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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 2<sup>ND</sup> DAY OF SEPTEMBER, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE RAVI V HOSMANI**

**MISCELLANEOUS FIRST APPEAL NO.8514 OF 2023 (CPC)**

**BETWEEN:**

1. SRI G.S. SUDHARSHAN,  
AGED 65 YEARS,  
S/O. LATE G. N. SRIRAMU,  
R/AT NO.14, S. B. ROAD,  
V. V. PURAM, BENGALURU - 560 004.
  2. SMT. AMBUNJAMMA,  
W/O. LATE SRI R. N. NARENDRANATH,  
AGED 69 YEARS,  
R/AT NO.17/1, PAPAIAH STREET,  
DODDA MAVALLI,  
BENGALURU - 560 004.
  3. SMT. MAMATHA B.V.,  
D/O. VENKATRAMA B.,  
AGED 53 YEARS,  
NO.42, PAPAIAH STREET,  
DODDAMAVALLI MARAMMA TEMPLE,  
BASAVANAGUDI,  
BENGALURU - 560 004.
- SRI B. V. SAMPATH,  
AGED 62 YEARS,  
S/O. B. M. VENKATARAMANAPPA,  
R/AT NO.24, ANNAPURNESHWARI NILAYA,  
SIDDEEOWDA STREET,  
DODDA MAVALLI,  
BENGALURU - 560 004.  
DEAD ON 7<sup>TH</sup> SEPTEMBER 2023.  
NO LRS ARE BROUGHT ON RECORD  
AND IS MENTIONED IN CAUSE TITLE  
HE WAS PARTY IN COURT BELOW





4. SRI V. MANJUNATH,  
S/O. P. VEERABHADRAPPA,  
AGED 55 YEARS,  
R/AT NO.69, MANJINNA BALLI,  
MAVALLI MAIN ROAD,  
NEAR LALBAGH WEST GATE,  
BENGALURU – 560 004.
  
5. SRI V. CHANDRASHEKAR,  
S/O. P. VEERABHADRAPPA,  
AGE 56 YEARS, R/AT NO.33/4,  
2<sup>ND</sup> FLOOR, KRUMBIGAL ROAD,  
NEAR LALBAGH MAIN GATE,  
BASAVANAGUDI,  
BENGALURU – 560 004.
  
6. SRI KAVIRAJA  
S/O. PUTTAMUDDAPPA,  
AGED 44 YEARS,  
R/AT NO.E-86, OLD NO.33,  
RANGAPPA STREET, NEAR LALBAGH,  
CHIKKA MAVALLI,  
BENGALURU – 560 004.
  
7. SRI S. SOMASHEKAR,  
S/O. LATE SHIVARAM,  
AGE 57 YEARS,  
R/AT NO.02, YELLAPPA STREET,  
CHIKKAMAVALLI,  
BENGALURU – 560 004.
  
8. SRI S. JAGANNATHA,  
S/O. LATE M. SRINIVAS,  
AGED 58 YEARS,  
R/AT NO.35/3, RAMAMURTHY ROAD,  
CHIKKAMAVALLI,  
BENGALURU – 560 004.
  
9. B. V. RAKESH S/O. VIJAY KUMAR,  
AGED 32 YEARS,  
NO.1B/25, NEW CROSS ROAD,  
CHIKKA MAVALLI,  
BENGALURU – 560 004.



10. SRI G. VENKATESH S/O. GOPAL,  
AGED 49 YEARS, R/AT NO.2,  
MUTTON STALL ROAD,  
DODDAMAVALLI,  
BENGALURU – 560 004.
11. J. PADMANABHA,  
S/O. M. GANESH MUDALIAYAR,  
AGED 42 YEARS,  
NO.1/A PAPAIAH STREET,  
DODDAMAVALLI,  
BENGALURU – 560 004.
12. N. P. SANTHOSH KUMAR,  
AGED 37 YEARS,  
A/O K /N PRABHU DEV NO.12 4<sup>TH</sup> CROSS,  
LALBHAGH FRONT ROAD,  
DODDAMAVALLI,  
BENGALURU – 560 004.

...APPELLANTS

[BY SRI M.R.RAJAGOPAL, SENIOR COUNSEL FOR  
SRI RAGHU PRASAD B.S., ADVOCATE (PH)]

**AND:**

1. GRAMA SEVA SANGHA TRUST  
OLD CORPORATION NO.25/A,  
SUSHEELA ROAD,  
(MARAMMA TEMPLE ROAD),  
CHIKKAMAVAHALLI,  
BANGALORE – 560 004.
2. SRI N. VENKATESH S/O. NAGAPPA,  
AGED ABOUT 78 YEARS,  
R/AT NO.58,  
MARAMAM TEMPLE ROAD,  
CHIKKAMAVAHALLI,  
BANGALORE – 560 004.
3. SRI M. UDAY SHANKAR,  
SON OF LATE H. MALLESHAPPA,  
AGED ABOUT 64 YEARS,  
R/AT NO.40,  
SIDDEGOWDA STREET,



DODDAMAVAHALLI,  
BANGALORE – 560 004.

4. SRI B. S. GOPALA KRISHNA  
SON OF R. SRINIVASAPPA,  
AGED ABOUT 68 YEARS,  
R/AT NO.1/A, BANASHANKARI  
TEMPLE ROAD, DODDAMAVAHALLI,  
BANGALORE – 560 004.
5. SRI B. BANASHANKARAPPA  
SON OF EARAPPA,  
AGED ABOUT 86 YEARS,  
R/AT NO. 26 KEMPANNA STREET,  
DODDAMAVAHALLI,  
BANGALORE – 560 004.
6. SRI S. RAMACHNADRAPPA  
SON OF K. SRINIVASAPPA,  
AGED 71 YEARS,  
R/AT NO.25,  
SRI MARAMMA TEMPLE STREET,  
DODDAMAVAHALLI,  
BANGALORE – 560 004.
7. SRI M. NAGARAJ  
SON OF MUNIRAMAIAH,  
AGED 68 YEARS, R/AT NO.26,  
MUDDALAPPA CROSS,  
DODDAMAVAHALLI,  
BANGALORE – 560 004.
8. SRI M. VISHWANATH  
SON OF MUNISHAMAIAH,  
AGED 65 YEARS, R/AT NO.415,  
MARUTHI LAYOUT, BELTHUR,  
KADUGODI POST,  
BANGALORE – 560 067.
9. SRI B. A. KRISHNAMURTHY  
SON OF ABBAIAPPA,  
AGED 64 YEARS, R/AT NO.9,  
PAPAIHAH STREET, DODDAMAVAHALLI,  
BANGALORE – 560 004.



10. SRI MUDLAIHAH SON OF HANUMAIHAH,  
AGED ABOUT 81 YEARS,  
R/AT NO.596, 7<sup>TH</sup> MAIN,  
TOM CROSS, 3<sup>RD</sup> STAGE,  
J. P. NAGAR, BANGALORE – 560 078.
  
11. SRI B. M. CHELUVARAJU,  
S/O. B. N. MARAPPA,  
AGED 63 YEARS, NO.3,  
APPAIANNA STREET,  
DODDAMAVALLI,  
BENGALURU – 560 004.
  
12. STATE BANK OF INDIA,  
SAJJAN RAO CIRCLE,  
P. B. NO.423, NO.116,  
KAVI LAKSHMISHA ROAD,  
BANGALORE.
  
13. KARNATAKA BANK,  
R. V. ROAD BRANCH,  
R. V ROAD,  
BASAVANAGUDI,  
BANGALORE.

...RESPONDENTS

[BY SRI R.S.RAVI, SENIOR COUNSEL FOR  
SRI B.ROOPESHA & SRI SANDEEP M.K., ADVOCATES FOR R2 TO R9  
AND R11 (PH);  
SRI AJITH KALYAN, ADVOCATE FOR R10 (PH);  
NOTICE SERVED TO R1, R12 AND R13]

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER ORDER  
43 RULE 1(r) OF THE CPC, AGAINST THE ORDER DATED 03.11.2023  
PASSED IN MISC. NO.346/2022 ON THE FILE OF THE PRINCIPAL  
CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DISMISSING THE  
PETITION FILED U/S.92 OF CPC.

THIS MISCELLANEOUS FIRST APPEAL, HAVING BEEN HEARD  
AND RESERVED FOR JUDGMENT ON 25.07.2024, THIS DAY,  
THROUGH VIDEO CONFERENCE, THE COURT PRONOUNCED THE  
FOLLOWING:



### **CAV JUDGMENT**

Challenging order dated 03.11.2023 passed by Principal City Civil and Sessions Judge, Bengaluru, in Misc.no.346/2022 under Section 92 of Code of Civil Procedure, 1908 ('**CPC**' for short), this appeal is filed.

2. Sri M.R.Rajagopal, learned Senior Counsel appearing for Sri Raghu Prasad B.S., advocate for appellants submitted appeal was by petitioners in Misc.no.346/2022 filed under Section 92 of **CPC** praying for grant of leave to institute a suit for removal of trustees, appointment of new trustees, administrator and for setting a scheme in respect of respondent no.1, namely Grama Seva Sangha Trust ("**Trust**" for short), a public trust managing Dodda Mavalli Bilsilu Maramma Temple ('**temple**' for short) situated at no.12, Mavalli main road, Mavalli, Bengaluru.

3. It was submitted, petitioners were residents of Mavalli village and devotees of deity 'Maramma' and had concern for temple and its properties. It was submitted most of respondents no.2 to 11 were leading luxurious life even



without any avocation, job or business, which clearly signified that they were misusing funds of temple for their own benefits. Hence, with intention to protect temple and its properties, petitioners had sought leave under Section 92 of CPC to file a representative suit. It was submitted, though petitioners had alleged misuse of funds and properties of trust, Trial Court refused to grant leave merely on ground that petitioners had bald allegations without production of documents.

4. It was submitted when allegations made in plaint were with sufficient particulars and plaint was appended with documents, refusal to grant leave would be uncharitable and indicate non application of mind. It was submitted other reason assigned that petitioners were espousing personal cause was without any basis or justification. Nowhere in plaint or petition, petitioners had expressed any personal grievances and had not sought any personal reliefs. It was submitted, reason assigned by Trial Court was by reference to averments in written statement/affidavit and therefore contrary to law.



5. It was submitted examination of merits of suit was not contemplated at stage of grant of leave for filing suit under Section 92 of CPC. Therefore, refusal to grant leave would be contrary to law. To support said submissions, reliance was placed on decision of Hon'ble Supreme Court in case of **Swami Paramatamanand Saraswati v. Ramji Tripathi**, reported in **(1974) 2 SCC 695** held as follows :

*"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 : 1972 WLN 157 : 1972 Raj LW 182] , Sohan Singh v. Achhar Singh [AIR 1968 P&H 463 : ILR 1968 Punj 359 : 1968 Cur LJ 480] and Radha Krishna v. Lachmi Narain [AIR 1948 Oudh 203 : 1948 OWN 179] . 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 Section 92".*

6. In so far as conditions required to be satisfied while seeking leave to institute suit under Section 92 of CPC, reliance was placed on ratio in **Ashok Kumar Gupta v.**





***Sitalaxmi Sahuwala Medical Trust***, reported in **(2020) 4 SCC 321**, wherein after referring to various earlier decisions, it was held as follows:

*"12. Three conditions are, therefore, required to be satisfied in order to invoke Section 92 of the Code and to maintain an action under the said section, namely, that:*

- (i) the Trust in question is created for public purposes of a charitable or religious nature;*
- (ii) there is a breach of trust or a direction of court is necessary in the administration of such a Trust; and*
- (iii) the relief claimed is one or other of the reliefs as enumerated in the said section.*

Consequently, if any of these three conditions is not satisfied, the matter would be outside the scope of said Section 92."

7. It was submitted, in a suit filed for framing a scheme for administration of public trust, earlier removal of petitioners from Board of Trustees, by itself would not color relief sought as *personal*. Relying on decision of High Court of Madras in case of ***Sengunthar Charitable Trust v. R. Manickam***, reported in **2012 SCC OnLine Mad 2368**, it was submitted at stage of granting leave to institute suit, issuance of notice to defendants was not mandatory, if it was



likely to lead to unnecessary delay. Referring to decision in case of ***Mulla Gulam Ali & Safiabai D. Trust v. Deelip Kumar & Co.***, reported in ***(2003) 11 SCC 772***, it was submitted, if trust was not administered properly and objects of trust not carried out, for benefit of public, resort to Section 92 of CPC for having a scheme framed for proper administration of trust by displacing trustees would be justified.

8. It was submitted, High Court of Allahabad in ***Devendra Kumar Mishra Vs. Ramendra Kumar and others***, reported in ***AIR 2006 All. 82***, had held reference to deed of trust for purpose of giving finding about nature of trust whether public or private was held to be unsustainable. Therefore, when at time of consideration of application for leave to file suit, reference to any material beyond plaint was prohibited, reason assigned by Trial Court that in instant case, application was not accompanied with documents would be contrary to law.

9. It was submitted, respondent no.10, who was one of trustees had filed objections stating that none of other



trustees were privy to accounts of trust or were permitted to look into them and that same were exclusive to Secretary and Treasurer. He had also stated others had not seen statement from Bank about deposits and donations given by disciples of temple and that documents/statements produced by trustees were fabricated and false statements, produced for first time before Court. Said respondent had in fact expressed no objection for appointment of receiver or an administrator to trust for efficient management and administration of temple. Such being case, refusal to grant leave was highly irregular and called for interference.

10. On other hand, Sri R.S.Ravi, learned Senior Counsel appearing for Sri Roopesha and Sri Sandeep M.K., advocates for respondents no.2 to 9 and respondent no.11, sought to oppose petition. At outset, it was submitted, in their written statement, defendants had pointed out that prior to 31.10.2021, petitioner no.1 and husband of petitioner no.2 were appointed as co-members of trust and as such participated in administration/management of trust. They insisted on being made trustees. On refusal by



Trustees, they began making baseless allegations against trust and trustees. When it was found that they were collecting money from public, they were removed from trust on 31.10.2021, after issuing show cause notice. Same was referred to in plaint. To wreck vengeance against removal, petitioners no.1 and 2 had joined few others and filed present plaint/petition. Thus, it was clear that suit was for espousal of personal or private interest and hence refusal of leave to file suit was justified.

11. It was submitted, though there was prayer for removal of trustees, petitioners had not made allegations against each of trustees but only made bald allegations against President, Vice President and Secretary of Trust. Petitioners had also not sought any relief for being included in management of trust. It was submitted petition under Section 92 of CPC was totally bereft of any material with regard to basic requirement for such petition namely, breach of Trust, by relying on decision in case of ***Harendra Nath Bhattacharya v. Kaliram Das***, reported in ***(1972) 1 SCC 115***. Hence, trial Court rightly refused leave.



12. It was submitted, contents of plaint (upto para-15), were mainly to support claim for removal from trusteeship. But there was no specific prayer for removal from trusteeship. It was submitted, audited balance sheets of trust, income tax returns with acknowledgement from year 2011 to 2022, income and expenditure statement etc., produced along with written statement clearly established that there was no mismanagement of funds of trust or its properties.

13. It was submitted, in ***Vidyodaya Trust v. Mohan Prasad R***, reported in ***(2008) 4 SCC 115***, Hon'ble Supreme Court had referred to decision in ***Swami Paramatmanand's case*** (supra), it was held, object of amendment to Section 92 of CPC by inserting sub-section (3) was to protect public trusts from being subjected to harassment by frivolous suits. It was further held, said amendment, required Trial Court to analyze averments in plaint to find out main object behind suit. If it was for vindication of individual or personal rights, same would be beyond scope of Section 92 of CPC. Only in case plaintiffs do not sue for vindication of right of public,



application for leave could be considered. It was observed, object or purpose of suit was determining factor and Court has to go beyond relief sought.

14. Sri Ajit Kalyan, learned counsel appearing for respondent no.10 referring to objections filed submitted, respondent no.10 was nominated as trustee in year 2003. It was stated therein that he was asked by Councilor, who claimed to be Secretary of Trust to attend meetings, to count money in hundi and put his signature. It was further stated, he was unaware, whether subsequently hundi amount was deposited in Bank or otherwise and likewise incase of rents collected from Choultry. It was stated that said information was privy only to Treasurer and Secretary and nobody else had seen accounts or accounting and in meetings, they were called only to affix their signatures without permission to raise any questions. It was stated in year 2011, trust would be formed and respondent no.10 would also be made one of trustees and believing that he was rendering noble service to temple, he had agreed to it. It was submitted, taking note of



above facts and circumstances, appropriate orders may be passed.

15. In reply, learned Senior Counsel for petitioners submitted, none of contentions of respondents established any personal interest of petitioners. In-fact, assertions by respondent no.10, one of trustees amounted to admission of certain allegations. It was submitted, Section 92 of CPC required allegations to be stated in petition. It was submitted paras-14 to 18 disclosed that respondents no.2 to 12 had by claiming themselves to be nominated, come together and registered trust deed, nominating themselves as trustees for life and designating themselves as President, Vice President, Secretary, Joint Secretary and Treasurer. Same was by overriding original persons who had executed original trust for utilization of temple fund and management of temple properties for benefit of temple and devotees. It was further alleged that persons who claimed themselves as trustees had found that temple got large followers/devotees who contributed very generously to temple and a Kalyana Mantapa was constructed, had permitted vendors to trade on



temple property, many of whom were paying rents daily or monthly basis and even amount collected in Hundies inside temple totaled to several Crores of rupees a year. Further open space in an around temple was given for parking by collecting parking charges.

16. Even MPs and MLAs had contributed lacks of rupees during annual fair etc. It was also stated though several attempts were made calling upon office bearers to render accounts (including filing applications under RTI Act and issuing legal notices), they were orally abused and denied information. Attention was drawn to specific and unequivocal assertion that majority of defendants no.2 to 11 had no avocation but were leading lavish life apparently by misusing funds of temple, by playing fraud on public as well as temple and its properties, would constitute specific assertion about breach of trust as well as allegation of misuse of trust. Such being case, Trial Court was not justified in refusing application.

17. In response, learned Senior Counsel for respondents no.2 to 9 and 11 submitted fact that neither





petitioners nor respondent no.10 had taken any action in case of failure by answering respondents to render account, until after removal of petitioner no.1 and husband of petitioner no.2 indicated that actual cause being agitated was against removal and claim for being included as trustees. It was submitted even respondent no.10 had not taken any action and his pleadings were only for purposes of petition which lacked bonafide. Said aspect having been discerned by Trial Court after meticulous examination of pleadings, in tune with requirements of law. No case of perversity or material irregularity having been made out, appeal lacked merit and sought for its dismissal.

18. Heard learned counsel and perused impugned order and record.

19. From above, it is seen petitioners are challenging refusal to grant leave to file representative suit against trust on ground that order passed was contrary to material on record. Therefore, point that arises for consideration is:



*"Whether order passed by Trial Court refusing to grant leave to file suit under Section 92 of CPC calls for interference?"*

20. As per petitioners, Misc.no.346/2022 is filed on ground of breach of trust and directions of Court are necessary for administration of Trust; they are also seeking for removal of trustees under sub-clause (a), for appointment of new trustees under sub-clause (b), settling of scheme under sub-clause (g) and appointment of administrator under sub-clause (h) of Section 92 (1) of CPC.

21. As per respondents no.2 to 9 and 11, petition lacks specific plea about breach of trust and filed in private interest as it was after removal of petitioner no.1 and husband of petitioner no.2, for which leave cannot be granted.

22. While passing impugned order, learned trial Judge adverted to pleadings and contentions of parties, framed points for consideration and passed reasoned order. It firstly observes, dispute probably arose in year 2021 after removal of petitioner no.1 from post of co-member of trust, by referring to letter dated 07.10.2021 proposing to take action



and letter dated 13.10.2021, intimating removal from co-membership. Further, present system of management was in existence from 2011 and petitioners failed to point out to any specific instance of misuse of funds or malpractice committed by trustees.

23. It also observes admission by respondent no.10 was without substance as he had not taken any action despite being trustee since 2003. And referring to objections of respondents no.2 to 9 and 11 that accounts were being maintained properly and audited from time to time, it draws adverse inference against petitioners for failing to come up with specific allegations against each of trustees. After specifying mandatory conditions for invoking Section 92 of CPC, it observes that to satisfy Court *bonafide*, petitioners were required to place *prima facie* material to probabalise their allegations about breach of trust. It concludes, averments/allegations made only against President, Vice President and Secretary of Trust, indicated petition was for agitating personal grievances than for rights of public.



24. Manner of consideration of application under Section 92 of CPC has been dealt with in several oft referred decisions. In **Swami Paramatamanand Saraswati's** case (supra) Hon'ble Supreme Court was considering legality of order of High Court affirming grant of leave to file suit by persons who claimed to be interested in affairs of Math. It was held prayer sought for declaration that Krishnabodhashram was validly installed as Shankaracharya of Math, was for vindication of private interest. It held alternative prayer for appointing some other person as Shankaracharya was with intention to bring suit within scope of Section 92 of CPC, as it was neither backed by formal pleading about his incompetence nor by arraying him as party. *It held Court should not only refer to reliefs sought but read entire plaint to ascertain real intention behind filing of suit.*

25. In **Ashok Kumar Gupta's** case (supra), Hon'ble Supreme Court referred to various decisions interpreting scope and purpose of Section 92 of CPC. It held, for seeking leave three main conditions had to be satisfied namely (i)



Trust in question is created for public purposes of a charitable or religious nature;(ii) there is breach of trust or a direction of court is necessary in administration of such Trust; and (iii) relief claimed is one or other of reliefs enumerated in Section 92 of CPC. *It held, even if any one of conditions were not satisfied, suit would fall outside scope of Section 92 of CPC.*

26. In ***Sengunthar Charitable Trust's*** case (supra), High Court of Madras, held order granting leave under Section 92 of CPC was administrative in nature and not either judicial or quasi-judicial and *issuance of notice to Defendants was not mandatory*. In ***Mulla Gulam Ali's*** case (supra) Hon'ble Supreme Court held, if trust is not administered properly and object of trust not carried out, public resort would lie under Section 92 of CPC.

27. In ***Vidyodaya Trust's*** case (supra), Hon'ble Supreme Court took note of changes brought about by insertion of sub-section (3) in Section 92 of CPC by amendment of year 1976. It held, *intention of legislature was to shield Public Trusts from frivolous litigation and for*



*said purpose, Court considering application for leave was required to find out main or dominant purpose of filing suit, by not only referring to reliefs sought but entire plaint.*

28. Even in **Harendra Nath Bhattacharya's** case (supra), it was held, primarily plaint is to be looked at for deciding question of applicability of Section 92. A suit under Section 92 is of a special nature, which presupposes existence of a public religious or charitable trust, wherein suit can proceed only on allegation of breach of trust or directions from Court were necessary for administration of trust, and if prayer for one of reliefs specifically mentioned therein were sought.

29. Sum and substance of ratio in above decisions is that Court considering application for leave to file suit under Section 92 of CPC has to ascertain whether plaintiffs have pleaded that (i) Trust in question was created for public purposes of a charitable or religious nature; (ii) there is a breach of trust or a direction of court is necessary in administration of such a Trust; and (iii) relief claimed was one or other of reliefs enumerated in said section. It would



also require to determine real or dominant intention in filing suit, whether for protection of rights of public in Trust or vindication of personal rights, by referring not only to reliefs but entire plaint averments. Same was mandatory and could be carried out even before issuance of notice to defendants. Above exercise was akin to considering application under Order VII Rule 11 of CPC.

30. This Court has in ***C.R. Shivananda v. H.C. Gurusiddappa***, reported in ***ILR 2011 Kar 4624*** elucidated legal position as follows:

*"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.**





*First 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 whom they are interested, then the suit would be outside 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.”*

*(emphasis supplied)*

31. When entire plaint averments are examined, it is seen plaintiffs have succinctly narrated manner of creation of



Public Trust. In para-14, they have stated that in year 2011, defendants no.2 to 12 came together and began claiming themselves as trustees, without being appointed by any one. They registered Supplementary Trust Deeds, nominating themselves as trustees for life and appointed themselves as President, Vice-President, Secretary, Joint-Secretary and Treasurers. In paras-15 to 25, it is stated that present office bearers collect various amounts without issuing receipts and rendering accounts. It is also stated that officer bearers had constructed Kalyan Mantap on temple property and permitted many vendors to trade on temple property by paying daily and monthly rents which total to several Crores of rupees. They have also stated that no accounts are rendered and when same were demanded, such persons were shouted at. Sum of them who were nominated as co-members were immediately removed. In para-26, plaintiffs have specifically stated that to their knowledge, majority of defendants no.2 to 11 are without any avocations, job or business, but were leading lavish life clearly signifying that they were misusing funds of temple for their own benefits by



playing fraud on public as well as temple and its properties. In preceding paragraphs they had also stated that purpose of trust was for utilization of temple fund and properties for benefit of temple and fair that was conducted annually in name of temple.

32. Said assertions would *prima-facie* appear sufficient to conclude that Trust was Religious and Charitable nature and about allegation of breach of trust. As noted above, reliefs sought for are due to breach of trust directions of Court were necessary for administration of Trust. Prayer for removal of trustees would fall within sub-clause (a) of Section 92 (1). Likewise, prayer for appointment of new trustees would fall under sub-clause (b); prayer for settling of scheme under sub-clause (g) and appointment of administrator under sub-clause (h) of Section 92 (1) of CPC. Therefore, reliefs sought for would be amongst those stipulated in Section 92 of CPC. Therefore, all three requirements held mandatory by Courts appear existing.

33. Such being case, observation by trial Court that plaintiffs failed to produce *prima facie* material to probabilize



contentions, reference to assertion of defendants in objections about accounts of Trust being audited would be contrary to law. Especially when examination of plaint for above purposes is at nascent stage of suit. And Court would be required to keep in mind that plaint need not be encyclopedia of all facts [***Indra Raja (Dr.) v. John Yesurethinam, 2011 SCC OnLine Mad 2048***] and stage for substantiating allegations in plaint would be in trial. Therefore, conclusion of trial Court on this count would be untenable.

34. Further, when there is no requirement either prescribed or laid down in any decision that plaintiffs would be required to make allegations against each of trustees, assigning said reason by learned trial Judge, would also be contrary to law. Yet another factor that requires to be taken note of is that purpose of Section 92 is to '*regulate*' process of seeking vindication of rights of public in Public Trusts of Religious or Charitable nature and '*not to prohibit*' it. Nowadays public trusts are holding/managing resources of enormous value both in terms of monetary value or beliefs.



While definitely requiring protection from unnecessary and frivolous interference by way of litigation, regulation in nature of prohibition would have an equally undesirable result, which cannot have been intention of legislature while enacting Section 92 of CPC.

35. Further, when there are several plaintiffs who have joined in filing suit, refusal to grant leave by pointing out disability which may apply to one or few of them would also not be proper. Likewise, merely on ground that one or some of plaintiffs had failed to take action against breach earlier cannot be ground to reject application, especially when suit under Section 92 would be in nature of representative suit and refusal to grant leave would likely bar fresh suit [***M.K. Rappai v. John***, reported in **(1969) 2 SCC 590**].

36. As this would be a drastic consequence, it would be appropriate to hold that in case of doubt, benefit at stage of grant of leave should go to applicants. Therefore, unless trial Court finds any material to arrive at conclusion that suit is vexatious normally leave should not be denied on hyper-



technical or oversensitive. Similar view is taken in **Vellore Institute of Technology v. G.V. Sampath**, reported in **2015 SCC OnLine Mad 3977**:

*"31-11. I am of the opinion that **if prima facie this Court finds that there is allegation with regard to breach of trust and a direction of this Court is necessary, that would suffice to grant leave to sue at the initial stage.** Only when there is a strong material before this Court to come to a conclusion that the suit is vexatious, then the Court can deny the leave already obtained, otherwise the leave cannot be rejected at the threshold stage. So far as the present case is concerned, from a reading of averments in the plaint and from the other materials, I find that there is an existence of a public Trust. There is allegation of breach of trust and a direction of this Court is necessary to set right the administration of the Trust. In the present case, two clauses are considered for grant of leave to sue under Section 92 of CPC; 1) a part of subject-matter of is within the jurisdiction of this Court and as such this Court gets jurisdiction to entertain the suit under Section 92 of CPC; 2) the allegations made in the plaint show that a direction of this Court is necessary to set right the administration of the Trust. The contentions made by the learned senior counsel for the 2nd defendant may be his defence which could be considered at the time of trial. Hence, I am of the opinion, a prima facie case has been made out to grant leave under Section 92 of CPC. Therefore, leave cannot be revoked.*

*(emphasis supplied)*

37. Consistent ratio that after recording evidence, if it is found that plaintiff failed to establish any of necessary



factors, then suit must be dismissed, provides sufficient protection to Trust. Such a view would also be in tune with consistent view that appreciation of application for leave under Section 92 of CPC is to be considered in manner similar to an application under Order VII Rule 11 of CPC.

38. In view of above discussion, point for consideration is answered in affirmative. Consequently, following:

**ORDER**

- i. Appeal is allowed. Impugned order dated 03.11.2023 passed by Principal City Civil and Sessions Judge, Bengaluru, in Misc.no.346/2022 is set-aside.
- ii. Misc.no.346/2022 stands allowed, with no order as to costs.

**Sd/-  
(RAVI V HOSMANI)  
JUDGE**

EM.  
CT-ASC  
List No.: 19 Sl No.: 1