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THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.09.2023	Delivered on 12.10.2023
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CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

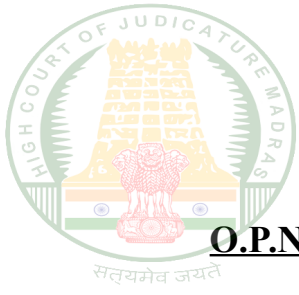
O.P.Nos.211, 252 and 183 of 2023

O.P.No.211 of 2023:

M/s.A.R.R.Charitable Trust
Rep. by its Founder Trustee Mr.B.Ramachandran,
No.31-B, Jawaharlal Nehru Salai,
Thirunagar, Vadapalani,
Chennai – 600 026.

...Petitioner

Prayer: Original Petition filed under Section 34 of the Indian Trust Act, 1882 to permit the petitioner Trust to transfer free of cost by way of Registered Gift Deed to M/s.Tamil nadu Generation and Distribution Corporation Limited a land parcel of 853 sq.mtr of land comprised in S.No.47/2 and 34/1 of Nallur Village, Ponneri Taluk, Thiruvalluvar District, morefully described in the Schedule of property, towards obtaining 33/11 KV Indoor Substation HT connection to the petitioner Trust Property.



O.P.No.252 of 2023:

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1.M/s.Dr.Arcot Lakshmanaswami Health Care Trust,
Rep. by its Managing Trustee Dr.A.V.Harendra,
No.856, Poonamallee High Road,
Kilpauk, Chennai – 600 010.

2.Mohana Venugopal

3.Dr.A.V.Jayagopal

4.Dr.A.V.Harendra

5.Mahalakshmi Ramakrishnan

6.Prakash Goklaney

...Petitioners

Vs.

1.Amrita Vishwa Vidyapeetham

Amritanagar P.O.,

Ettimadai, Coimbatore – 641 112

Rep. by its Chancellore Mr.Swami Abhayamritananda Puri.

2.M/s. Sterling Horticulture & Research Ltd.,

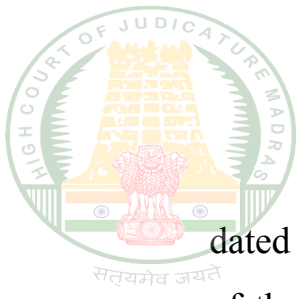
No.2B, Apex Plaza, No.3,

Nungambakkam High Road,

Nungambakkam, Chennai – 600 034.

...Respondents

Prayer: Original Petition filed under Section 34 of the Indian Trust act, 1882 to permit the 1st petitioner Trust herein to sell the property viz., 10.02 acres or thereabouts in Vengal Village, Tiruvallur Taluk and District and more particularly described in the Schedule hereunder in terms of the offer letter



dated 02.04.2021 to the 1st respondent free of all encumbrances including that of the Cancellation dated 09.03.2009 and registered as Document No.1447 and 1448 of 2009 on the file of the Sub-Registrar, Arani and the sale proceeds to be utilized for the objects of the Trust.

O.P.No.183 of 2023:

1.M/s.Pachaiyammal Educational Trust,
Rep. by its Managing Trustee S.Vengateswaran
S/o.Sekhar, Door No.9-B,
Winding Driver Chinnasamy Street,
Dharmapuri Town, Dharmapuri Taluk,
Dharmapuri District.

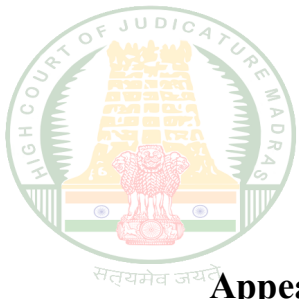
2.Rajeshwari Sekhar

...Petitioners

Prayer: Original Petition filed under Section 34 of the Indian Trust act, 1882 read with Section 7 of the Religious and Charitable Trust Act, 1920

a) to permit the petitioner to sell Item No.1 to 29 of the properties which are morefully described in the schedule hereunder to any purchaser who may offer to purchase for the market price,

b) to permit the petitioner to invest the sale proceeds in any nationalized Bank in the name of the trust and to use the interest earned on the said fixed deposit for meeting the expenses of maintaining and managing the Trust and also for fulfilling the objects of the Trust.



Appearance:

Mr.N.Umapathi, counsel for the petitioner in O.P.No.183 of 2023

Mr.T.K.S.Gandhi, counsel for the petitioner in O.P.No.211 of 2023

Mr.M.Vaidhiyanathan, counsel for the petitioner in O.P.No.252 of 2023

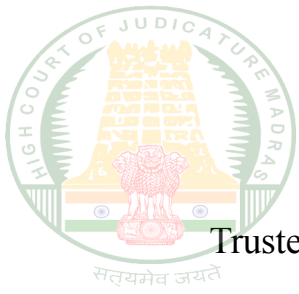
Mr.S.Parthasarathy, Senior Counsel, Amicus Curiae - Assisting the Court

COMMON ORDER

(Order of the Court was made by **R.SUBRAMANIAN, J.**)

All these Original Petitions filed under Section 34 of the Indian Trust Act, 1882 have been placed before us pursuant to the order of the Hon'ble Mr.Justice K.Kumaresh Babu dated 05.06.2023, wherein the Hon'ble Judge found that there is a sharp inconsistency between certain judgments of this Court which is irreconcilable and hence it requires consideration by a Division Bench.

2. As already pointed out, all these petitions were filed seeking permission to sell trust properties invoking Section 34 of the Indian Trusts Act. The petitioners are invariably the Trusts themselves represented by the

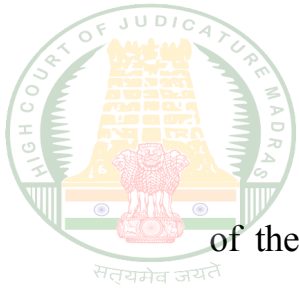


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Trustees. It is also seen from the contents of the petitions that all the petitioners are Public Charitable Trusts.

3. Before the learned Single Judge the contention was that these petitions are maintainable only under Section 34 of the Indian Trusts Act read with Section 7 of the Charitable and Religious Trusts Act, 1920. Reliance was placed upon the judgment of the Hon'ble Mr.Justice V.Parthiban dated **27.10.2021** rendered in ***A.No.3671 of 2021 in C.S.D.No.80696 of 2021, A.No.3676 of 2021 in C.S.D.No.80695 of 2021 etc.,*** By the said judgment, the learned Judge had held that Section 92 of the Code of Civil Procedure cannot be invoked in the absence of an allegation of breach of Trust. Support was drawn for the said conclusion from the judgment of the Hon'ble Supreme Court in ***Ghat Talab Kaulan Wala Vs. Gopal Das Chela Surti Dass (Dead) by Legal Representative Ram Niwas*** reported in ***(2020) 13 SCC 50.***

4. Hon'ble Mr.Justice K.Kumaresh Babu had noticed that this Court in ***K.Srinivasan Vs. G.Kuppusamy Naidu Memorial Sport Trust, Kovilpatti*** reported in ***2010 (5) CTC 438*** had held that neither Section 34 nor Section 39



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of the Indian Trust Act are applicable to a Public Charitable Trust and the

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remedy is only under Section 92 of the Code of Civil Procedure. In *Swami*

Dayanadha Saraswathi Memorial Trust Vs. Sri Ramachandra

Educational Trust reported in *MANU/TN/3161/2020*, the Hon'ble Mr. Justice

Senthilkumar Ramamoorthy had held that Section 34 would not apply in case

of a public charitable Trust. Since the learned Judge felt that the judgment in

Kanchi Charity Trust and others Vs. Avilankanni and others in

A.Nos.3671 of 2021 etc., batch dated *27.10.2021* takes a diametrically

opposite view and the views cannot be reconciled, he had referred the matter

to be decided by a larger Bench.

5. When the matter was listed before us on 05.09.2023, considering the importance of the question that has been placed before us, we had appointed Sri.S.Parthasarathy, learned Senior Counsel to assist the Court as Amicus.



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6. We have heard all the counsel for the petitioners viz., Mr.N.Umapathi, Mr.T.K.S.Gandhi and Mr.N.Vaidhiyanathan and Mr.S.Parthasarathy, learned Senior Counsel as Amicus.

7. All the learned counsel in unison would submit that the interpretation placed by the Hon'ble Mr.Justice V.Parthiban on the language of Section 92 of the Code of Civil Procedure may not be fully correct. According to them, the sweep of Section 92 cannot be restricted only to cases where there is an alleged breach of trust. The learned counsel would point out that if such a restricted meaning is sought to be given to Section 92, there is a possibility of very provision being rendered redundant. The learned counsel would also point out that the very language of Section 92 is very wide and it does not admit such restrictive interpretation. Before deliberating further on this issue, it will be useful to extract the very provision. Section 92 of the Code of Civil Procedure reads as follows:-



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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 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 inquiries;

*(e) **declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;***

(f) authorizing the whole or any part of the trust



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property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

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

8. A reading of Section 92 of the Code of Civil Procedure would show that the intendment of the legislature is to provide for a machinery to effectively deal with or to regulate the affairs of a Public Charitable Trusts. The first part of the Section provides for two contingencies i) alleged breach of trust or ii) where a direction of the Court is deemed necessary for administration of such Trust. The word used is '**or**' and not '**and**'. Therefore, invocation of Section 92 is not restricted only in cases where there is a breach of trust. It can be invoked either in case where there is a breach of trust or where a direction of the Court is deemed necessary. This interpretation is strengthened by the term “**whether contentious or not**” appearing in the latter part of the Section. Therefore, the restricted meaning given to Section 92 by the Hon'ble Mr.Justice V.Parthiban, in our considered opinion, may not be justified. In view of the plain language of the Section, we are constrained to, with great respect disagree with the learned Judge in his conclusion that



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Section 92 can be invoked only in a case where there is an alleged breach of trust and the Section does not contemplate an application by the Trust or the Trustees without there being an allegation of breach of trust.

9. The reliance placed by the Hon'ble Mr.Justice V.Parthiban on the judgment of the Hon'ble Supreme Court may not be correct, since the Hon'ble Supreme Court had infact dealt with a suit instituted by the Trust against a Sevadar with a prayer for mandatory injunction for rendition of accounts. In that context the Hon'ble Supreme Court found that Section 92 cannot be invoked, since there was no allegation of breach of trust or there was no prayer for a direction from the Court in respect of management of the Trust. From the facts set out in the said judgment, we find that the suit does not come within the sweep of Section 92.

10. Moreover, this Court as well as the Hon'ble Supreme Court have been consistent in their view that Section 34 of the Indian Trust Act cannot apply to a private Trust. As regards Section 7 of the Charitable and Religious Trusts Act, 1920, the said provision is in most general terms and it empowers the Trustees to seek opinion, advice or direction from the Court on



any question affecting the management or administration of the Trust property. The Charitable and Religious Trusts Act, 1920 which is subsequent to the enactment of the Code of Civil Procedure does not contain a *non obstante* provision. On the contrary Section 9 of the said Act provides that once a suit is instituted in accordance with Section 92 of the Code of Civil Procedure in respect of the Trust in question, the Court shall not entertain any petition under the provisions of the said Act.

11. In *Trustees of HEH The Nizam's Pilgrimage Money Trust, Hyderabad Vs. Commissioner of Income Tax, A.P., Hyderabad* reported in (2000) 4 SCC 179, the Hon'ble Supreme Court noted a difference between Section 34 of the Indian Trusts Act and Section 92 of the Code of Civil Procedure and held that an application under Section 34 cannot be treated as an application under Section 92. In paragraph 10 of the said judgment the Hon'ble Supreme Court has observed as follows:-

10. We cannot also accept the contention of the learned counsel that the application under Section 34 of the Trusts Act be treated as a suit under Section 92 of the Code of Civil Procedure for reasons more than one. Suffice it to say



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that the application purported to be under Section 34 of the Trusts Act does not satisfy requirements of Section 92 of the Code of Civil Procedure.

12. Another factor which stands in the way of invocation of Section 34 of the Indian Trust Act in matters relating to Public Charitable Trust is that the preamble of Indian Trust Act, 1882 itself restricts its operation to private Trusts and Trustees. The preamble reads as follows:-

An Act to define and amend the law relating to Private Trusts and Trustees.

Preamble.—WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY I.

Short title.—This Act may be called the Indian Trusts Act, 1882.

Commencement.—and it shall come into force on the first day of March, 1882.

Local extent.—2 [It extends to 3 [the whole of India and] the Andaman and Nicobar Islands; but the Central



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Government may, from time to time, by notification in the Official Gazette, extend it to 6 [the, Andaman and Nicobar Islands] or to any part thereof.]

*Savings.—But nothing herein contained affects the rules of Muhammadan law as to waqf, or the mutual relations of the members of an undivided family as determined by any customary or personal law, **or applies to public or private religious or charitable endowments**, or to trusts to distribute prizes taken in war among the captors; and nothing in the Second Chapter of this Act applies to trusts created before the said day.*

13. In view of the above categorical exclusion, we are afraid that invocation of Section 34 in matters relating to Public Charitable Trust is impermissible.

14. In *A.Changiah and others* reported in *1997-3-LW-537*, Hon'ble Mr.Justice K.Sampath had held that by its very nature, a proceeding under Section 34 are summary and they do not permit rowing enquiry. Therefore, considering the question as to whether the Trust should be



permitted to sell its properties would be beyond the scope of Section 34. The learned Judge after referring to the judgment of the Hon'ble Supreme Court in *Official Trustee Vs. Sachindra Nath Chatterjee and another* reported in *AIR 1969 SC 823* and the judgment of this Court in *re-Madras Doveton Trust Fund* reported in *(1895) ILR 18 Madras 443* held that Section 34 cannot be invoked for permitting sale of Trust properties.

15. In *Swami Dayanadha Saraswathi Memorial Trust Vs. Sri Ramachandra Educational Trust* referred to *supra*, the Hon'ble Mr. Justice Senthilkumar Ramamoorthy after referring to the judgments of the Hon'ble Supreme Court in *Sheik Abdul Kayum Vs. Mulla Alibhai* reported in *AIR 1963 SC 309* and *Trustees of HEH The Nizam's Pilgrimage Money Trust, Hyderabad Vs. Commissioner of Income Tax, A.P., Hyderabad* reported in *(2000) 4 SCC 179* referred to *supra* held that the power under Section 34 is intended to deal with the question that are capable of proceeding with any summary proceedings and not questions of detail, difficulty or importance. The learned Judge ruled out the applicability of Section 34 to proceedings which are more complex in nature. We are in entire agreement with the view



expressed by Hon'ble Justice.Senthil Ramamurthy in *Swami Dayanandha*

Saraswathi Memorial Trust Vs. Sri Ramachandra Educational Trust

reported in *MANU/TN//3161/2020* in this regard.

16. In *K.Srinivasan Vs. G.Kuppusamy Naidu Memorial Sport Trust, Kovilpatti* reported in *2010 (5) CTC 438* the Hon'ble Mr.Justice Selvam held that Section 34 and 39 of the Trust Act cannot be invoked in matters relating to Public Trusts. In the light of the language of Section 92 of the Code of Civil Procedure, particularly, where it permits the Trustees to move the Court in case where a direction of the Court is deemed necessary for administration of the Trust and it includes within its sweep the matters which are not contentious also, we find that the narrow interpretation sought to be placed on its provision by the Hon'ble Mr.Justice V.Parthiban run counter to the settled position of law and as such we are unable to approve of the same.

17. Yet another circumstance which impels us to conclude that the applications for permission to sell the property made under Section 92(1)(f)



are maintainable is the doctrine of *cursus curiae est lex curiae* meaning the

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practice of the Court is the law of the Court. In ***Maxworth Orchards Vs.***

B.Ravi Babu and others reported in **2023 (4) LW 205** to which one of us

[Hon'ble Mr. Justice R. Subramanian] was a party, this Court had held that the

practice of the Court is the law of the Court. This Court had adopted the

above maxim to justify the practice of the Court to justify the action of the

Court in setting aside sales based on the report of the Administrators. In

doing so, the Division Bench had relied upon the judgment of the Calcutta

High Court in ***Habibar Rahaman Vs. Saidannessa Bibi*** reported in ***ILR***

(1924) 51 Cal 331 and the opinion of ***Coke C.J. in Burrowes Vs. High***

Commission Court, 3 Bulst. 48, 53. Reliance was also placed on the

judgment in ***Freeman Vs. Tranah*** reported in ***1882 (12) CB 414.*** The

Hon'ble Supreme Court also had adopted the principle in ***Rao Shiva***

Bahadur Singh and another Vs. The State of Vindhya Pradesh reported in

AIR (1955) SC 446 and the judgment in ***Rias Ahmad Vs. State of U.P and***

others reported in ***(1999) 6 SCC 391.*** It has been the practice of this Court to

entertain the application or the suits under Section 92 with a prayer for sale of

the property in terms of Section 92(1)(f) for considerably long time now and

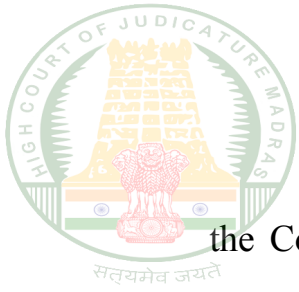


any deviation from such procedure, in our opinion, may not augur well for the

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18. We therefore, with due respect, conclude that the view of the Hon'ble Mr.Justice V.Parthiban to the effect that an application under Section 92(1)(f) at the instance of the Trusts or the Trustees is not maintainable cannot be sustained. No doubt, Section 7 of the Charitable and Religious Trusts Act, 1920 could also be invoked, but, the said provision would also suffer the same deficiency as Section 34 as pointed out by Hon'ble Mr.Justice K.Sampath and the Hon'ble Mr.Justice Senthilkumar Ramamoorthy in *A.Changiah and others* reported in *1997-3-LW-537* and *Swami Dayanandha Saraswathi Memorial Trust Vs. Sri Ramachandra Educational Trust* reported in *MANU/TN//3161/2020*.

19. In fine, we conclude that the application / suit under Section 92 seeking permission to sell Trust property would be maintainable under Section 92(1)(f) of the Code of Civil Procedure. We direct the Registry to require the learned counsel to re-file these applications under Section 92 of



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the Code of Civil Procedure. The Registry is also directed to place these

applications before the Hon'ble Judge dealing with the roster. We permit the

learned counsel to amend the provision of law under which these applications

are filed. The reference is **disposed of** as above.

(R.S.M.,J.) (R.K.M.,J.)

12.10.2023

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Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking order



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VERDICTUM.IN



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

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