claiming that it has now become landlord of the said C.M.S. Shastry. He is earning a net income of more than Rs.6,000/- per month by way of illegal sub-leases.

12. The head of Kodi-mutt of Haranahalli Sri Sri Neelalochana Mahaswamygalu, has addressed a letter dated 25-07-1991 stating that Uppalli Mutt is not at all a branch Mutt, and that the defendant No.1 has not been authorised to deal on behalf of Kodi Mutt. They contend that, it is false to allege that there are three or any sub-ordinate mutt of 1st defendant in Chickmagalur City, or that Uppalli Mutt or Hosa-Mutt or Karisiddadevara Mutt. It is false to allege that the said Mutts are subordinate to 1st defendant or of Sri Kodi Mutt of Haranahalli, or that the said Mutts are constructive trusts, or that they were created at any time for public purposes of charitable or religious nature for the benefit of Veerashaiva Community. They admit that the 3rd defendant is a registered body. The allegation that the 3rd defendant has no powers or eligibility to manage, supervise or control the suit schedule properties or that these properties were or are under the control of the 1st defendant at any time or that the 3rd defendant has become defunct, is denied. They denied that the 2nd defendant took over control and management of Sri Basaveshwara Temple and its finances in the circumstances alleged in plaint para 7. The allegation that the 2nd defendant took any advantage of the suit schedule properties or that there was no one to look after them at Chickmagalur or that the 2nd Defendant took any advantage as alleged or that he formed a group of his own or named it as Veerashaiva Samaj. Chickmagalur to claim and gain the right of said registered Veerashaiva Samaj of 1919 or that he got himself elected as President of Veerashaiva Samaj with the help of alleged followers, or got the Khatha of the suit schedule properties changed from the names of respective Mutts to the name of his own Veerashiva Samaj, or by virtue of his holding the office of the President of Town Municipal Council, ordered in that capacity the change of Khatha of the schedule properties from the names of three mutts to the name of Veerashaiva Samaj of his own making, are all denied.

13. It is contended that, it is false to allege that the Veerashaiva Samaj, Chickmagalur, registered in the year 1919 could have nothing to do with any of the schedule properties or that the 3rd defendant was formed by the 2nd defendant or that the 3rd defendant has nothing to do with its earlier name -sake, or that the 3rd defendant has nothing to do with the suit schedule properties, or that the 2nd defendant under the guise of the President of 3rd defendant is claiming the right to manage the suit schedule properties, as a trustee on behalf of Veerashaiva Community or that the 2nd defendant has put the schedule property for any other purpose other than religious or charitable purpose, or that the alleged act is in order to have gains form the said properties, or that he is appropriating all the income from the said properties improperly, or that he is not rendering any accounts of income or expenditure, or that the 3rd defendant is the handmade of the 2nd defendant.

14. At the instigation of the said tenant of the 3rd defendant Sri C M S Shastri the proceedings were initiated without the 2nd defendant being given proper or sufficient opportunity as he was in Judicial custody during emergency in the country. The said order of the Deputy Commissioner has been set-aside by the High Court, as also the order of Government of Karnataka. It is false to allege that the second defendant has not rendered accounts, or that he has mis-managed the affairs of the funds relating to the schedule property and that he had any intention to prolong any matter. The said late Sri B. Gurusiddappa Shetty, was instigated by the aforesaid Sri C.M.S. Shastri. He had denied that he has de-secreted or demolished "Giddiges" in the schedule properties, or has got the sacred tree of Bilva that was in the 3rd item of the schedule property cut and removed, or that he has converted the schedule property (3rd item) into commercial lease hold premises in order to derive for himself any income, or that it is not accounted for, or that he has appropriated for himself.

15. The second and 3rd defendants have spend more than five lakhs towards building. R.C.C. structure with several floors for the purpose of creating income for the purpose and object of the 3rd defendant and the Mutts, when there was no income worth its name and when the property was lying idle without any use for the devotees. All the accounts of income and expenditure have been regularly

audited and approved by the responsible bodies. Sri C.M.S. Shastry who is aggrandizing each month by illegal sub-leases a sum of more than Rs.5,000/- by illegality squatting upon the property in spite of the decree for eviction he has suffered after dragging it on for more than 12 years. The plaintiffs have an oblique motive. They have no representative capacity to represent Veerashaiva Community. The Plaintiffs have no locus-standi. The suit is not maintainable, as the institution of the suit should have been preceded by permission under Section 92 of CPC and therefore it is liable to be dismissed. There has been no trust as contemplated by law attracting the provision of Section 92 of CPC and there has been no breach of trust. The suit is vexatious and speculative and is intended to harass defendants 2 and 3. The first defendant is not at all fit to be a trustee as he is stated to have betrayed the trust reposed by his own Guru, the present head of Sri Kodi Mutt of Haranahalli and he is stated to have usurped the Kodi Mutt. Therefore, they sought for dismissal of the suit with exemplary costs. 16. On behalf of defendant No.5 a written statement was filed. They have reiterated what defendants 2 and 3 have stated in their written statement and wanted the suit to be dismissed.

17. The trial Court on the basis of the aforesaid pleadings framed the following issues:- 1) Do the plaintiffs prove that they are Veerashaivas by community and, as such, they have locus standi to file the suit?

2) Do plaintiffs prove that the three plaintiff schedule mutts in Chickmagalur City named (1) Uppalli Mutt (2) Hosa Mutt and (3) Karisiddeswara Mutt, with their respective items of properties described in the plaintiff schedule are the constructive trusts created for the public purpose of charitable and religious nature for the benefit of Veerashiva community? 3) Do plaintiffs prove that plaintiff schedule Mutts with their respective properties are sub-ordinate to and branch Mutts of defendant -1 Kodi Mutt, Maha Samsthana of Haranahalli, Arasikere Taluk? 4) Do the plaintiffs prove that defendant-1 is the rightful Mahant, and Head of Kodi Mutt Maha Samsthana of Haranahalli Arasikere Taluk?

5) (a) Do plaintiffs prove that the Committee of Body of defendant 3 registered Society is the handmaid of second defendant and it has unauthorisedly assumed

charge and management of the plaint schedule properties as trustee thereof with his alleged machinations? and

(b) That is has been mismanaging and misutilising the said properties and the income therefrom?

6) Do plaintiffs proved that defendant No.2 has rendered himself not competent and fit to be a trustee of the plaint schedule properties by his acts of omissions and commissions alleged in the plaint?

7) Do plaintiffs proved that cause of action for the suit has arisen as pleaded in paragraph No.12 of plaint?

8) Do plaintiffs prove that a decree as prayed for with respect to the plaint schedule Mutts and their properties is required to be passed in law?

9) Is the suit not maintainable for want of valid permission under Section 92 of the Code of Civil Procedure, as contended by defendant Nos. 2 and 5 in their written statement?

10) Whether defendant Nos.2 to 7 prove that plaintiffs and defendant No.1 are colluding with each other?

11) Is the suit against defendant No.3 not maintainable by reason of its being a registered body under the Societies Registration Act, as pleaded in para 24 of defendant No.2's written statement?

12) Whether first defendant is not competent and fit to be appointed as a trustee of the plaint schedule properties, as pleaded in para 21 of defendant No.2's written statement?

13) Whether plaintiffs are not competent and fit to be appointed as trustees of plaint schedule properties, as pleaded in paragraph 25 of defendant No.2's written statement?

14) What order?

18. During the pendency of the proceedings, the second plaintiff died. Therefore, one Sri G.R.Vedamurthy was substituted in his place. On behalf of the plaintiffs one Sri G.B.Nanjundappa, a 81 years old person, who retired as the Tahsildar was examined as PW1. One Sri G.Puttappa who is aged 78 years was examined as PW.2. Second plaintiff Sri Vedamurthy was examined as PW.3. 4 documents were produced which were marked as Exs. P1 to P4. On behalf of the defendants, one Sri Manje Gowda was examined as DW1. The second defendant Sri C.R.Shivananda was examined as DW2. One Sri N.S.Niranjanaswamy was examined as DW3 and they have produced 27 documents which were marked as Exs. D1 to D27.

19. The trial Court on appreciation of the aforesaid oral and documentary evidence on record held that plaintiffs have proved that they are Veerashaivas by community and as such they have locus standi to file the suit. It held that the plaintiffs have proved that the three plaint schedule Mutts in Chickmagalur City, named Uppalli Mutt, Hosa Mutt and Karisiddeswara Mutt, with their respective items of properties described in the plaint schedule are the constructive trusts created for the public purpose of charitable and religious nature for the benefit of Veerashaiva community. However, the plaintiffs have failed to prove that the plaint schedule Mutts with their respective properties are subordinate to and branch Mutts of Kodi Mutt, Maha Samsthana of Haranahalli, Arasikere Taluk. It held the question whether defendant No.1 is the rightful Mahant and head of Kodi Mutt Maha Samsthana of Haranahalli, Arasikere Taluk do not arise for consideration in the suit. The plaintiffs have proved that the defendant -3 registered society is the handmade of the second defendant and it has unauthorisedly assumed charge and management of the plaint schedule properties as trustee thereof with his alleged machinations and that it has been mismanaging and misutilising the said properties and the income therefrom. The defendant No.2 has rendered himself not competent and fit to be a trustee of the plaint schedule properties by his acts of omissions and commissions. There is cause of action for the suit. The plaintiffs are entitled to the decree as prayed for. Suit is maintainable under Section 92 of CPC. However, the defendants 2 to 7 have failed to prove that the plaintiffs and defendant No. 1 are colluding with each other. Defendants have failed to prove that the first defendant is not competent and fit to be appointed and fit to be

appointed as a trustee of the plaint schedule properties. Plaintiffs are competent and fit to be appointed as trustees of plaint schedule properties and, therefore, it proceeded to pass a decree removing the second and third defendants from constructive trusteeship in respect of the suit schedule properties and directed them to deliver possession of the same to the first defendant. It appointed the first defendant as the sole trustee and that the suit schedule properties shall vest in the first defendant and he shall be in the management and administration of the suit schedule properties according to the tenets of the Veerashaiva Mutts and he is also entitled to nominate his successor. The accounts shall be maintained regularly and it shall be got audited every year. The suit was decreed with costs of Rs.5,000/-. Aggrieved by the said judgment and decree of the trial Court, defendants 2 and 3 are in appeal.

ARGUMENTS

20. Sri B.V. Acharya, learned Senior Counsel appearing for the appellants, contended, that the averments in the plaint and the evidence on record clearly discloses that the suit is not filed to vindicate the rights of the public. It is filed, in substance, for declaration that the suit schedule properties are branch Mutts of the Kodi Mutt and the said Mutts and its properties are constructive trust created for the benefit of Veerashaiva community and therefore they want a decree vesting the suit properties in the first defendant. Further they want the first defendant to be appointed as sole trustee of the said properties and for his succession. In the alternative, to appoint the plaintiffs as the trustees of the plaint schedule properties. Therefore, the said suit do not fall under Section 92 of CPC, as such is not maintainable. He further contended that the allegation of breach of trust or misappropriation or mismanagement of the schedule properties is false and not established by any evidence and therefore a case under Section 92 of CPC is also not made out. Therefore, he submits that seen from any angle, the decree of the trial Court cannot be sustained and is liable to be set aside and the suit of the plaintiff is to be dismissed.²¹ Per contra, Sri Ashok Haranahalli, learned Senior Counsel appearing for the respondent-plaintiffs in the suit, contended that the material on record clearly discloses that the schedule properties are all Mutts, a religious denomination which came into existence for imparting religious

instructions to the people of Veerashaiva community and it is a constructive trust for public purpose. Admittedly, the third defendant society has no manner right, title or interest over the suit schedule properties. However, the second defendant, the president of the third defendant, abusing his position as the president of Chickmagalur Municipality, has got the Katha of the suit schedule properties transferred to the name of the third defendant and thus asserting title to the schedule properties. He has put up construction on the schedule properties, let out the same to various tenants and they are collecting huge amount. The said income from the schedule property is not utilized for any religious or charitable purpose and it is a clear case of misuse and mismanagement of the schedule properties. Therefore, the second and third defendant has to be removed from the trusteeship and new trustees have to be appointed. If for any reason, this Court comes to the conclusion that neither the first defendant nor the plaintiffs are the competent persons to be appointed as trustees for the management of the schedule properties, still, as the object of filing of the suit is not for any personal gain, this Court may issue necessary direction for the administration of the trust, inasmuch as, Court may frame scheme for the management of the schedule properties, appoint trustees and thus the interest of the Lingayat or Veerashaiva community of Chickmagalur district is protected. Therefore, he submits that there is no merit in this appeal. 22. In the light of the aforesaid facts and rival contentions, the point that arise for our consideration in this appeal are as under:

1) Whether the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of personal rights of any other person or persons in whom they are interested or their personal rights, as such the suit falls outside the scope of Section 92 of the Code of Civil Procedure.

2) whether the direction of the Court is necessary for the administration of the trust, inasmuch as whether any scheme is required to be framed for the management of the property in the interest of the Lingayat or Veerashaiva community.

23. In order to answer the aforesaid points that arise for consideration in this appeal, it is first necessary to know the origin of the concept of trust; the nature of

trust; what is the position of a Mutt; whether the trust is a public trust or private trust and what are the distinguishing features between them and what are the conditions to be fulfilled for a suit under Section 92 of CPC.

ORIGIN OF THE CONCEPT OF TRUST

24. Religious and Charitable Trusts are found to exist in some shape or other, in almost all the civilized countries. Instincts of piety and benevolence which are implanted in human nature finds expression in religious and charitable trust. In Roman law, properties dedicated to Gods formed a species of *res Publicae*. They were not the objects of ownership of transfer and no action could lie in respect of them in a Court of law. The only juristic person recognized in early Roman Law was the State but it was a public and not a private person. The idea of a corporate body as a new subject to rights and duties distinct from all its members was fully recognized in Rome during the Imperial period. In English Law there is something technical in the conception of trust which had its origin in dual system of law and dual system of ownership which came into existence in England under peculiar historical and political conditions. The trust property in English Law vests in the trustee who holds it for the benefit of certain persons or for the fulfillment of certain purposes and the beneficiaries are regarded as having what is equal, a equitable society or interest in the subject matter of the trust. The conception of trust in its technical sense was devised by the chancery Courts in England. These principles were imported to a large extent from the Roman Civil Law. Several jurists have attempted to define the word 'trust'. But it is not complete in all respects. The concept of trust over the years have undergone considerable change. Charitable trusts were enforced in England long before the seventeenth century. Prior to the time when the chancellor first began in the fifteenth century to enforce uses and trusts, gifts for charitable purposes, whether *inter vivos* or testamentary, were protected to a certain extent by the courts of law. The principal charities were those of a religious nature. 25. The popular Hindu religion of modern times is not the same as the religion of the Vedas though the latter are still held to be the ultimate source and authority of all that is held sacred by the Hindus. Notwithstanding the existence of richly endowed Hindu temples and religious institutions all over India, the subject of endowment received a most niggardly

treatment in the hands of the smriti writers. Having regard to the extreme conservation of Hindu society, people who were incharge of administering the benefactions did not go against the traditions and usages which grew up in respect of the same. As the materials to be found in the writings of the Hindu law givers on the subjected of religious and charitable trusts are extremely scanty, it goes without saying that the law which is found administered today in India, is to a large extent the creation of Judges. Ever since the establishment of British Courts in India, an array of eminent Judges both English and Indian brought their legal learning and strong common sense to bear upon this delicate and somewhat abstruse branch of Hindu law and attempted to evolve out of the few cryptic writings of ancient Hindu sages, a sufficiently well-developed body of rules and principles. This development was in a sense necessitated by the demands of the time and the prevalent social and moral ideas and it cannot be denied that it was influenced to a great extent by the notions and principles of English Law.

WHAT IS A TRUST

26. Indian Trust Act, 1882 defines the word 'trust'. It means the trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. 27. The word "trust" has been used in section 92 in a general and not in a restrictive sense. It connotes an obligation or duty attaching to a person in charge of properties dedicated to religious or charitable purposes which could be enforced either in law or equity. It is akin to that of a trustee in English law without any legal estate in the property which the English trustee has got. The trust need not be express, it may be constructive as well. Section refers to both express or constructive trust.

28. A distinction may be drawn between express trusts and trusts arising by operation of law. Generally speaking an express trust may be said to arise from the intention of a person to create a trust declared directly or indirectly. Precatory trusts, that is trusts created by expressions of wish or desire which on their true construction amount to declarations of trust, are express trusts, because in such cases the court finds as a matter of construction that the settler expressed.

Indirectly, an intention to create a trust, Trusts arising by operation of law are trusts which are not declared by any person, either by clear or doubtful words. Trusts arising by operation of law may be further divided into implied or presumptive, resulting trusts. A constructive trust includes only trusts imposed by law against the trustee's will. CONSTRUCTIVE TRUST

29. A constructive trust has a well known meaning in English law and its essential characteristic is that it arises by operation of law independently of the act of parties. In other words, a constructive trust arises not by act of parties but by operation of law, as for example, when a trustee gains some personal advantages by availing himself of his position as a trustee. Constructive trustee and a trustee de son tort are synonymous expressions. A person who without title chooses to take upon himself the character of a trustee becomes a trustee de son tort and is liable to account for what he has done or what he has received while so acting in the same way as if he were a de jure trustee. Such person may be described as a de facto trustee or a trustee de son tort and is distinguishable from a trespasser out and out who does not support to act as a trustee at all but claims adversely to the trust.

PUBLIC TRUST AND PRIVATE TRUST

30. The distinction between a public trust and a private trust is, broadly speaking, in a public trust the beneficiaries of the trust are the people in general or some section of the people, while in the case of a private trust, the beneficiaries are an ascertained body of persons. The Indian Trusts Act as clear by its Preamble and contents is applicable only to private trusts and not to public trusts. The essential distinction between a public and a private trust is, that in the former the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained, but in the latter the beneficial interest must be vested in an uncertain and fluctuating body or persons-either the public at large or some considerable portion of it answering a particular description. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the

trust a private trust. The line of distinction between a public purpose and a purpose which is not public is very thin and technical and in difficult of an easy definition. If the intention of the donor is merely to benefit specific individuals, the gift is not charitable, even though the motive of the gift may be to relieve their poverty or accomplish some other purpose with reference to those particular individuals which would be charitable if not so confined; on the other hand, if the donor's object is to accomplish the abstract purpose of relieving poverty, advancing education or religion or other purpose charitable within the meaning of Religious endowments, are of two kinds, public and private. In a public endowment, the dedication is for the use or benefit of the public at large or a specified class. But when property is set apart for the worship of a family god, in which the public is not interested, the endowment is a private one. It is a question of fact whether a temple is a private or a public one. Whether the trust is public or private would have to be decided in each case with reference to the terms of the document if any; and if there is no document or its language is ambiguous, the decision would depend upon inferences which could be legitimately drawn from the evidence adduced in the case, the material evidence being a actual user and public repute. The essence of a public foundation consists in dedication to the public and whether there has been any dedication or not must be ascertained with reference to circumstances of each individual case. Section 92 applies only when the religious or charitable trust is for a public purpose. In order to find out whether a trust is a public trust or a charitable or religious nature contemplated by Section 92 of CPC, the Court must look to the real substance of the trust and the primary intention of the creator of the trust. The suit contemplated by Section 92 proceeds on the allegation of breach of public trust or is founded on the necessity of having direction from the Court regarding the administration of such trust. WHAT IS THE POSITION OF MUTT

31. A mutt is, under the Hindu law justice person. Mutt is an institutional sanctum presided over by a superior who combines in himself the dual offices of being the religious or spiritual head of the particular cult or religious fraternity and of the manager of the secular properties of the institution or Mutt. A Mutt like an idol, is a juridical person and is capable of acquiring, holding and assuring legal rights through the medium of some human agency which is ordinarily the agency of the

Mohunt. There cannot be a Mutt in the legal sense without a Mohunt or superior, no matter in whichever way he might come to occupy the office. The Mohunt or the spiritual teacher is undoubtedly the presiding element in a Mutt. He is the manager of the Mutt property, though he may have larger rights in certain respects. The head of such an institution though not a trustee in the English sense of the term is nevertheless in view of the obligations and duties resting on him answerable as a trustee in the general sense for proper administration. Mutt owes its origin to dedication or property by a donor. A pious ascetic gathers round him a number of disciples whom he initiates into the tenets of his order. Pious persons make grantees of property for the use and benefit of the fraternity and a Mutt is constituted. For making this grant, no particular form is necessary, nor is it required that there should be a document in writing. There is another way in which a Mutt already established. In such cases, the parent Mutt exercises some sort of control over the subordinate institution, which is regulated by usage. A mutt can be dedicated for the use of ascetics generally or for the ascetics of a particular sect or cult. Mutts have generally arrangements for giving food and shelter to wayfarers and ascetics attached to them,. They may have temples to which the public is allowed access. Such circumstances might indicate the public character of the institution. A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no Administrator or Manager becomes *res nullius*, i.e., property belonging to nobody. Such a property dedicated for general public use is itself raised to the category of a juristic person. When property is dedicated for a particular purpose, the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created. The question whether a particular mutt forms a public religious endowment or is a private institution must be judged in the light of the evidence in each case. The origin of the mutt if it is known, its antiquity, the nature of the gifts of property made to it, the way how these have been treated by its head, the long established usage and custom of the institution, all these throw valuable light on the question whether the mutt is a public religious endowment or a private institution. All matters relating to the administration of a Mutt are also intimately connected with the rights and duties of a Mohunt. The Matadapathi is the head of the institution. He manages

the property of the institution. He administers its affairs and the whole assets are vested in him as the owner thereof in trust for the institution itself. He is not the proprietor of the Mutt or its properties and although in view of his obligations and duties he is answerable as a trustee in the general sense for administration of the affairs of the endowments. He is not a trustee in the sense in which it is used in English law. The endowed property vests in the Mutt itself as a juristic person and not in the Mohunt or superior. The position, indeed, would be different if a formal trust deed is executed. In such circumstances, the legal ownership would vest in the trustees, and the superior or Mohunt might be one of the trustees or even the sole trustee if the donor so chooses. The beneficiaries of a math are the members of the fraternity to which the math belongs and the persons of the faith to which the spiritual head of the math belongs. It may constitute, at least a section of the public, mutts, in general, consequently, are public trusts. It is clear that there may be a trust in the general sense and its existence as to the usage and custom of the math. In each case the court has to come to its conclusion either from the grant itself or from the circumstances of the case whether the grant was for the benefit of the public or a section of it, i.e., an unascertained class, or for the benefit of the grantee himself or for a class of ascertained individuals. An inference can also be drawn from the usage and custom of the institution or from the mode in which its properties have been dealt with as also other established circumstances.

32. In RAM PRAKASH DAS v. ANAND DAS. Reported in AIR 1916 PC 256, LORD SHAW says as under;

“An asthal, commonly known in Northern India as a Math, is an institution of a monastic nature. It is established for the service of a particular cult, the instruction in its tenets and the observance of its rites. The followers of the cult and disciples in the institution are known as chelas; the chelas are of two classes celibate and non-celibate. In the asthal now being dealt with, the religious brethren were the bairagt or celibate chelas, the lay brethren were girhast or house holder chelas.

Must, by the custom of the Math, be a batragi or religious chela. The Mahant is the head of the institution. He sits upon the goddi; he initiates candidates into the mysteries of the cult; he superintends the worship of the idol and the accustomed

spiritual rites; he manages the property of the institution; he administers its affairs; and the whole assets are vested in him as the owner thereof in trust for the institution itself. Upon his death or abdication he is succeeded by one of the bairagi chelas. These bairagi chelas are, as stated, celibates; or if they have ever been married they must prior to their initiation as bairagi chelas, have renounced their wives and families and have conformed to the practice of the Math. This practice is ascetic; it involves a separation from all worldly wealth and lies, and a self-dedication to the services and rites of the asthal..... this property is held by the Mahant as its owner, and the succession to him in such property follows with the succession to the office. The nature of the ownership is, as has been said, an ownership in trust for the Math or institution itself, and it must not be forgotten that although large administrative powers are undoubtedly vested in the reigning Mahant, this trust does exist, and that it must be respected.”

Further it is held that the head of such an institution though not a trustee in the English sense of the term is nevertheless in view of the obligations and duties resting on him answerable as a trustee in the general sense for proper administration.

If the defendant is not a trustee in the specific sense he must be a full owner and that owner can be no trust within the meaning of S. 92, Civil P.C. It is clear that there may be a trust in the general sense and its existence or otherwise is a matter for determination on the evidence as to the usage and custom of the math. Mr. Mahabir Prasad has further contended in this connection that the words:

“express or constructive trust created for public purposes for charitable or religious nature”

In S. 92, Civil P.C., mean that the section is only applicable when there is definite evidence as to the creation of the trust and of a dedication to purposes of charitable and religious nature. That is to say that S.92 reinforces his contention that the matter is to be decided on the terms of the grants. To take this narrow view however would in my opinion, be contrary to the principle laid down by the Privy Council in 1916 P C 256(3) and 1922 P C 123 (1), where it is made clear that the Courts will have regard particularly to usage and custom.”

33. In MATAM NADIPUDI KOTI VEERAYYA AND OTHERS VS. BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOWMENTS, MADRAS AND ANOTHER, reported in AIR 1938 MADRAS 810, it is held as under;

“If the origin of the mutt is unknown, the history of the property of the mutt and manner how it has been dealt with by the matadhipathi will often afford an answer to the question whether the mutt is a private institution or a public endowment. In this case the mutt in question is, in my opinion, a public religious endowment, though the properties of the mutt were for some time treated as if they were the private properties of the family of the appellants. It is clear from the inam statement that the head of the matam himself treated the property mentioned in it as having been given for public purposes. In its origin and narrow sense the term ‘mutt’ signifies the residence of an ascetic, or a sanyasi or a paradesi;

A preceptor of religious doctrine gathers around him a number of disciples whom he initiates into the particular mysteries of his order and instructs his religious tenets.

Gradually, pious persons endow the preceptor with properties and in course of time we have associations of sanyasis devoted to divine worship who give updesam or instruction to deserving candidates. It is in this manner that mutts come into existence. But there are many cases where mutts have been deliberately established from the very commencement as public institutions in order to maintain and strengthen the doctrines of particular systems of religious philosophy. The history of this class of what may be called “endowed mutts” which came into existence in the nature of monastic institution presided over by ascetics and sanyasis are mentioned in 10 Mad 375 (GIYANA SAMBHANDA PANDRASANNADHY VS. KANDASWAMI THAMBIRAN, (1887) 10 mad 875.) already referred to, it is possible to conceive of gifts of properties by pious followers to the head of a mutt personally for his own use. These he may administer as properties of his own but over other properties which appertain to the mutt, his responsibility is that of a trustee. Ordinarily properties though given to the head of a mutt will also be used as properties of the mutt as an ascetic is prevented from owning property for personal enjoyment. The question whether a

particular mutt forms a public religious endowment or is a private institution must be judged in the light of the evidence in each case. The origin of the mutt if it is known, its antiquity, the nature of the gifts of property made to it, the way how these have been treated by its head, the long established usage and custom of the institution, all these throw valuable light on the question whether the mutt is a public religious endowment or a private institution.”

34. In the case of GURUNATHARUDHASWAMI GURU SHIDHARUDHASWAMI VS. BHIMAPPA GANDGADHARAPPA DIVATE AND ANOTHER, reported in AIR (35) 1948 PRIVY COUNCIL 214, it has been held as under:

“6. The only question in this appeal is whether the suit properties used for the purposes of the Math belonged to the Swami at the time of his death, or appertained to the Math and were subject to an express or constructive trust created for public purposes of a charitable or religious nature within the meaning of S.92. Civil P.C. Except in regard to one small property, which will be presently mentioned, their Lordships have no doubt that the Courts in India were right in answering this question against the appellant. The evidence establishes beyond doubt, in their Lordship’s view, that the properties in suit were either originally given, or were dedicated by the Swami, to the purposes of the Math which was a charitable or religious institution. It has been argued by counsel for the appellant that even if this be so the trust was not for public, but for private, purposes. But this is clearly not so. It is common ground that anybody was at liberty to go at any time to the Math to worship the Swamy and take food there. The trust was plainly one for public purposes.

8. By the decree which the learned trial Judge passed it was declared that the properties in suit were properties belonging to a public trust of a religious and charitable character, and that it was necessary to settle a scheme for the administration of the trust. The decree gave general directions as to the scheme to be prepared for carrying out the terms of the judgment and settled an interim scheme. It was directed that the appellant be removed from the position which he occupied as the head of the Math and that his worship must stop. It has been argued on behalf of the appellant that the Court had no jurisdiction to remove him

from his position as head of the Math to which he had been appointed by the will of the Swami. This contention is quite untenable. In setting a scheme for the administration of a charitable trust involving the appointment of trustees or managers, the Court is bound to secure persons whom it regards as suitable. The fact that the Swami desired that the appellant should succeed him does not fetter the discretion of the Court, or preclude consideration of the conduct of the appellant, both before and since the death of the Swami. Both Courts in India have held that by his conduct the appellant has shown, himself unfit for the position which he occupies, and their Lordships accept such finding.”

35. The Apex Court in the case of THE BIHAR STATE BOARD OF RELIGIOUS TRUST, (PATNA) APPELLANT VS. MAHANTH SRI BISESHWAR DAS. Reported in AIR 1971 SC 2057, has as under:

“17. A religious mutt in northern India is usually known as asthal, a monastic institution founded for the maintenance and spread of a particular sampradaya or cult. The distinction between dedication to a temple and a mutt is that in the former case it is to a particular deity, while in the latter. It is to a superior or a mahant. But just as in the case of the debutter endowment, there is both a private and a public endowment, so too there can be the same distinction between a private and a public mutt. A mutt can be dedicated for the use of ascetics generally or for the ascetics of a particular sect or cult, In which case it would be a public institution. Mutts have generally sadavrats, i.e., arrangements for giving food and shelter to wayfarers and ascetics attached to them. They may have temples to which the public is allowed access. Such circumstances might indicate the public character of the institution. But is not impossible to have a private mutt, where the endowment is not intended to confer benefit upon the public generally or even upon the members of a particular religious sect or order,. Examples do occur where the founder may grant property to his spiritual preceptor and his disciples in succession with a view to maintain one particular spiritual family and for perpetuation of certain rights and ceremonies which are deemed to be conducive to the spiritual welfare of the founder and his family. In such cases it would be the grantor and his descendants who are the only persons interested in seeing that the institution is kept up for their benefit. Even if a few ascetics are fed and given

shelter, such a purpose is not to be deemed on independent charity in which the public or a section of it has an interest. Such charities, as already stated earlier appertain to a private debutter also. (see B.K. Mukherjea, Hindu Law of Religious and Charitable Trusts, (3rd ed.) 303, 304) 18. The existence of a private mutt, where the property was given to the head of the mutt for his personal benefit only, has in the past been recognized. (see Matam Nadipudi v. Board of Commissioners for Hindu Religious Endowments, Madras. AIR 1938 Mad 810 and Missir V. Das, (1949) ILR 28 Pat 890. In such cases there is no intention on the part of the grantor to fetter the grantee with any obligation in dealing with the property granted. In each case the court has to come to its conclusion either from the grant itself or from the circumstances of the case whether the grant was for the benefit of the public or a section of it, i.e., an unascertained class, or for the benefit of the grantee himself or for a class of ascertained individuals. An inference can also be drawn from the usage and custom of the institution or from the mode in which its properties have been dealt with as also other established circumstances.”

36. Therefore, if the origin of the Mutt is unknown, the history of the property of the Mutt and manner how it has been dealt with by matadhipathi will often afford an answer to the question whether the Mutt is a private institution or a public endowment.

37. It is in the background of these legal concepts, we have to find an answer to the points which arise for consideration in these appeals.

POINT NO.1

38. In order to answer the maintainability of the suit under Section 92 of the Code, it is necessary to look into the statutory provision as well as the law on the point. Section 92 of the Code, which deals with Public Charities, reads as under:

“Section 92 Public charities:-(1) 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 or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate 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 inquires;

(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) Setting a scheme; or

(h) Granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863) or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States., no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as in therein referred to except in conforming with provisions of that sub-section.

(3) The Court may after the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more the following circumstances, namely:-

(a) where the original purposes of the trust, in whole or in part.-

(i) have been, as far as may be, fulfilled, or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust;

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down.-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful in the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.”

39. To attract the operation of Section 92, the suit must be of a certain character and pray for certain reliefs. In the first place, the suit should relate to a trust created for public purposes of a charitable or religious nature. In the second place, it must proceed on an allegation either of breach of trust or of the necessity of having directions from the court for the administration of trust. In the third place,

the reliefs claimed must be one or other of the reliefs specified in the section and lastly, the suit must be one brought in a representative capacity in the interests of the public or of the trust itself and not for vindicating the private rights of the plaintiff. If these conditions are present, the suit can be brought in conformity with the provisions of section 92 of the Civil Procedure code.

40. The Supreme Court in the case of PRAGDASJI vs. ISHWARLALBHAI, AIR 1952 SUPREME COURT 143 held as under:-

10. A suit under section 92, Civil Procedure Code, is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the court are necessary for the administration thereof, and it must pray for one or other of the reliefs that are specifically mentioned in the section. It is only when these conditions are fulfilled that the suit has got to be brought in conformity with the provision of section 92, Civil Procedure Code. As was observed by the Privy Council in *Abdur Rahim v. Barkat Ali*(1), a suit for a declaration that certain property appertains to a religious trust may lie under the general law but is outside the scope of section 92, Civil Procedure Code. In the case before us, the prayers made in the plaint are undoubtedly appropriate to the terms of section 92 and the suit proceeded on the footing that the defendant, who was alleged to be the trustee in respect of a public trust, was guilty of breach of trust. The defendant denied the existence of the trust and denied further that he was guilty of misconduct or breach of trust. The denial could not certainly oust the jurisdiction of the court, but when the courts found concurrently, on the evidence adduced by the parties, that the allegations of breach of trust were not made out, and as it was not the case of the plaintiffs, that any direction of the court was necessary for proper

Administration of the trust, the very foundation of a suit under section 92, Civil Procedure Code, became wanting and the plaintiffs had absolutely no cause of action for the suit they instituted. In these circumstances, the finding of the High Court about the existence of a public trust was wholly inconsequential and as it was unconnected with the grounds upon which the case was actually disposed of,

it could not be made a part of the decree or the final order in the shape of a declaratory relief in favour of the plaintiffs. It has been argued by the learned counsel for the respondents that even if the plaintiffs failed to prove the other allegations made in the plaint, they did succeed in proving that the properties were public and charitable trust properties a fact which the defendant denied. In these circumstances, there is nothing wrong for the court to give the plaintiffs a lesser relief than what they actually claimed. The reply to this is, that in a suit framed under section 92 of the Civil Procedure Code the only reliefs which the plaintiff can claim and the court can grant are those enumerated specifically in the different clauses of the section. A relief praying for a declaration that the properties in suit are trust properties does not come under any of these clauses. When the defendant denies the existence of a trust, a declaration that the trust does exist might be made as ancillary to the main relief claimed under the section if the plaintiff is held entitled to it; but when the case of the plaintiff falls for want of a cause of action, there is no warrant for giving him a declaratory relief under the provision of section 92. Civil Procedure Code. The finding as to the existence of a public trust in such circumstances would be no more than an obiter dictum and cannot constitute the final decision in the suit. The result is that in our opinion the decision of the High Court should stand, but the decree and the concluding portion, of the judgment passed by the trial court and affirmed by the High Court on appeal shall direct a dismissal of the plaintiff's suit merely without its being made subject to any declaration as to the character of the properties. To this extent the appeal is allowed and the final decree modified.⁴¹ The Apex Court in the case of SWAMI PARMATMANAND SARASWATHI AND ANOTHER VS. RAMJI TRIPATHI AND ANOTHER reported in AIR 1974 SC 2141, has held as under;

“10. A suit under Section 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 was a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper

administration of the trust, the very foundation of a suit under the Section would fall; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they interested, then the suit would be outside the scope of Section 92. (see *Shanmukham v. Govinda*, AIR 1938 Mad 92; *Tirumalai Devasthanams v. Krishnayya*, AIR 1943 Mad 466 (FB); *Sugra Bibi V. Hazi Kummua Mia*, (1969) 3 SCR 83=(AIR 1969 SC 884) and *Mulla*; Civil Procedure Code, (13th ed.) (Vol.1. P. 400). A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside S.92. 14. 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 R.D.B. Bagga Singh v. Gurnam Singh*, AIR 1972 Raj 263; *Sohan Singh v. Achhar Singh*, AIR 1968 Punj and Har 463 and *Radha Krishna v. Lachhmt Narain*, AIR 1948 Oudh 203). But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in facts or reason but is made only with a view to bring the suit under the section, then a suit purporting to be brought under Section 92 must be dismissed. This was one of the grounds relied on by the High Court for holding that the suit was not maintainable under Sec. 92.”⁴². The Apex Court in the case of *R. VENUGOPALA NAIDU AND*

OTHERS VS. VENKARAYULU NAIDU CHARITIES AND OTHERS, reported in AIR 1990 SC 444 dealing with the legal position in respect of a suit under Section 92 of CPC has held as under:-

“9. 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. Can we say that the persons whose names are on the suit-title are the only parties to the suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust all such interested persons would be considered in the eyes of law to be parties to the suit. A suit under Section 92 of the Code is thus a representative suit and as such binds not only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that explanation VI to Section 11 of the Code constructively bars by res judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier suit under Section 92 of the Code.”

43. The Supreme Court in the case VIDYODAYA TRUST V. MOHAN PRASAD R, [(2008) 4 SCC 115] held us under:-

“12. ... Merely because their objections or views did not find acceptance by majority, that cannot be a ground to lay a suit under Section 92 CPC questioning legitimate decisions taken by the majority. The Court does not deal with administration of trusts. Only if the pre-conditions are satisfied then only leave can be granted as provided in Section 92. There must be an element of dishonest intention and lack of probity. When action is taken bona fide though there may be mistaken action, that would not amount to breach of trust.

13. To find out whether the suit was for vindicating public rights there is necessity to go beyond the relief and to focus on the purpose for which the suit was filed. It

is the object and purpose and not the relief which is material. A co-trustee is not remediless if the leave is not granted under Section 92.” 18.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.

19. In the suit against public trusts. If an 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.

20. In *Swamy Parmatmanand's case* (supra) it was held 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. But if after evidence is taken it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in fact or reason but is made only with a view to bringing the suit under the Section then suit purporting to be brought under Section 92 must be dismissed.” 26. To put it differently, it is not every suit claiming reliefs specified in Section 92 that can be brought under the Section; but only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. As a decisive factor the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought. The Courts have to be careful to eliminate the possibility of a suit

being laid against public trusts under Section 92 by persons whose activities were not for protection of the interests of the public trusts.”

44. From the aforesaid statutory provision and judgments, the law is fairly well settled.

A suit under Section 92 CPC is a suit of a special nature for the protection of Public rights in the Public Trusts and charities. It presupposes the existence of a public trust of a religious or charitable character. A suit for a declaration that certain property appertains to a religious trust may lie under the general law but is outside the scope of section 92, CPC. A suit framed under section 92 of CPC, the only reliefs which the plaintiff can claim and the court can grant are those enumerated specifically in the different clauses of the Section. A relief praying for a declaration that the properties in suit are trust properties does not come under any of these clauses. When the defendant denies the existence of a trust, a declaration that the trust does exist might be made as ancillary to the main relief claimed under the section, if the plaintiff is held entitled to it. 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. A suit under Section 92 of CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who are interested in the trust. In deciding whether a suit falls within Section 92 of CPC the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. 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. 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. But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in facts or reason but is made only with a view to bring the suit under the section, then a suit purporting to be brought under Section 92 must be dismissed. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. It is not every suit claiming reliefs specified in

Section 92 that can be brought under the Section; but only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. As a decisive factor the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought. The Courts have to be careful to eliminate the possibility of a suit being laid against public trusts under Section 92 by persons whose activities were not for protection of the interests of the public trusts. Find and the foremost requirement for an application under Section 92 is, the plaintiffs should bring the suit to vindicate the right of the public. In the suit, if they are seeking a declaration of their individual or personal rights or individual or personal rights of any other person or persons in which they are interested, then the suit would be out side the scope of Section 92 of CPC. In order to find out whether the plaintiff, in such a suit, is vindicating the right of the public or his personal right, what is to be seen is, allegations in the plaint. In the first instance, if the allegations in the plaint do not indicate that the plaintiffs have approached the Court to vindicate the rights of the public, on the analogy of Order 7 Rule 11 of CPC, the plaint can be rejected on the ground that the plaint does not disclose a cause of action. However, if it is not rejected and enquiry is conducted, evidence is taken and thereafter it is found that breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in facts or reason, but is made only with a view to bring the suit under the Section, then the suit purported to be brought under Section 92 must be dismissed. Therefore even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they interested, then the suit would be outside the scope of Section 92. A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section.

45. Therefore, in the instant case we have the plaint and we have the oral and documentary evidence adduced to substantiate the claim. It is an consideration of such entire material on record, if it is found that the plaintiff is not seeking to vindicate the rights of the public, but he is only trying to vindicate personal interest,

then the suit is liable to be dismissed. Since that is the main ground urged for the appellant, it is necessary to look into the pleadings and the material on record.

The prayer column in the plaint reads as under:

The plaintiffs humbly pray therefore for a decree against the defendants.

(a) vesting the schedule properties in the 1st defendant;

(b) by appointing him if necessary as the sole or the chief trustee for the said properties for the management and the administration of the said properties according to the tenants of the Veerashaiva Maths under the 1st defendant;

(c) which includes the appointment of the respective heads to the said maths, in all manner deemed appropriately by the 1st defendant;

(d) on refusal if any of the 1st defendant to accept the trusteeship as stated above, to appoint these plaintiffs or some competent persons other than the 2nd and 3rd defendants to be the trustee in place of the 1st defendant for the same purpose as stated above in this prayer clause. 46. A perusal of the aforesaid prayer column makes it clear that the plaintiffs do not want any scheme to be settled for the proper management of the schedule properties. They also do not want appointment of persons belonging to Veerashaiva community as trustees and for vesting of the schedule properties in such trustees. Their prayer is specific that these properties should vest with the first defendant i.e., the Swamiji of Kodi Mutt Maha Samsthana and he should be appointed as the trustee. In the event, he does not accept the trusteeship, then it is the plaintiffs who should be preferred for appointment. The Court is given the option to appoint some competent person other than the plaintiffs. On the face of it, it is obvious that the suit is not filed representing the interest of the Veerashaiva community or Lingayath community, people of Chickmagalur district. The main object is to see that the schedule properties vest with the first defendant or his Mutt and he or the plaintiffs are appointed as trustees for management of the schedule properties.

47. This is also clear from the averments in the plaint. According to the plaint averments, the schedule properties are sub-ordinate and branch Mutts of the first

defendant. The first defendant and his predecessors in title have for a few decades neglected the management of the said three sub-ordinate mutts and the management of the schedule properties. The second defendant who was the president of the Town Municipal Council, Chickmagalur Town, took over control and management of the schedule properties and got the katha of the schedule properties changed from the name of the three Mutts to the names of the third defendant and is claiming right to manage all the schedule properties as a trustee on behalf of Veerashaiva community. He has put the schedule properties all together to a purpose other than religious and charitable nature in order to have huge amount from the said properties. He is appropriating all the income from the said properties to himself. He has not rendered any accounts even to the alleged Veerashaiva Samaj of which, he claims to be the president. He has desecrated and demolished the 'Gaddiges' in the schedule properties. He also got cut and removed the sacred tree of Bilwa that was in the third item of schedule properties. The schedule properties are converted as commercial lease hold premises. In order to derive for himself huge income which is not accounted for and is appropriating for himself. Therefore, they want the schedule properties to vest with the first defendant. It is curious to note that the first defendant who claims to be the Matadhipathi of Kodi Mutt, has not initiated any proceedings to recover the schedule properties from defendant s 2 and 3. He also claims title to the schedule property. He has not exercised any rights over the schedule properties till now. Admittedly he is not managing the said properties. He has not spend any amount. He has not acted Swamiji of the said Mutt nor has he appointed any Swamiji to the said Mutts. He wants the schedule property to vest in him. It is a dispute regarding title to the schedule property. Therefore, in the entire plaint there is no indication that the present suit is filed in representative capacity, representing community of Veerashaiva of Chickmagalur district and that the schedule properties is to be used for the benefit of the community. It is in this background, we have to see what is the evidence that is adduced in support of those allegations. They are contesting the claim of the plaintiffs.

48. After the filing of the suit, the second plaintiff. B.S. Chanalingamurthy died. In his place, one G.R. Vedamurthy has been substituted. The first plaintiff is K.C. Rajappa, who was aged 20 years on the date of the suit and he has not stepped

into the witness box. It is averred in paragraph 12 of the plaint that plaintiffs have filed an application for the publication of the notice of the institution of the suit to the members of the Veerashaiva community in order to enable all interested members of the said community to get themselves impleaded in its suit as parties. In spite of such publication, none of the members of the Veerashaiva community have come forward to implead themselves as parties to the suit in order to support the claim of the plaintiffs. However, original suit was filed only against defendants 1 to 3. Subsequently, defendants-4 to 7 got themselves impleaded as defendants by virtue of the order passed by the Court on 06.11.1991. They were represented by a common Counsel. The 5th defendant filed his written statement which was adopted by defendants-4, 6 and 7 by filing a memo dated 16.03.1992.

49. One G.B. Nanjundappa, who was aged 81 years, on 18.07.2000 was examined as P.W-1 in support of the plaintiff's case. He was working at Chickmagalur from 1942 to 1943 a Second Division Clerk in the Taluk Office and again from 1954 to 1963 has Head of the Development Section. It is his evidence that one Karibasappa was providing food to persons who come to Uppalli Mutt, item no.1 of the schedule properties. He was providing food to persons belonging to Lingayath community. He was taking Alms in the said Mutt. There was no Swamiji at Uppalli Mutt. Some Jangamas used to get Alms in the town and then come and take the food in the Mutt. They used to reside there. They were taking bath and performing pooja in the Mutt only. It was being worshipped by Karibaappa and also Jangamas after taking bath. One Chandaiah was managing the affairs of the Mutt. He was the agent of Kodi Mutt at Haranahalli, 4 or 5 annas were being charged for one meal. The Gaddige was of one Swamiji. He do not know the name of that Swamiji. The Mutt had a big building of country tiles. Chandaiah had permitted Karibasappa to run the meal section in the Mutt. There was no special functions conducted by the Mutt. But on the next day of Shivarathri, there used to be Dasoha in the morning. For the Dasoha, all the Lingayath used to come during Shivarathri. He has seen Hosamutt and Kari Siddeshwara Mutt, items-2 and 3 of the schedule properties. He knows the present Swamiji of Kodi Mutt. During his stay at Chickmagalur, Veerashaiva Samaj had no hand in the management of schedule properties. In cross-examination, he has stated that, he do not know who actually founded Uppalli Mutt and in which year. Similarly, he do

not know about Kari Sidda Devara Mutt and also Hosamutt. He has seen the property at Uppalli Mutt. One C.M.S. Sastry was running the Garage in it for about 20 years. He denied the suggestion that the said C.M.S. Sastry had brought him to Court. He volunteers that, Kodi Mutt Swamiji had asked him to go and depose. He do not know that Karibasappa had executed lease agreement in favour of Veerashaiva Samaj. He admits that Karibasappa used to worship the Gaddige of Uppalli Mutt. He admits that, by the side of Gaddige, there is a shopping complex. He do not know if Veerashaiva Samaj had constructed it. He admits that Kodi Mutt people had not constructed the same and that he has seen the shopping complex. He do not know whether there are 11 shops in the ground floor and 10 shops in the first floor. He do not know whether there were tenants. He pleads his ignorance about Veerashaiva Samaj initiating eviction proceedings against C.M.S. Sastry and the matter going up to High Court. He admits that he is the devotee of Kodi Mutt since about 30 years. He has not seen any documents to say that Kodi Mutt is managing the affairs of the three Mutts.

50. The other witness examined is P.W.2-G. Puttappa, aged 78 years on 18.07.2000. He is also working as R.R. (Record of rights) Clerk at Chickmagalur Taluk Office in 1943-44. In 1954-54 he was working as Bench Clerk in the Food First Class Magistrate Court, Chickmagalur. He was working in the Food Department in 1955-56 and 1966-57 as Accountant. He came to know about these three Mutts when he was working at Chickmagalur. In Uppalli Mutt, meals were being supplied to Lingayath people on payment of charges. He also used to take the food there. There was facility for conducting worshipping also in that Mutt. He also used to do worship there. There was no Swamiji in that Mutt. Jangamas who lived on Alms used to come there and do worship and then take food and go away. There was facility for them to stay also. It was a country tiled building in which the Mutt was situated. There was a Gaddige in that Mutt. It pertained to one Swamiji and he do not know whose Gaddige it was. The meals arrangement was being made by one Karibasappa. One Chandaiah of Gowripura, agent of Kodi Mutt was looking after the management of Uppalli Mutt. He is no more. He was also looking after the management of Hosamutt and Kari Sidda Devara Mutt also. The next day after Shivarathri, he used to make arrangements for Dasoha in Uppalli Mutt. Important persons of Lingayath community used to come for that

function. When he was in Chickmagalur, there was no hand of Veerashaiva Samaj in the management of the schedule properties. In Cross-examination, he admits that he was suspended from service when he was working as Food Clerk in DC's office, Chickmagalur for some days in connection with sugar distribution matter. He was later reinstated. But he took voluntary retirement. He denied the allegation that he was compulsorily retired. He does not know when Uppalli Mutt, Hosamutt and Karisidda Devara Mutt were established and by whom. He knows one C.M.S. Sastry. He was running a Garage in the property of Uppalli Mutt. He does not know that Veerashaiva Samaj instituted eviction proceedings against him and got him evicted. He does not know whether C.M.S. Sastry was paying rents of Veerashaiva Samaj. He does not know that Karibasappa had executed lease agreement in favour of Veerashaiva Samaj. He admits that there is a shopping complex adjacent to Uppalli Mutt. He does not know who actually constructed it and he has not enquired about it. He has not seen any Board on that property as 'Veerashaiva Samaj'. Chickmagalur, Uppalli Mutt. He is also the devotee of Kodi Mutt since his boyhood.

51. Then we have the evidence P.W.-3, Vedamurthy, on 28.07.2000, who is aged about 47 years. According to him, Sanyasis used to reside in three Mutts. NO religious activities were going on there. The three Mutts are now being administered by Sri. Shivananda, the second defendant. He is not conducting any religious activities in these three Mutts. He has constructed shop premises and has leased them. Therefore, he wanted a scheme for conducting religious activities in these Mutts to be framed. The Matadhipathi of Kodi mutt, the first defendant is competent to administer these three Mutts and carry on the religious activities, or else, some suitable person may be appointed by the Court. In cross-examination, he admits that at present, these three Mutts are in the administration of Veerashaiva Samaj. He does not know since how many years it is so. It is a registered association. He also does not know when it was registered. Because he has faith in Kodi Mutt, he was going there often. He has not enquired as to whether there are any documents in the Kodi Mutt about these three Mutts belong to it. He does not know the dimensions of the suit schedule properties or their boundaries. He does not know who were all the Swamijis of three Mutts. The second plaintiff, Chanalinga Murthy is only his casteman and he is not his relative. He admits that one C.M.S. Sastry was running a garage in suit item No.1. Now he is

not running the garage. He do not know about the eviction petition filed by the Veerashaiva Samaj against the said Sastry. He do not know whether the second plaintiff is the brother-in-law of C.M.S. Sastry. He do not know if the daughter of the 1st defendant's uncle Marulaiah was married to Chanalingamurthy's son. He denied the suggestion that it is at the instance of C.M.S. Sastry, he has impleaded himself in the suit. He admits that he is an Aradhya Jangama. He admits that C.M.S. Sastry and Chanalingamurthy are also Aradhya Jangamas and first defendant is also an Aradhya Jangama. He has tried to become the member of third defendant Samaja. He has given application about 10 years ago, but they did not give him admission. He admits that Aradhya is a sub-sect of Veerashaiva Jangama.

52. The first defendant has supported the case of the plaintiffs in total and he has no objection for the Court vesting the schedule properties in his name and appointing him as a sole trustee for management of the schedule properties. Let us see the evidence adduced on his behalf. The first defendant did not step into the witness box. On his behalf, One Sri H.N. Nanjegowda, aged about 42 years, coffee planter by occupation, was examined as his owner of attorney holder. He has seen the three Mutts, which are the subject matter of the suit. Now there are no Mutts in the said place. Buildings have been constructed and they have been let out. Those buildings were constructed by the second defendant and about Rs.20,000-00 to Rs.25,000-00 per month is being realized as rent, out of letting out of those buildings. The rents are being collected by the second defendant only. He admits that he also belongs to Veershaiva community. The second defendant has not till now accounted for the rents he has realized. He admits that one C.M.S. Sastry was running a garage in the Uppalli Mutt property. Now he is not running the garage. Sheds have been put u p and have been let out to different persons. in the vacant space, private taxis are allowed to be parked on rental basis. There is a Gaddige at Uppalli Mutt property. The first defendant is competent to manage and administer the suit schedule property. There is no pooja to that Gaddige. He is not a member of Veerashaiva Samaja. Membership was not given to him by the second defendant. He approached the second defendant for membership about 304 years ago. He admits that his elder brother Dr. Swamy is a tenant in one of the shop premises of Uppalli Mutt. He admits that Veerashaiva Samaj has initiated

eviction proceedings against his elder brother for eviction. Since childhood he is the follower of Kodi Mutt. He has not collected rents of the shops of these three branch Mutts as GPA holder of the Kodi Mutt. He has not carried out any vahivatu of these branch Mutts. He has not maintained any accounts of these three branch Mutts. In the Execution Case 213/93 on the file of the Principal Civil judge (Jr.Dn), Chickmagalur, he has deposed that he was managing Uppalli Mutt property on behalf of Kodi Mutt and that he had maintained accounts in that regard. He admits that Kodi Mutt has not let out any properties of Uppalli Mutt. C.M.S. Sastry, who was running the garage has surrendered possession in favour of Kodi Mutt. That property was let out to one Yogish Urala. During that time, eviction petition filed by the second defendant was pending. Within one month of their letting out the property to Yogish Urala, there was a Court order in favour of second defendant. Then they gave by possession to him. Yogish Urala paid one month's rent to them. He had let out the property to Yogish Urala on behalf of the first defendant-Swamiji. C.M.S. Sastry handed over the possession of the property in which he was running a garage to Kodi Mutt. C.M.S. Sastry was present before the Court when he was deposing. C.M.S. Sastry was also the President of Chickmagalur Pattana Sahakara Bank. He admits that he was the director of that bank earlier. Veerashaiva Samaj took possession of the property from C.M.S. Sastry only. That property is now in possession of second defendant in his individual capacity. He has not seen the documents in the Kodi Mutt about Uppalli Mutt, Hosamutt and Karisiddeshwara Mutt being the branches of the Kodi Mutt. He denied the suggestion that, mother of the first defendant and C.M.S. Sastry's wife are related to each other. He do not know if both of them belong to mad aura. He admits that the first defendant has filed suits in respect of suit schedule properties. There is no order of injunction in favour of the first defendant in those cases.

53. It is in this background, we have to look at the case of defendants-2 and 3, the oral and documentary evidence which they have produced to establish their case.

54. It is the specific case of defendants-2 and 3 that the first plaintiff K.C. Rajappa, is one of the unauthorized and illegal sub-lessee of the tenant C.M.S. Sastry. Second plaintiff's younger sister is married to the said tenant's brother-in-law, Mariswamy. The eviction proceedings and the order passed therein against the

tenant C.M.S. Sastry which are produced in the case as Exs.D-3, D-4, D-5 Ex.D-6 discloses that he obtained the property bearing municipal assessment number 1801 bearing assessment register No.1437/A situated on the northern row of Bannimarada Beedi of Chickmagalur Town measuring 84 feet plus 54.2 x 248 feet bounded on the East by remaining portion of the property of Uppalli mutt, West by Indira Ghandi Road, North by property of Munshram and South by Bannimaradabeedi, on lease from the 3rd defendant. As per his letter dated 17.07.1956 and 11.05.1951 the property was leased on a monthly rent of Rs.20/-. He failed to pay the rent from 1976 onwards. The rents were paid by him to Veerashaiva Samaj, for nearly more than 20 years, admitting their ownership and title to the property. The Veerashaiva Samaj wanted to demolish the entire structure and raise a Kalyana Mantap with shop premises surrounding it. A resolution came to be passed to that effect and Guddali Pooja was performed on 08.06.1979 in the presence of Jagadguru Sri Rambhapurimutt of Balehonnur on the eastern side of the schedule premises. The said C.M.S. Sastry, in turn, sub-leased a portion of the schedule premises to seven persons without the consent and permission of Veerashaiva Samaj, illegally and unauthorisedly. He was collecting rent of more than Rs.2000-00 per month from those sub-lessees. He also erected structures and permitted the sub-lessees to erect structures and alterations in the suit schedule properties without the consent of Veerashaiva Samaj. Therefore the Veerashaiva Samaj was constrained to file a suit in O.S No.259/76 on the file of the Munsiff at Chickmagalur for a decree of permanent injunction restraining him from putting up or erecting any building or structure or directly relating to the existing building. After contest, the suit came to be decreed. The appeal filed by C.M.S. Sastry in R.A. No.8/78 came to be dismissed and thus, the said decree attained finality. It is thereafter, the Veerashaiva Samaj issued a legal notice dated 04.06.1979 which was duly served on him on 06.06.1979 whereunder, they terminated the tenancy and called upon him to quit and deliver vacant possession of the schedule property. When he did not vacate the premises, they were constrained to file HRC No.77/79 on the file of the Munsiff, Chickmagalur. After service of notice, he entered appearance and filed statement of objections. He denied the jural relationship of landlord and tenant. He denied the title of the Veerashaiva Samaj, he also contended that since more than 12

years, he is enjoying the property continuously and therefore he has acquired ownership over the schedule property. In the said proceedings, the preliminary issue was raised regarding the existence of jural relationship of landlord and tenant. By an order dated 04.11.1981, the Court held that there exist relationship of landlord and tenant and the HRC petition was maintainable. The said order was challenged before the District Judge in Revision Petition 7/82. The same came to be dismissed by an order dated 09.06.1983, confirming the said finding. Thereafter, enquiry was conducted on the merits of the petition and an order of eviction came to be passed on 17th December 1984, directing the said C.M.S. Sastry to vacate the schedule premises within two months. Aggrieved by the said order, he preferred a Revision (Rent) 6/85 before the District Judge, Chickmagalur. After contest, the said Revision came to be dismissed. Aggrieved by the same, he preferred Revision Petition to the High Court in CRP No.54/88. It also came to be dismissed on 28.01.1991 and he was granted time to vacate the schedule premises till the end of April 1991.

55. Having lost the battle, the said C.M.S. Sastry filed a suit in O.S.No.124/91 against the third defendant. Similarly, the first defendant filed O.S. NO.185/91 on the file of the Principal Munsiff, Chickmagalur claiming title to the said property sought for an order of injunction restraining the Veerashaiva Samaj from executing the decree for eviction obtained in the aforesaid proceedings. There was no interim order. Therefore the Veerashaiva Samaj filed Execution Petition in Ex.No.213/92. In O.S.No.185/91 filed by the first defendant, he sought for stay of further proceedings in Execution 213/92. In fact, in Execution Petition also, an application was filed for stay of execution of the eviction decree. Execution proceeding was stayed on the application filed by the first defendant in Ex.No.213/92. The suit in O.S.No.185/91 was ordered to be returned for presentation to the proper Court. Both the parties preferred an appeal before the District Court, which was numbered as MA.3 and 4/96. The order passed in O.S.No.185/91 was maintained, whereas the order of stay passed in Ex.No.213/92 was set aside and the Ex.No.213/92 was remanded with a direction to proceed further in the light of the observations made therein. Thereafter the Executing Court issued delivery warrant. The order passed by the District Court vacating the order of stay was challenged in the High Court by preferring CRP.No.1518/97,

which came to be dismissed on 21st September, 1999. Thereafter possession was taken by the Veerashaiva Samaj through Court.

56. The evidence of D.W.-2, discloses that Veerashaiva Samaj was formed in Chickmagalur in 1919. It was a registered society under the then Societies Registration Act. Ex.D-1 is the certificate of registration. One Yajaman Puppanna Shettru was the first President of the Samaj. The three Mutts situated in the plaint schedule property were in the management of this Veerashaiva Samaj since 1919. One Gangamma who was a worker in the Hosamutt sold the Hosamutt in 1954-55 to one Surendra, who is a hotel owner. At that time C.M.S. Sastry was the Municipal President. At his instance the katha of the property was changed in favour of the purchaser. On coming to know of the same, the second defendant filed objections and thereafter katha was restored to Hosamutt. Therefore he became the President of the Veerashaiva Samaj in 1970. On behalf of Veerashaiva Samaj, an application was filed to the Municipality to transfer the katha of these three Mutts in the name of Veerashaiva Samaj as they were managing the properties for more than 60 years. It is thereafter proceedings were taken to prevent C.M.S. Sastry from meddling with the property, putting up constructions, erecting structures and also for his eviction on the ground of non-payment of arrears of rent and also sub-letting. Ultimately, in 1991 when they succeeded in getting the order of eviction, then the first defendant in collusion with the said C.M.S. Sastry initiated the aforesaid proceedings to stall Veerashaiva Samaj from taking possession of the property. In 1989, a complex was constructed in Karisiddeshwara Mutt by the Veerashaiva Samaj. In Uppalli Mutt they have constructed 11 shops in the ground floor and 7 rooms in the first floor. In Hosamutt they have constructed 4 shops in the ground floor and 4 shops in the first floor. In Karisiddeshwara Mutt, they have constructed 2 shops in the ground floor and first floor was ear marked for running free hostel for students. Vacant land is available around these constructions. In paragraphs 25, 26, 35, 36, 37 and 38 of his deposition he has deposed about the rents which the Veerashaiva Samaj was receiving from each tenant. When they wanted loan from State Bank of India, for putting up construction in 1990, the Veerashaiva Samaj, once again got registered for the purpose of getting loan. The katha of the property was transferred to the name of Veerashaiva Samaj to see that nobody else would meddle with the

property as has been one by Smt. Gangamma. The entire construction costing to lakhs of rupees is spend by the Veeerashaiva Samaj and therefore the Samaj is receiving the rent. He has produced the audited accounts of the society. In the cross-examination, no questions are put to him regarding any misappropriation of the rental income from him. On the contrary, he has produced documents to show that a sum of Rs.9 lakhs is recoverable from the wife of ex-vice president of the Samaj. During the emergency period he was arrested and detained. During his absence, the vice-president collected the rents and appropriated the said rents to himself. Subsequently, he died. Therefore, the amount of Rs.3 lakhs is due to Samaj.

57. Thus evidence on record clearly demonstrates the existence of three mutts which are more particularly described in the schedule to the plaint, which are called as Uppalli Mutt, Hosamutt and Karisiddeshwara Mutt. Though it was specifically pleaded in the plaint, which was also admitted in the written statement of the first defendant that these three mutts are branches of Kodi Mutt of Haranahalli, no documents are produced to substantiate the said claim. Similarly, there is no material on record which shows that Kodi Mutt, at any point of time managed these three mutts or the properties. Similarly, there is no evidence on record to show that the Kodi Mutt appointed any Swamiji to these Mutts. On the contrary, the Veerashaiva Samaj of Chickmagalur, which came into existence in the year 1919 was managing the affairs of these three Mutts. One Chandaiah, was the person who was managing all the three Mutts. None of the witnesses who gave evidence knows who actually founded these three Mutts and in which year. All of them have admitted that there is Gaddige in Uppalli Mutt. No Gaddiges are found in other two Mutts. Gaddige found in Uppalli Mutt is of a Swamiji. However, no one knows the name of the said Swamiji. Admittedly, no witness speaks about any Swamiji managing these Mutts at any point of time to their knowledge. The evidence on record discloses that some Jangamas used to get Alms in the town and they came and took food in the Mutt. They used to reside there. They were taking bath and performing pooja in the Mutt. There was no special functions conducted in the Mutt. In Uppalli Mutt, on the next day of Shivarathri, there use to be Dasoha in the morning. For the Dasoha, all the Lingayats use to come during Shivarathri. The said Chandaiah had leased a portion of Uppalli Mutt in favour of

Karibasappa. He was serving food to persons belonging to Lingayat community on payment of charges. In other words, he was running a hotel there. Jangamas who came to these Mutts were not provided food free of cost. At that point of time, there was a big building of country tiles. All the three Mutts were in the management of Veerashaiva Samaj since 1919. It is only persons belonging to Veerashaiva Samaj or Lingayat caste who were using the schedule premises. No religious activity is performed in these Mutts. There is no public participation in any of the activities of the said Mutt. No functions are conducted. These Mutts were in dilapidated condition. The Veerashaiva Samaj let out the same to various tenants. One such tenant is C.M.S. Sastry, who was running a garage there. He in turn, had let out the premises to eight other tenants and was collecting rent of Rs.2000-00 per month. He paid rent to the Veerashaiva Samaj for nearly 20 years. On behalf of Veerashaiva Samaj, an application was filed to the Municipality to transfer the katha of these three Mutts in the name of Veerashaiva Samaj as they were managing the properties for more than 60 years. Guddali Pooja was performed by the Veerashaiva Samaj on 08.06.1979 in the presence of Jagadguru Sri Rambhapurimutt of Balehonnur on the eastern side of the schedule premises,. In 1989, a complex was constructed in Karisiddeshwara Mutt by the Veerashaiva Samaj. In Uppalli Mutt they have constructed 11 shops in the ground floor and 7 rooms in the first floor. In Hosamutt they have constructed 4 shops in the ground floor and 4 shops in the first floor. In Karisiddeshwara Mutt, they have constructed 2 shops in the ground floor and first floor. The entire cost of construction is borne by Veerashaiva Samaj. Rents are kept in bank account. Now they intend constructing a Kalyana Mantap, for the benefit of the community. From the aforesaid material. It is clear that the origin of the Mutt is not known. However, the history of the property of the Mutt and the way it has been dealt with shows that it was not meant for the benefit of any particular individual or family. It was meant for the persons belonging to Veerashaiva or Lingayat community. It is a place which is used for taking food, public worship and for sleeping. No amounts were collected by anyone for the said purpose. It was free of cost. Any person belonging to aforesaid community could use this premises. The property is dedicated for general public use. The purpose is impressed on the property itself. Therefore the Mutt is raised to the status of juristic person so that the property which is dedicated

would vest in the Mutt itself. The Mutt under the Hindu Law, is a juristic person. As the Mutt is not founded by an express indenture. It is a constructive trust. Having regard to the usage and custom over the years, irresistible conclusion which can be drawn is, it is a dedication for purpose of charitable and religious nature. It is a public trust. In fact, both the parties do not dispute that defendants-2 and 3 are managing these properties for the last more than sixty years. It is in the course of such management, they have initiated legal proceedings, recovered possession from the tenants, put up multistoried constructions, let out the property to the tenant, collecting rents, rents so derived is kept in a separate bank account and they are ready and willing to spend that money for any charitable and religious purpose. In fact, they intend constructing a Kalyanta Mantapa for the benefit of people belonging to Veerashaiva and Lingayat Community. 58. The Apex Court in the case of THAYARAMMAL (DEAD) BY LR VS. KANAKAMMAL AND OTHERS, reported in AIR 2005 SC 1588, dealing with the question whether a Dharma Chatra, a Chowtry of South India, would constitute a Trust, has held as under:-

“14. Dharmachatram is ‘Choultry’ of South India meaning a place where pilgrims or travelers may find rest and other provisions. Hindus in India consider the establishment of temples, mutts and other forms of religious institutions or excavation and consecration of tanks, wells and other reservoirs of water, planting of shady trees for the benefit of travellers, establishment of Choultries, sarals or alms houses and Dharmasala for the benefit of medicants and wayfarers and pilgrims as pious deeds which would bring heavenly bliss and happiness to a Hindu. The PROPATHA of the Vedas is the same thing as Chuntry or Sarai and sometimes it is described as ‘OPRATISHEYAGRAH’ (see: BK Mukherjea on Hindu Law of Religious and Charitable Trusts, Fifth Edition by AC Sen. Pages 15, 16 and 26)

15. The contents of the stone inscription clearly indicate that the owner has dedicated the property for use as ‘Dharmchatra’ meaning a resting place for the travelers and pilgrims visiting the Thyagraja Temple. Such a dedication in the strict legal sense is neither a ‘gift’ as understood in the Transfer of Property Act which requires an acceptance by the donee of the property donated nor it is a trust’. The Indian Trusts Act as clear by its Preamble and contents is applicable only to

private trusts and not to public trusts. A dedication by a Hindu for religious or charitable purposes is neither a 'gift' nor a 'trust' in the strict legal sense. (see BK Mukherjea on Hindu Law of Religious and Charitable Trusts, Fifth Edition by Ac Sen, pages 102, 103).

16. A religious endowment does not create title in respect of the property dedicated in anybody's favour. A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no Administrator or Manager becomes *res nullius* which the learned Author in the Book (*supra*) explains as property belonging to nobody. Such a property dedicated for general public use is itself raised to the category of a juristic person. Learned author at page 35 of his commentary explains how such a property vests in the property itself as a juristic person. In *Manohar Ganesh v. Lakshmiram* (ILR 12 Bombay 247), it is held that 'the Hindu Law like the roman Law and those derived from it recognizes not only corporate bodies with rights or property vested in the corporation apart from its individual members, but also juridical persons and subjects called foundations. The religious institutions like mutts and other establishments obviously answer to the description of foundations in Roman law. The idea is the same, namely, when property is dedicated for a particular purpose, the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created.' And so it has been held in *Krishna Singh v. Mathura Ahir* (AIR 1972 Allahabad 273) that a mutt is under the Hindu Law a juristic person in the same manner as a temple where an idol is installed. 17. The learned judge of the High Court was right in coming to the conclusion that the property in suit which was a dedication for charitable purposes cannot be claimed by the plaintiff as a trustee or the defendant as owner. Having thus come to the conclusion, the High Court failed to make a distinction between a 'trust' in strict legal sense and a 'religious or charitable endowment' as understood in customary Hindu Law. It is because of its failure to see this distinction that it committed an error in directing that Administrators General in accordance with the provisions of Administrators General Act No.45 of 1963 and a official trustee under Official Trustee Act No.2 of 1913 should take over the property for administration."

Therefore the plaint schedule properties constitute a constructive trust. Defendants-2 and 3 are trustees and it is a public trust.

59. P.W-1 is not the resident of Chickmagalur. He was a retired Tahsildar settled down in Shimoga. P.W-2 is also retired Tahsildar, who was residing at Guddahalli Village. P.W-3 is an agriculturist who is residing at Ramanahalli. D.W-1 is a coffee planter, who is resident of Halasummane village. All of them are devotees of Kodi Mutt. They have completely pleaded ignorance about the title of the property, the development of the property subsequent to 1960 and regarding the management of the properties. However, both P.W-3 and D.W-1 in categorical terms admitted that Kodi Mutt has not constructed the present building. They have not let out the premises to the tenants. They are not collecting the rents. They further admitted that it is the third defendant-Veerashaiva Samaj, which has put up constructions, let out the premises. Their grievance is that, the second defendant is collecting rents and appropriating the same to himself. In the entire evidence of D.W-2, there is nothing to indicate that either he has mismanaged the suit schedule properties in his capacity as the president of the Samaj, or he has misutilized the funds derived from the suit schedule properties or he has misappropriated funds of the suit schedule properties or the Samaj for his personal benefit. The audited accounts of the 3rd defendant are produced. The Bank account are produced. Pass book is produced. Therefore the plea of breach of trust is not proved from the evidence on record.

60. It is in this background and from all these material on record, it is obvious, it is a fight between the said C.M.S. Sastry on the one side and the Veerashaiva Samaj on the other. C.M.S. Sastry was not examined in the case. However, he was present in the proceedings when P.W-3 and D.W-1 deposed before the Court, as is clear from the evidence. From the averments in the suit filed by C.M.S. Sastry and the first defendant it is clear that they are hand in glove with each other. After loosing the battle up to the High Court, at the instance of C.M.S. Sastry, the first defendant has filed a suit in O.S.No.185/91. In the said suit, the Kodi Mutt is claiming that Uppalli Mutt is also a Shaka Mutt of plaintiff Mutt. It is pleaded in the plaint that due to indifference in the management of the plaintiff-Mutt, its Shaka Mutts and their affairs during the time of the predecessors of the

present Pontiff, Mutt has suffered. Uppalli Mutt has lost its religious Head long ago. As there was none to look after the affairs of the property of the said Mutt, the Veerashaiva Samaj has taken over the management of the said property. By such taking over the property it is not vested with the Veerashaiva Samaj. It continues to be the property of Uppalli Mutt. Then they have referred to the eviction proceedings and then they sought for a decree declaring that the Kodi Mutt is entitled to the management of plaint schedule property and to restrain the Veerashaiva Samaj and its office bearers including the then president, the second defendant herein, by a permanent injunction from executing the decree in HRC No.77/79 against the tenant by name C.M.S. Sastry, in the alternative, for possession of the plaint schedule property to them. In the said suit, they did not include items-2 and 3 of the plaint schedule property namely Hosmutt and Karisiddeshwara Mutt and put forth any claim. Therefore, till the eviction proceedings attained finality, the Kodi Mutt did not bother about the property in the occupation of the tenant. They made no attempts to collect the rents. They made no attempts to evict the tenants from the schedule property. Till the decree of eviction is confirmed by the High Court in 1991, the plaintiffs and the 1st defendant did not move their little finger to protect, manage or develop the schedule property. It is only after the eviction order, the 1st defendant filed a suit to prevent execution of the eviction decree. Even he claims that the tenant C.M.S. Shastry delivered possession to him and thereafter he let out the premises to one tenant by name Yogish Urala, who vacated the premises after one month. Therefore, this conduct makes it amply clear through the judicial this process, the 1st defendant wants to takeover the schedule property. It is a title dispute between the first defendant and the third defendant. The plaintiffs are set up by the said C.M.S. Sastry and the first defendant to take over the suit schedule property. The first plaintiff is hardly 20 years old. If no respectable person from the Veerashaiva community was available to represent the community, in a representative suit, to protect the properties of the Mutt, it is clear that the community as such, has no grievance. Few individuals in the community closely connected to each other and belonging to a particular sub-sect of the community are agitating this matter to take over the control of the property which is developed by the third defendant at considerable cost, which is yielding a very good income. The whole object is to take out the management of

the suit schedule properties from the hands of the second and third defendants and vest the property and the management in the hands of the first defendant. It is on record that the first defendant. P.W-3, C.M.S. Shastry and second plaintiff, all belong to Aradhya, a sub-sect among the Veerashaiva community and also related. Therefore, these persons belonging to that particular sub-sect wants to take over the schedule properties and its management from the persons belonging to other sect in the very same community. It is a property dispute. It is a dispute between the two sub-sects in the Veerashaiva community. In fact that the Trial Court on appreciation of the entire evidence has categorically recorded a finding that the plaint schedule three Mutts are not the Shaka Mutt's or branched of Kodi Mutt, and Kodi Mutt has no title over the schedule property. The said finding is not challenged in this appeal, rightly, as the material on record do not substantiate the claim. The plaintiffs has set up title to the plaint schedule properties in the 1st defendant. 1st defendant also claims title to the schedule properties. Now the property is in the possession of tenants inducted by defendants 2 and 3, who are collecting rents. It is the 3rd defendant who initiated legal proceedings to evict tenants. After securing possession, in all the three properties commercial complex are constructed at a considerable cost. The rental income is deposited in a Bank account. It is not utilized by them. To take over the properties and the income from these buildings the plaintiffs and the 1st defendant have come together in engineering the present suit. It is also specifically pleaded in the plaint that the 1st defendant neglected to manage and protect the schedule property. Still the plaintiffs wanted the schedule property to be vested in him and he should be appointed as the sole trustee. Therefore, the intentions are obvious. The suit is a scheme planned by the 1st defendant and the said tenant C.M.S. Shastry to take over the schedule property. The plaintiffs are only name lenders. No respectable member of the public or the community has come forward complaining against the defendants 2 and 3. The defendant No.3 is itself a representative body representing the Veerashaiva community, which is managing the schedule property for nearly 60 years, without any complaint from any quarter. The trouble started only after the filling of the eviction petition against C.M.S. Shastry and the passing of the eviction order. His hidden hand is clearly visible behind the litigation. It is he who is prosecuting the matter. It is a proxy fight. No public

interest is involved. It is purely to settle scores and vindicate the personal rights, this litigation is commenced. It is actuated with malafides. It is a clear case of the abuse of the provision of Section 92 of the Act. Therefore the present suit is not filed to vindicate the rights of the public. It is filed with the sole intention of vindicating the rights of the first defendant, in the alternative that of the plaintiffs. This aspect has been completely missed by the learned trial Judge. Therefore, the suit does not fall within Section 92 of CPC. As such, the suit is not maintainable. POINT NO.2

61. Sri Ashok Haranahalli, learned senior counsel submitted that the plaintiff in the suit has no personal interest. Even if the management of the trust, public charities, which are involved in this case, is not vested with the first defendant, the whole object in preferring the suit is to see that the properties are properly protected, managed and utilized for the benefit of the public for which the scheme is required to be framed by this Court, in particular to Lingayat/Veerashaiva Community. 62. He relied on the judgment of the Apex Court in the case of A.A. GOPALAKRISHNAN VS. COCHIN DEVASWOM BOARD AND OTHERS, reported in (2007) 7 SCC 482. Dealing with the power of the Court in the matters of public and religious charities and public religious trust, it observed as under:

“The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of “fences eating the crops” should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.”

63. Countering the said argument the defendants-2 and 3 contended that they have not claimed title to the suit schedule properties. They are managing the

properties for the last 60 years. They have developed the properties. The plea of breach of trust is not established by any acceptable evidence. In those circumstances the question of this court either removing them from the office of trustees and appointing any other person in their place or framing a scheme for the administration of the trust property would not arise. In support of their contention they relied on the judgment in the case of ASSOCIATION OF RADHASWAMI DER BABA BAGA SINGH AND ANOTHER VS. GURNAM SINGH AND OTHERS, reported in AIR 1972 RAJASTHAN 263, wherein it is held as under; “16. In our opinion, the position of a trespasser is different from that of a trustee de son tort; the former claims adversely to the trust and so cannot be deemed to be a trustee within the meaning of the section, while the latter does not claim adversely though here may be defect in his title to act as a trustee. In Muhammad Nasim V. Muhammad Ahmad. 18 Oudh Cas 38 = (AIR 1940 Oudh 4-8), a Bench of the Court of the Judicial Commissioner Oudh discussed the matter and held that Section 92, C.P.C., covered a suit for removal of a person who though not a trustee de jure had taken upon himself the management of trust property and thus became a trustee de son tort. The same view was also taken in Mulchand Bassarmal V. Devigir Motigir, AIR 1986 Sind 179: Radha Krishna V. Lachmi Narain, AIR 1948 Oudh 203 and S.K.Mitra V.H.C.Dey, AIR 1960 Cal 558.

17. The learned counsel for the respondents invited our attention to a case reported as Sundaralingam Chettiar V.S. Nagalingam Chettiar, AIR 1958 Mad 307, in which, it has been held that the removal for which S.92 provides is in respect of a de jure trustee and not of a trustee de son tort. We have carefully examined this authority. We do not find any substantial reason contained in this authority for the view propounded in it. The term ‘trustee’ in Section 92 in our opinion has been used in a wider sense to include both the express as well as implied trust. The trustee de son tort who is acting as and de facto trustee is in our opinion covered by S.92. C.P.C. as we think there is not warrant for putting a narrow construction on the term “trustee” occurring in Section 92. C.P.C. A person who without title chooses to take upon himself the character of trustee becomes a trustee de son tort and is liable to account for what he has done or what he has received while so acting in the same way as if he were a de jure trustee. Such a person may be described as a de facto trustee or a trustee de son tort and is distinguishable from

a trespasser. In view of the preponderance of judicial opinion referred to above to the contrary, we are unable to agree with the proposition laid down in this case. It may be pointed out that the respondents in the present case have not claimed any title of their own but they have claimed themselves to be trustees and are managing the property in that capacity.” 64. The schedule properties belong to three Mutts of Veerashaiva community. There are no Matadipatis. No religious activities or charitable activities are being conducted in the said Mutt for more than 60 years. Public are not using the same. Community people are not visiting that place. The Veerashaiva Samaj which came into existence in 1919 is managing the properties. They had let out the property to one C.M.S. Sastry who in turn, has subleased the property to others. The properties were in dilapidated condition. Therefore, the Veerashaiva Samaj took steps to get the tenant vacated and put up two shopping complex at considerable cost and they have let out the premises and is yielding good rental income. They also intend putting up a Kalyana Mantap for the benefit of community people in particular and public at large in general. The persons belonging to Veerashaiva community have no grievance whatsoever against the functioning of the Veerashaiva Samaj. There was no Swamiji. A portion of Hosamutt was sold by one Gangamma and on the basis the katha was transferred in the name of the said purchaser. The second defendant has taken steps to get the katha restored in the name of the Mutt. In order to avoid such attempts in future, he made an application on behalf of third defendant and got the katha transferred to the name of the third defendant. His father was a respectable person in the community and under his stewardship the activities of the Samaj were conducted in a lawful manner. After his death the second defendant became the President of Samaj. It is after the second respondent took over, they initiated eviction proceedings for eviction of the tenants. After a hard battle of 20 years, they have taken possession. In the mean while, they have also put up two shopping complex which are yielding good rental income. It is true that he has admitted in his evidence that no religious or charitable activities are being conducted in the schedule properties. They have made provisions for scholarships for students and no applications are received for the same. Therefore, no amount has been disbursed in this regard. The Samaj was not getting marriages and thread ceremonies performed in the Samaj. They have not got any hospitals constructed.

They also have not given any financial assistance to handicapped persons belonging to Veerashaiva community. They also have not given funds to any organization. It is an honest admission on part of the second defendant. If the community people do not take interest in the affairs of the Samaj, the president and the Samaj cannot be blamed. In spite of it, as the president of the Veerashaiva Samaj, he has taken keen interest in protecting the properties belonging to the Samaj, developed the property and the income derived from the said property is safely kept in the bank account. It is nobody's case that he has played fraud or misappropriated any funds of the Samaj. Now they intend putting up Kalyana Mantap, for the benefit of the community. Merely because, the katha was transferred in their name, is no ground to infer that the Samaj is trying to claim title to the property. They have not put forth any claim over the title to the schedule property as has been done by the first defendant. It is their specific case that from 1919 the Samaj is managing the properties of these three Mutts. Therefore it is in their management. In these circumstances, we do not find any justification for the interference by the Court to frame scheme for administration of these properties. In the facts of this case, no case for issuing direction for administration of these properties is made out, for the time being. If and when occasion arises for such direction or formulating a scheme, it is always open to the persons who are really interested in the community to approach the Court for such scheme being formulated.

65. For the aforesaid reasons, the judgment and decree passed by the Court in so far as issues which are held against the defendants-2 and 3 are concerned, requires to be set aside. Accordingly it is set aside.

66. From the aforesaid discussion what emerges is, the schedule properties earlier which were Mutts constitute a constructive trusts and it is a public, charitable and religious trust. Defendants-2 and 3 are the constructive trustees of the said trust. There is no breach of trust as alleged. Therefore, no case for removal of defendants-2 and 3, as trustees, would arise. Consequently, no case is made out for issue of direction for the administration of the trust properties. The suit is not filed to vindicate the rights of the public. It is filed to vindicate the private rights. Therefore the suit filed under Section 92 of Code of Civil Procedure is not maintainable.

67. After admission of these appeals, on an application for stay, this Court by its order dated 18.09.2001, granted stay subject to certain conditions. The said order is in force till today. Hence, we pass the following order.

- i) Appeals are allowed.
- ii) The judgment and decree of the trial Court is hereby set aside.
- iii) The plaintiff's suit is dismissed.
- iv) All interim orders passed in these appeals stand vacated.
- v) Parties to bear their own costs.

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