

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.S.SATHEESACHANDRAN

FRIDAY, THE 17TH JULY 2009 / 26TH ASHADHA 1931

CRP.No. 1076 of 2007(B)

OP.1/2007 of SUB COURT, PERUMBAVOOR

REVISION PETITIONER(S): 3RD RESPONDENT:

VIJI P.ISSAC, S/O.ISSAC, PONNAL HOUSE,  
OORAMANA KARA, MEMURI VILLAGE, MUVATTUPUZHA  
TALUK.

BY ADVS. MR.DINESH R.SHENOY,  
MR.G.G.ABHILASH.

RESPONDENT(S): (PETITIONERS 1 TO 3 & RESPONDENTS 1, 2 & 4):

1. PASTOR WILSON JOSEPH, S/O.K.C.JOSEPH,  
KARIMAKKAL HOUSE, MELUKAVUMATTOM P.O.  
KOTTAYAM DISTRICT, NOW RESIDING AT H.283,  
BETA -II, GREATER NOIDA, G.B.NAGAR (DISTRICT),  
U.P - 201 306.
2. PASTOR JOMON JOSEPH, S/O.K.C.JOSEPH,  
-DO- -DO-
3. T.J.JOHN, S/O.JOHN,  
KURUVITHADATHIL HOUSE, MULLAMKUTHI, KALIYAR,  
THODUPUZHA TALUK, IDUKKI DISTRICT, NOW RESIDING  
AT II B, 18 DAWSAN VIHAR, THAIKKOODAM, VYTTILA,  
ERNAKULAM.
4. GOOD NEWS FOR ASIA, A RELIGIOUS TRUST  
WITH ITS REGISTERED OFFICE AT 8/90,  
PUTHENCROUZ, REP. BY MANAGING TRUSTEE  
K.JACOB MATHAI, S/O.LATE K.V.JACOB, 106 F,  
VRINDAVAN APARTMENTS, VYTTILA, KOCHI.

Kss

..2/-

**CR.P.NO.1076/2007**

**5. REV.K.JACOB MATHAI, S/O.LATE K.V.JACOB,  
106 F, VRINDAVAN APARTMENTS, VYTILA, KOCHI.**

**6. MANOJ MATHEW, S/O.MATHEW,  
THEVARANIYIL HOUSE, KOOTHATTUKULAM P.O.,  
MUVATTUPUZHA TALUK.**

**R1 & R2 BY ADVS.MR.K.S.HARIHARAPUTHRAN,  
MR.GEORGE MATHEW.**

**R3 BY ADVS.MR.M.D.SASIKUMARAN,  
MR.K.S.HARIHARAPUTHRAN,  
MR.P.J.JOSEPH,  
MR.GEORGE MATHEW,  
MR.SUNIL KUMAR A.G.**

**R4 & R5 BY ADVS.MR.JOBY JACOB PULICKEKUDY,  
MR.ANIL GEORGE,  
MR.SARITHA V.A.**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 30/06/2009, THE COURT ON 17/07/2009 PASSED THE  
FOLLOWING:**

*Kss*

**S.S.SATHEESACHANDRAN, J.**

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**C.R.P.No.1076 of 2007 - B**  
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**Dated this the 17<sup>th</sup> day of July, 2009**

**ORDER**

The revision is filed challenging the leave granted to respondents 1 to 3 to institute a suit under Section 92 CPC against the petitioner and respondents 4 to 6, among whom respondent No.4 is stated to be a public religious trust. The revision petitioner was the third counter petitioner in the petition for leave which is numbered as O.P.No.1/2007 on the file of the Sub Court, Prumbavoor. Parties are hereinafter referred to as petitioner and respondents as ranked in the above O.P. before the court below.

2. Petitioners in the O.P. applied for leave under Section 92 CPC to institute a suit in respect of the fourth respondent, a public religious trust, setting forth a case that the trust has been created with the objective of spreading the teachings of Jesus Christ and it is governed by the provisions of a trust deed executed on 14.4.1987. Claiming to be the beneficiaries of that trust leave was applied for to sue the respondents. It was

challenged jointly by the third and sixth respondents contending that the O.P. was not maintainable. It was further contended that the reliefs claimed in the proposed suit had already been agitated by some others and found against in a previous suit, O.S.No.231/2002 before the Sub Court, North Paravoor. They also contended that the present petitioners who applied for leave, are close relatives of the plaintiff in the above suit and, further, the first respondent is not a public trust.

3. The first respondent, public trust, was represented by its managing trustee, the second respondent. The managing trustee, the second respondent alienated the immovable properties by way of registered sale deeds in favour of respondents 3 and 4, and thus committed gross abuse of his office of trust and rendered himself unfit to hold the office of trustee, according to the petitioners, who claimed that they are beneficiaries of the trust having sincere and real interest in its affairs. The alienation of the trust properties effected by the managing trustee is liable to be declared as invalid treating it as ab initio void and for that relief a suit has to be instituted, was the case canvassed by the petitioners seeking leave under

Section 92 CPC.

4. Other than marking of the trust deed as Annexure A1, no other material was placed before the court to determine the grant of leave under Section 92 CPC for instituting the suit, which was disputed. Learned Sub Judge after hearing both sides and examining A1 trust deed, formed a preliminary view that the deed disclosed that the first respondent is a public trust created for preaching Bible to the public at large. In taking a view that the allegations raised in the plaint alone need be looked into to determine the question of leave under Section 92 CPC, negating the objections raised by the third and sixth respondents leave was granted to institute the suit. Order of the court granting the leave is impeached in the revision contending that it suffers from material irregularity and jurisdictional infirmity in not properly and correctly examining the question of leave with reference to the reliefs that can be claimed in a suit filed under Section 92 CPC.

5. Inviting my attention to the reliefs claimed by the petitioners in the proposed suit after obtaining leave which is

stated in the O.P., learned counsel for the 3<sup>rd</sup> respondent (review petitioner) submitted that the reliefs sought in the suit is outside the scope of Section 92 CPC. No relief other than a declaration that the alienation made by the managing trustee is not binding on the trust and it is ab initio void, is claimed as a relief in the proposed suit is pointed out by the counsel to contend that such a suit is not maintainable under Section 92 CPC. To buttress the argument so canvassed, the learned counsel relied on **Bishwanath and Another v. Sri Thakur Radha Ballabhji and Others** (AIR 1967 SC 1044), **Johnson D. Po Min and Another v. U Ogh and Others** (AIR 1932 Rangoon 132) and **Umasanker and Others v. Salig Ram and Others** (AIR 1975 Allahabad 36). So much so, it is contended that the leave granted by the court below in the nature of the relief claimed by the petitioners is unsustainable under law. On the other hand, the learned counsel for the petitioners (respondents 1 to 3 in the revision) contended that there is no merit in the challenge raised against the order of the court below. The relief of declaration as sought for in the proposed suit is sufficient to bring it within the ambit of Section 92 CPC where it is specifically alleged that the managing

trustee had acted prejudicially against the interest of the trust in effecting alienation of the trust properties in favour of strangers, according to the learned counsel. A suit filed seeking such a declaration as against the managing trustee and the alienees, according to the learned counsel, squarely comes within the clauses c, d, e and h of subsection (1) of Section 92 CPC. Reliance is placed by the counsel in **Pazhukkamattom Devaswom and Others v. Kunju Muhammed** (2005(3) KLJ 125) to contend that the proposed suit seeking relief of declaration as stated above comes within the ambit of Section 92 CPC.

6. The reliefs claimed in the proposed suit to be instituted by the petitioners, after obtaining leave as spelt out in the original petition are as hereunder:

- "a) *Vesting the scheduled properties A and B in the first defendant trust finding that sale deed Nos.5720/97, 996/1/2003 and are invalid and ab initio void.*
- b) *To allow to realise the cost of the proceedings.*
- c) *Such other reliefs, that may be urged at the time of hearing which are deemed fit and proper in the facts and circumstances of the case".*

We need look into only the first relief by which a declaration is sought for that the sale deeds executed by the managing trustee and later alienations thereunder to others in respect of immovable properties which are alleged to be owned by the public trust have to be declared as not binding on the trust treating them as ab initio void. A declaratory decree so sought for, whether comes within the ambit of Section 92 CPC, is the question posed for consideration.

7. In a suit filed under Section 92 CPC, there must be a prayer for one or other reliefs as specifically mentioned in that Section. If only there is such a relief then only it can be said that the suit is filed in conformity with the provisions of Section 92. In **Harendra Nath Bhattacharya and Others v. Kaliram Das** (dead) by his legal representatives and Others (AIR 1972 SC 246), apex court has held thus:

*"In the suit, however, there must be a prayer for one or other of the reliefs that are specifically mentioned in the Section. Only then the suit has to be filed in conformity with the provisions of Section 92 CPC".*

That was a case where a challenge raised that the relief claimed



in the suit, which was of a declaratory in nature, fell under Section 92 CPC was repelled holding that the declaration sought for would not attract the applicability of Section 92 CPC. Section 92 CPC envisages a suit 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. But the suit must be for a decree in any of the following reliefs:

- "(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) Authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;*

*(g) Settling a scheme; or*

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

8. Evidently, the relief sought for by the petitioners in the proposed suit to declare that the properties alienated under sale deed executed by the managing trustee and, later, by the the alienees thereunder is not binding and vested with the trust treating such sale deed as ab initio void, is outside the scope of Section 92 CPC. In **Johnson D. Po Min and Another v. U Ogh and Others** (AIR 1932 Rangoon 132) it has been held thus:

*“The plaintiffs in a suit framed under Section 92 are not entitled to claim against strangers to the trust*

*either a declaration of title or possession or any other relief; and a suit under Section 92 in which a claim for relief against strangers to the trust is added to a claim for relief which the court is competent to decree in such a suit entails a clear misjoinder both of parties and causes of action and unless the plaint is amended the suit cannot be sustained. Section 92 is enacted to provide means for obtaining the directions of the court in connexion with matters relating to the administration of the trust and for exposing the malpractices of defaulting or fraudulent trustees and issues relating to the rights of third parties are outside the scope of a suit brought under Section 92. The strangers to the trust, consequently are not proper or necessary parties to a suit under Section 92 and in such a suit the plaintiffs who have wrongly impleaded third parties cannot pray in aid the provisions of Order I Rule 3 or Order I Rule 10”.*

In the case covered by the above decision adding of strangers to the trust and seeking a declaration or any other relief coupled with the relief covered by Section 92 CPC in a suit instituted under that Section was frowned upon and held to be not maintainable; but, in the present case, the situation is more worse where the only relief sought for is not covered by Section

92 CPC. The only relief sought for is a declaration binding on the strangers, which is not covered by any of the reliefs enumerated under subsection(1) of Section 92 CPC.

9. The learned counsel for petitioners has relied on **Pazhukkamattom Devaswom and Others v. Kunju Muhammed** (2005(3) KLJ 125) to sustain the impugned order contending that the mismanagement of the trust by the managing trustee resulting in deprivation of the trust properties is impeachable in a suit under Section 92 CPC to secure the interests of the trust and a declaration sought in respect thereof against the managing trustee is equally binding on any person who claimed under it including the alienees who claimed trust properties by way of sale deed executed by the managing trustee prejudicially to the office of trustee. Going through the above decision, it is seen, an incidental relief coupled with the main relief for settling a scheme for the proper management and administration of a temple and its property, which was claimed as a public trust, that alienation of trust properties effected by a delinquent trustee is binding upon the lessees of such trustees was considered in that case. In that context it was held a

declaration to the effect that the lessee of a delinquent trustee who continue to be so on transfer made by such trustee is bound by the orders/direction as a person claiming under the delinquent trustee. In arriving at such a conclusion, taking note of the main relief claimed in the suit, which was strictly in accordance within the scope and ambit of Section 92 CPC, this Court held that the declaration sought for as against the lessee of the trustee squarely fell within Section 92 (1)(h) of the Code. In forming such a conclusion this Court further observed that the powers under clause (h) of Section 92 obviously has to be read ejusdem generis with the clauses that preceded it. In that context, it may be appropriate to look again at clause (h) of Section 92 CPC, which reads thus:

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

In the present suit the only relief claimed is a declaration as to vesting of the properties covered by the sale deed executed by the managing trustee and his alienees in the trust and nothing more. It is not a further or/other relief coming under the scope of Section 92 CPC. Further or other relief covered under Section

92(h) has to be read along with the reliefs claimed under clauses (a) to (e) of Section 92 and it should not be of a character of an entirely different one from those specifically mentioned in the Section.

10. In **Kalyana Venkataramana Aiyangar and another v. Kasturi Ranga Aiyangar** [AIR 1917 Madras 12 (FB)] it has been held thus:

*"The expression 'granting such further or other relief as the nature of the case may require' must be read along with the specified reliefs and the reliefs that can be granted under the general clause should not be of a character different from those expressly mentioned."*

In **Pazhukkamattom Devaswom and Others v. Kunju Muhammed** (2005(3) KLJ 125) it has been pointed out that the relief under clause (h) of subsection(1) of Section 92 CPC has to be read ejusdem generis with the clauses which preceded it. Viewed in that angle also the relief claimed by respondents 1 to 3 in the proposed suit, a declaration as to vesting of the trust properties alienated by the managing trustee by sale deed, and, later by his alienees, treating them as not binding on the trust,

the solitary relief claimed in the suit, does not come within the scope of further or other relief under clause (h) or of any of the clauses that preceded it in subsection (1) of Section 92. That being so, the irresistible conclusion follows that the suit in which a declaration as above is sought for is outside the scope of Section 92 CPC and as such the leave granted by the court under the impugned order is unsustainable under law.

The order granting leave by the court below is quashed and the revision is allowed.

**S.S.SATHEESACHANDRAN,  
JUDGE.**

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