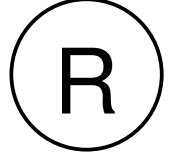




IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH



DATED THIS THE 19TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.203194 OF 2022 (GM-CPC)

BETWEEN:

1. DR. NARASIMHALU NANDINI

2. DR. MAHALINGA B.

Digitally signed by
B NAGAVENI
Location: HIGH
COURT OF
KARNATAKA

...PETITIONERS

(BY SRI. SHIVAKUMAR KALLOOR, ADVOCATE)

AND:

1. JANATHA TRUST, A CHARITABLE TRUST
HAVING ITS REGISTERED OFFICE AT NO.42,
ANAND RAO CIRCLE, SHESHADRI ROAD,
GANDHINAGAR, BENGALURU-560009.
THROUGH ITS MANAGING TRUSTEE,
SRI. C. PRABHAKAR



BENGALURU-500009.

2. ROOPESH P. S/O SRI. C.PRABHAKAR
1077, 108th Cross, 1st Stage

3. SANJEEV KUMAR KOLUR

BENGALURU-500009

4. C.JAGADISH
1077, 108th Cross, 1st Stage

5. SMT. SHARADAMMA KOLUR

6. SMT. GEETHA K.
1077, 108th Cross, 1st Stage



ORDER

1. The petitioners are before this Court seeking for the following reliefs:

"a) Issue a writ of certiorari quashing the impugned order Annexure-E passed by the Addl. Civil Judge and JMFC-III, Raichur dated 31.03.2022 in O.S.No.263/2021, in the interest of justice and equity.

b) Issue any writ or order or directions as this Hon'ble Court deems fit in circumstances of the case, in ends of justice and equity"

2. The respondent-Janatha Trust, a Public Charitable Trust had filed a suit in O.S.No.263/2021 before the Additional Civil Judge and JMFC-III at Raichur, seeking for a permanent injunction against the petitioners herein and others from interfering with the peaceful possession of the suit land in Sy.No.21 measuring 37 guntas of Rampur village.
3. The petitioners had filed their written statement and subsequently, filed an application under Section 92 of the Code of Civil Procedure, 1908 (for short, hereinafter referred to as 'CPC') on 20.12.2021



contending that without permission being obtained in terms of Section 92 of CPC, a suit could not have been instituted by a Public Charitable Trust against the petitioners arraying as defendants.

4. The said application came to be dismissed by the Trial Court by holding that the suit having been filed against the third party, there is no requirement of permission under Section 92 of CPC to be taken and as such, dismissed the application in I.A.No.III. It is aggrieved by the same that the petitioners are before this Court.
5. Sri Shivakumar Kalloor., learned counsel for the petitioners would submit that the proceedings initiated by the Public Charitable Trust is akin to a representative suit in terms of Order I Rule 8 of CPC and the trust filing the suit on behalf of its beneficiaries and trustees any suit which is filed by a trust would have to satisfy the requirement of



Section 92 of CPC and since the allegation is that there is an interference with the property of the trust, the same at the most would amount to a public nuisance and in terms of section 92 of CPC without permission being taken from the jurisdictional District Court acting in its capacity as a parens patriae no suit can be instituted by the public charitable trust against anybody. These aspects going to the very root of the matter inasmuch as the suit itself is not maintainable, admittedly, no permission having been obtained, the trial Court ought to have considered the same and dismissed the suit at the threshold itself. It is on this ground, he submits that the writ petition is required to be allowed.

6. Notice to respondents is dispensed with in view of the proposed order to be passed.
7. Heard Sri.Shivakumar Kalloor, learned counsel for the petitioners and perused the records.



8. The short point that would arise for consideration is whether a public charitable trust could be required to obtain permission from the jurisdictional District Court in order to file the suit against a third party?

Section 92 of CPC reads as under:

"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 ⁴[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;

¹*[(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 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.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), ²[or by any corresponding law in force in ³[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 is therein referred to except in conformity with the provisions of that sub-section.

⁴*[(3) The Court may alter 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 cypres in one or more of 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; or

(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 to 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.]"

9. In terms of sub Section (1) of Section 92 of CPC, it is mandated that if a trust were to file a suit whether contentious or not, leave of the principal Civil Court of original jurisdiction or any other Civil Court empowered in that behalf by the State Government within the local limits of which subject matter is situate, would have to be obtained in order to



institute the suit. The said provisions also details out the nature of the suit that would come within the purview of sub Section (1) of Section 92 of CPC.

10. It is by referring to clause-(h) thereof, Sri Shivakumar Kalloor, learned counsel for the petitioners submits that even as regards the permanent injunction or a bare injunction suit, necessary leave has to be obtained in terms of Sub-Section (1) of Section 92 of CPC.

11. A perusal of the various matters enumerated under Sub Section (1) of Section 92 of CPC would indicate that a suit relating to removal of a trustee, appointment of new trustee, vesting the property in a trustee, direction to a trustee, accounts and enquiries of the trust, usage of the trust property for a particular purpose, settling the claim, etc. is carried under sub section (ii) of Section 92 of CPC.



12. Clause-(h) is a residuary provision which deals with granting of any such further or other relief as the nature of the case may require. This residuary provision can only relate to the subject matter enumerated in Clauses-(a) to (g) and would have to be read in conjunction with the said clause. Clause-(h) has no independent existence nor does it provide for an independent subject matter so as to make it applicable to a suit for permanent injunction filed by the trust against a third party. It is only in respect of the subject matter at Clause-(a) to (g), that leave of the Court is required to be obtained and in connection thereto, any such other further reliefs in the interest of justice or in the nature of the case may also be sought for.

13. The said Section 92 of CPC has been introduced for the purposes of proper administration of a trust and as such, deals with the internal management of the trust and the management of the trust properties.



14. The suit filed by the trust against a third party as done in this case, in my considered opinion would not come within the purview of Section 92 of CPC. The said suit having been filed in the normal operation of the trust for the trust to preserve and protect its properties and or claim such other properties and not relating to the management of the trust would be outside the purview of Section 92 of CPC. If such an interpretation is taken up, then a public charitable trust would never be able to file any suit for bare injunction, recovery of money, specific performance, declaration or the like, thus, impeding effective functioning and operation of the trust.

15. In that view of the matter the trial Court having considered several aspects relating to the dispute between the plaintiff and the defendants of the suit and held that Section 92 of CPC would not apply for the reasons stated hereinabove and that stated by the trial Court, I do not find any reason to interfere



with the matter. Accordingly, the writ petition is
dismissed.

Sd/-
JUDGE

NB/VNR
List No.: 1 SI No.: 19