

Operation Asha vs Shelly Batra on 5 August, 2025

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10048 OF 2025

(Arising out of S.L.P (Civil) No. 29830 of 2024)

OPERATION ASHA

...APPELLANT(S)

VERSUS

SHELLY BATRA & ORS.

...RESPONDENT(S)

JUDGMENT

J.B. PARDIWALA, J.

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1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Delhi, dated 21.08.2024 in FAO(OS) No. 114 of 2024 (hereinafter, the “impugned decision”), by which the High Court dismissed the appeal filed by the appellant herein against the judgment and order dated 03.05.2024 passed by a learned Single Judge of the High Court in CS(OS) No. 153 of 2020 allowing the application under Section 92 of the Code of Civil Procedure, 1908 (hereinafter, the “CPC”) filed by the respondent nos. 1 and 2 respectively, seeking leave to institute the subject suit.

A. FACTUAL MATRIX

3. Operation ASHA (hereinafter, the “appellant Society/original defendant no. 1”) is a not-for-profit society founded in the year 2005 and registered under the Societies Registration Act, 1860 with its registered office in New Delhi. The appellant Society is engaged in providing health services through a plethora of activities primarily to the underprivileged sections of the society across India with special emphasis on the treatment, education and prevention of tuberculosis and other diseases. The same can be inferred from the Memorandum of Association (hereinafter, the “MoA”) of the appellant Society. The aims and objectives of the appellant Society are as follows:

“4. AIMS AND OBJECTS MAIN OBJECTIVES OF THE SOCIETY ARE GIVEN BELOW.

4.1 To develop, establish, maintain and provide health and all other related services, and to help, aid, assist, arrange, co-

ordinate, organize maintain and carry on activities connected with one of health quality of life, nursing facilities, socio-economic aspects, general welfare and problems of the society with special emphasis on provision of services for the underprivileged sections of the society as per Govt. rule.

4.1.2 To develop, establish, make and provide microcredit microfinance and all other related services, and to help, aid, assist, arrange, contribute, co-ordinate, organize maintain and carry on activities connected with concerns of microcredit and micro finance. Socio-economic aspects, general welfare and problems of the society with special emphasis on provision of services for the underprivileged sections of the society as per Govt. rule.

4.1.3 To establish hospitals, medical schools and colleges, nursing schools and colleges, dispensaries, laboratories research institutions and other educational institutions as per Govt. rule.

4.1.4 To purchase or otherwise deal in medicines and equipment required for maintenance of health, hygiene and microcredit/ microfinance.

4.1.5 To aid, promote establish, maintain, run and encourage alternative systems of medicine and establish training and research centers for this purpose as Govt. rule.

4.1.6 To aid, promote, establish, maintain, run and encourage microcredit/microfinance as per Govt. rule.

4.1.7 To open centers and institutes for diagnostic, curative, therapeutic and research of medical sciences as per Govt. rule, 4.1.8 To provide free medicines to the poor.”

4. The MoA of the appellant Society also stipulates that all the incomes and earnings of the society, whether movable or immovable, shall solely be utilised to further the aims and objectives of the appellant Society. Furthermore, it is also stated that the members of the appellant society would not be entitled to any profits by virtue of their membership. The relevant portion of the MoA is extracted hereinbelow:

“All the incomes, earnings, movable or immovable properties of the society shall be solely utilized and applied towards the promotion of its aims and objectives only as set forth in the memorandum of association and no profits thereof shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or past members or to any person claiming through any one or more of the present or the past members, no member of the society shall have any profits, whatsoever by virtue of his membership, the names, addresses, occupations and signatures of the present members of the executive committee □ whom the management and affairs of the society are entrusted as required under section 2 of the societies registration act, 1860 (punjab amendment act of 1957) as extended and applicable to the national capital territory & all state of india.”
(Emphasis supplied)

5. A few other relevant clauses from the Articles of Association (hereinafter, the “AoA”) of the appellant Society are reproduced hereinbelow:

“6. DUTIES & OBLIGATIONS OF MEMBERS All and every member

6.1 Shall attend the Board of meetings regularly;

6.2 Shall give necessary information to the Society, pertaining to matters necessary to be known by the Society;

6.3 Shall not indulge in activities, which may prove prejudicial to the Aims and Objects of the Society and/or to the Rules and Regulations of the Society;

6.4 Shall maintain sanctity of the secrets and confidentiality of police matters of the Society and its members;

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11.2 POWERS & DUTIES OF THE EXECUTIVE COMMITTEE 11.2.1 All the properties, movable, immovable, and other kind of assets shall stand vested in the Committee.

11.2.2 The business and the affairs of the Society shall be managed and administered by the Committee.

11.2.3 Without prejudice to the generality of the foregoing provisions, the Committee shall have the following powers. 11.2.3.1 To acquire by gift, purchase, exchange, lease or in any other manner land, building, or other immovable, property together with all rights pertaining thereto.

11.2.3.2 To manage the properties of the Society.

11.2.3.3 To accept the management of any trust, fund, or endowment or any other ... in which the Society is interested. 11.2.3.4 To raise funds for the Society by way of gifts, donations, grants-in-aid or otherwise within India or outside, as provided in the bye-laws.

11.2.3.5 To raise loans, stand guarantee for loans and do all acts necessary to raising the loans to further the objects of the Society. 11.2.3.6 To receive monies, securities, instruments, investments, or any other assets for and on behalf of the Society.

11.2.3.7 To enter into agreements contracts for and on behalf of the Society.

11.2.3.8 To manage, serve, transfer or otherwise dispose-off any property, movable or immovable of the Society.

11.2.3.9 To prescribe the powers, duties and functions of the office-bearers.

11.2.3.10 To exercise control over the President and the General secretary of the Society including the powers of dismissal. 11.2.3.11 To appoint the Secretary of the Society.

11.2.3.12 To elect new members to the Committee when casual vacancies occur.

11.2.3.13 To appoint the Secretary of the society.

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13. SOURCES OF INCOME & UTILIAZATION OF FUNDS Funds will be raised by way of grants-in-aid, donations, gifts, subscriptions fees, and income from investments, loans and other means available to the Society under the Act. Funds will be used to carry out the Aims and Objectives of the Society.”

6. Dr. Shelly Batra (hereinafter, the “respondent no. 1/original plaintiff no. 1”) is a medical health professional and co-founder of the appellant Society. Vide communication dated 19.06.2020, Mr. Sandeep Ahuja (hereinafter, the “respondent no. 3/original defendant no. 2”) who is also the co-founder and CEO of the appellant Society terminated the services/employment of the respondent no. 1. The communication alleged that the termination of the respondent no. 1 was on account of various “omissions including misrepresentation” of her daughter’s previous employment, fabrication of documents, misappropriation of the assets and funds of the NGO as well as gross misbehaviour with the staff and the employees. Subsequently, on 23.06.2020, the Board of the appellant Society is said to have passed a resolution terminating the respondent no. 1 from the post/office of President of the appellant Society. Soon thereafter, on 27.06.2020, the Board of the appellant Society is also said to have removed the respondent no. 1 from her capacity as a member of their Board.

7. Mrs. Usha Gupta, (hereinafter, the “Respondent No. 2/original plaintiff no. 2”), who is the mother of the respondent no. 1, is one of the current members of the Board of the appellant Society. Immediately after the removal of the respondent no. 1 as a Board member, both the respondent no. 1 and respondent no. 2 (collectively also referred to as the “original plaintiffs”) instituted an Original Suit bearing CS (OS) No. 153 of 2020 on 28.06.2020 under Section 92 of the CPC before a learned Single Judge of the High Court for declaration, permanent & prohibitory injunction and, rendition of accounts. They alleged misconduct and breach of several of the society’s by-laws by the respondent no. 3 and one Ms. Suniti Ahuja (hereinafter, the “respondent no. 4/original defendant no. 3”). The original defendant nos. 4 to 8 respectively are current Board members and the original defendant no. 9 is a former Board member of the appellant Society.

8. To further elaborate in detail, the respondent nos. 1 and 2 respectively (original plaintiffs) alleged the following in the suit instituted by them:

- i. That the respondent nos. 3 and 4 respectively, were indulging in gross financial impropriety, misconduct and siphoning off funds/donations which were received by the appellant Society into various shell companies/entities controlled by them and

their friends/relatives. Such funds were utilised and misappropriated for personal gains. Furthermore, that the funds received by the society have been utilised for activities outside India, which is impermissible, since the requisite permission was not taken from the appropriate governmental authorities and yet, tax benefits were illegally availed for the same.

ii. That there has been a severe mismanagement in the administration of the appellant Society by the respondent nos. 3 and 4 respectively. They have avoided making accounting provisions for statutory disbursements in the form of provident fund or gratuity to their employees and are also engaging in cross-

payment of salaries to employees through their sister concerns with a view to avoid the grant of statutorily mandated employee benefits.

iii. That the respondent no. 3 has misrepresented information and thereby misled the donors of the appellant Society with an intent to defraud them by claiming that the appellant society had provided COVID-19 related services to more than 12,600 families and 10,000 migrants, however, the same remains entirely uncorroborated and unsubstantiated.

iv. That the respondent nos. 3 and 4 respectively, used force and coerced several employees in order to illegally take away the property of the appellant Society.

This includes pressurizing the original defendant no. 8 to hand over the ATM card, passbook etc. of the account in which his salary is remitted and utilising those funds for personal needs. Furthermore, it was alleged that they have also demanded compulsory kickbacks from the employees engaged by the appellant Society by threatening, coercing and blackmailing them with immediate termination of employment, with a view to siphon employee payments.

v. That respondent no. 3 has also regularly misbehaved by issuing threats of personal injury and also indulged in discriminatory behaviour against the employees of the appellant society on the basis of race, caste, religion and sex.

vi. That, around February 2020, the respondent no. 1 approached the respondent nos. 3 and 4 respectively to resolve the aforesaid issues, amongst others. In retaliation, she was harassed and threatened to exit from her position at the appellant Society.

9. The reliefs prayed for in the aforesaid suit are reproduced hereinbelow:

“PRAYER

35. In light of the above facts and circumstances of the case, Plaintiffs most humbly pray that this Hon'ble Court may grant the following reliefs in its favour:

(a) Pass a decree of declaration holding that all the decisions taken by the Board of Defendant No.1 and/or any Board member or employee or personnel w.e.f. 01-06-2020 onwards are illegal, wrong and void, in the present facts and circumstances, and therefore, set-aside; and/or

(b) Pass a decree of declaration holding that the termination of Dr. Shelly Batra (Plaintiff No. 1) from the post/office of President vide Board Resolution dated 23-06-2020 and ouster from the Board of Defendant No. 1 vide Board Resolution dated 27-06-2020 is illegal, wrong and void in the present facts and circumstances, and restoring her office/post in the affairs of Defendant No. 1;

and/or

c) Pass a decree for permanent & prohibitory injunction against the Defendant Nos.2 and 3 by removing them from the Board of Defendant No.1 on account of the illegalities & breach of the bye-laws of Defendant No.1, and restraining them from being involved in the activities/affairs of the Board of Defendant No.1 either as member or employee or contractor or advisor or anyway whatsoever;

(d) Pass a decree for rendition of accounts of profits/monies siphoned, misappropriated, illegally earned by Defendant Nos.2- 3 for their personal use/benefit from the accounts/funds of Defendant No.1, and further a decree for recovery of the amount be found to be due, siphoned, misappropriated, etc. by the Defendant Nos. 2-3 along with interest @18% in favour of Defendant No. 1; and/or I Pass a decree or order regarding settling the scheme of the Defendant No. 1 by amending its bye-laws in such manner that no one family gets complete control of the affairs of Defendant No. 1.

(f) Costs:

(g) Any other relief (s) which this Hon'ble Court deems, fit, just and proper may also be awarded in favour of the Plaintiffs, in the interest of justice."

10. In pursuance of the aforesaid, the respondent nos. 1 and 2 respectively, filed an application being IA. No. 5009 of 2020 in CS (OS) No. 153 of 2020 seeking leave to institute the civil suit against the appellant Society along with the respondent nos.

3 to 10 (collectively referred to as the "original defendants") before the learned Single Judge of the High Court. In the said application, it was stated that the appellant Society is a public charitable institution - an NGO engaged in the healthcare industry. The main objectives of the society as evidenced by its by-laws is public welfare and therefore, it would fall under the ambit of "public charities" mentioned under Section 92 of the CPC. The respondent nos. 1 and 2 respectively

(original plaintiffs) have been involved in the functioning of the appellant Society since its inception and have a justified and bona fide interest in the society, Therefore, they are “interested persons” as required by Section 92. Furthermore, since numerous breaches have occurred in the conduct of business/affairs of the appellant Society, the direction of the court would be of utmost necessity for its administration.

11. After taking seisin of the matter, vide order dated 05.08.2020, the learned Single Judge of the High Court appointed Justice (retd.) R.V. Easwar as the Chairperson of the Board of the appellant Society with the consent of both the parties. Directions were issued to the Chairperson to submit a report and conduct a financial audit in order to ascertain, amongst others, whether there has been a defalcation or siphoning off of funds that the donors have contributed towards the appellant Society and to make suggestions as to how the working of the society can be improved. The Chairperson submitted three reports dated 26.08.2020, 03.10.2020 and 09.12.2020 respectively. On, 13.08.2021, an Interim Forensic Audit Report and on 20.09.2021, a Final Forensic Audit Report respectively, are also said to have been submitted by the auditors appointed for the said purpose.

12. The learned Single Judge of the High Court vide the judgment and order dated 03.05.2024 granted leave to the respondent nos. 1 and 2 (original plaintiffs) for the purpose of instituting a suit under Section 92 of the CPC. While holding that all the elements and ingredients under Section 92 of the CPC stood fulfilled and granting leave, the learned Single Judge observed as follows:

i. First, whether it be the Interim Forensic Audit Report dated 13.08.2021 or the various reports submitted under the Chairmanship of Justice (retd.) R.V. Easwar, there was no gainsaying that actions are required to be taken to remedy the state of affairs of the appellant Society, particularly in relation to its financial affairs and administrations, for which the directions of the court may be necessary.

ii. Secondly, heavy reliance was placed on the decision of this Court in Ashok Kumar Gupta & Anr vs. Sitalaxmi Sahuwala Medical Trust & Ors. reported in (2020) 4 SCC 321 to grant leave under Section 92 of the CPC since the enunciation of law in the said decision is also said to have been made in a strikingly similar factual background. It was reiterated that it is the dominant purpose of the suit, as discernible strictly from the allegations made in the plaint that is required to be assessed by the court while considering whether leave must be granted to institute the suit or not.

iii. Thirdly, that the respondent no. 1 (original plaintiff no. 1) being one of the co-founders of the appellant Society and a long-time President of its Board, along with the respondent no. 2 (original plaintiff no. 2) who has been associated with the appellant Society for an extended period of time while also continuing to be a member of its Board, would constitute ‘persons having an interest in the trust’.

iv. Fourthly, while referring to Article 13 of the AoA as per which the society is entitled to raise funds by way of gifts, donations, grants-in-aid or otherwise strictly for the purpose of carrying out the aims and objectives of the society, it was opined that the formal ‘entrustment’ of property or funds by a third-party to the appellant Society would not be a necessary ingredient to hold that the society is a ‘constructive trust’. If that formality were a sine-qua-non, the very distinction between a ‘trust’ and a ‘constructive trust’ would stand obliterated.

Since any grant-in-aid, donation or gift made by a third-party to the society would, by its very nature, be intended to be used for the benefit of those in need of medical care in furtherance of the objects of the society, it was held that this in-itself would be sufficient to infer that all such grants-in-aid, donations gifts etc., made to the society would become property ‘entrusted’ to it, by reason of which the society would acquire the character of a ‘constructive trust’.

v. Fifthly, after perusing the aims and objects of the appellant Society as detailed in the MoA it was declared that the appellant Society is evidently engaged in a ‘public purpose of charitable nature’ since they principally provide health care services to the underprivileged sections of the society, specifically with respect to the treatment, education and prevention of tuberculosis.

vi. Lastly, that the claims made in the suit also co-relate and fall within the scope of the reliefs contemplated under Section 92 of the CPC, more particularly sub-sections (1)(d) and (1)(h) thereof.

13. The relevant observations made by the learned Single Judge are reproduced hereinbelow:

“20. Therefore, we must not lose sight of the fact, that for purposes of deciding whether leave should be granted under section 92 CPC, it is only the allegations in the plaint that should be looked into in the first instance; it being available to the court to even dismiss the suit if after evidence is led it is found that the breach of the trust alleged was not made-out.

21. To reiterate it is the dominant purpose of the suit, as discernible only from the allegations in the plaint, that is required to be assessed by the court at the stage of considering whether leave should be granted under section 92 CPC to institute a suit.”

22. In the present case, the following assertions are found in the plaint:

22.1. Plaintiff No.1 is one of the co-founders of defendant No.1 society and has been a long time President of its Board, Plaintiff No.2, has been associated with defendant

No.1 society for a long time and continues to be a member of the Board of the society, even if she is plaintiff No.1's mother. In fact these assertions appear to reflect the admitted position.

22.2. Plaintiff No.1 has played a pivotal role in the functioning of the society ever since it was established.

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"22.4. Furthermore, a perusal of the Articles of Association ('AOA') of defendant No.1 society inter-alia shows that the management of the society is entrusted to an Executive Committee, which is entitled to raise funds for the society by way of gifts, donations, grants-in-aid or otherwise, which funds are to be used to carry-out the aims and objectives of the society. Attention in this behalf may be drawn to Article 13 of the AoA of the society, which reads as follows [...] In the opinion of this court, the formal 'entrustment' of property or funds by a third-party to defendant No.1 society is not a necessary ingredient to hold that the society is a constructive trust'. If that formality were a sine-qua-non, the very distinction between a 'trust' and a 'constructive trust' would get obliterated. This court is of the view, that any grant-in-aid, donation or gift made by a third-party to the society is, by its very nature, meant and intended to be used for the benefit of those in need of medical care in furtherance of the objects and purpose of the society. This, in itself, is sufficient to infer that all such grants-in-aid, donations, gifts etc. made to the society are property entrusted to it, by reason of which the society acquires the character of a 'constructive trust'." 22.5. Also, defendant No.1 is evidently engaged in a public purpose of charitable nature, since it provides medical-aid and relief to patients of tuberculosis who otherwise cannot afford treatment, thereby fulfilling the other criterion of section 92 CPC. 22.6. In this manner, defendant No.1 society fulfils all conditions necessary to invoke section 92 CPC, as enunciated by the Supreme Court in Ashok Kumar Gupta (supra) and the elements required to qualify as a 'constructive trust' as laid down by a Co-ordinate Bench of this court in The Young Mens Christian Association of Ernakulam (supra) cited above.

23. In addition, the IFAR as well as the multiple audit reports submitted in relation to the administration and financial affairs of the society, including under the chairmanship of Justice Easwar, clearly disclose that the manner in which the affairs of the society are being run, requires closer consideration and scrutiny.

24. Furthermore, the claims made in the suit also co-relate and fall within the scope of the reliefs contemplated in section 92 CPC, especially section 92(d) and (h) thereof;

25. In the above view of the matter, this court is persuaded to hold that all elements and ingredients of section 92 CPC are satisfied; and that therefore, the plaintiffs are entitled to grant of leave to institute the present suit under section 92, CPC.

26. To obviate any ambiguity, it may be clarified that the grant of leave to the plaintiffs to institute the suit would not prevent the court from dismissing die suit subsequently, if the allegations contained in the plaint are found not to be substantiated.

27. The application is accordingly allowed." (Emphasis supplied) B. THE IMPUGNED JUDGMENT

14. Aggrieved by the aforesaid judgment and order of the learned Single Judge dated 03.05.2024, the appellant Society preferred an appeal being FAO (OS) No. 114 of 2024 before the Division Bench of the High Court. The Division Bench while dismissing the appeal, observed as follows:

i. First, reliance was, again, placed on the decision of this Court in Ashok Kumar Gupta (supra) in order to delineate the conditions that are required to be satisfied under Section 92 of the CPC.

ii. Secondly, the Division Bench echoed the observations made by the Single Judge in as much as observing that the appellant Society is admittedly of a charitable nature as evident from its MoA.

iii. Thirdly, reliance was placed on the relevant provisions of the MoA which stipulated that all the incomes, earnings, movable or immovable properties of the society shall be solely applied towards furthering the objectives of the society and no profits shall be paid, either directly or indirectly, to the members of the Board or any person claiming through or under them. Furthermore, while referring to Article 112.1 of the AoA which specifically stated that all the properties, movable, immovable and other kinds of assets shall stand vested in the Executive Committee of the appellant Society, the Division Bench expressed its agreement with the views of the Single Judge that all donations, gifts etc. made to the appellant Society are property 'entrusted' to it, due to which the society would acquire the character of a 'constructive trust'.

iv. Fourthly, referring to the decision of this Court in Shiromani Gurudwara Prabandhak Committee vs. Som Nath Dass reported in 2000 (4) SCC 146, it opined that the donations, gifts, etc., being received by the appellant Society and being vested in the Committee from various institutions would constitute an 'endowment' for public purpose.

v. Lastly, although the Bench acknowledged the contention of the counsel for the appellant Society that prayer (b) of the plaint agitates a personal/private grievance, yet it took the view that the reliefs sought in prayers (d) and (e) of the plaint fall within those reliefs contemplated under sub-section (1) of Section 92 of the CPC. The relevant observations of the Division Bench are reproduced hereinbelow:

'12. Admittedly, the Appellant-society is of a charitable nature as it has been formed primarily for serving the under-privileged sections of the society, in particular, patients suffering from tuberculosis. [...]

13. The Memorandum of Association further stipulates that all the incomes, earnings, movable or immovable properties of the society shall be solely utilized and applied

towards the promotion of its aims and objectives only as set forth in the Memorandum of Association and no profits thereof shall be paid or transferred directly or indirectly by way of dividends, bonus or profits in any manner whatsoever to the present or past members or to any person claiming through any one or more of the present or the past members. The Memorandum of Association also states that no member of the society shall have any profits, whatsoever by virtue of his membership, the names, addresses, occupations and signatures of the present members of the Executive Committee to whom the management and affairs of the society are entrusted, as required under Section 2 of the Societies Registration Act, 1860 (Punjab Amendment Act of 1957).

14. Article 112.1 of the Articles of Association specifically stipulates that all the properties, movable, immovable and other kinds of assets shall stand vested in the Committee.

15. Keeping in view the aforesaid as well as the fact that the Appellant has been set-up with the primary objective of providing medical relief to patients, who otherwise cannot afford such treatment, this Court is in agreement with the view of the learned Single Judge that all the donations, gifts etc. made to the Appellant-society are property entrusted to it, by reason of which the society acquires the character of a 'constructive trust'.

16. In the above context, it would also be necessary to refer to the judgment of Supreme Court in Shiromani Gurudwara Prabandhak Committee vs. Som Nath Dass 2000 (4) SCC 146, wherein it has been held that an "endowment" is, when the donor parts with his property for it to be used for a public purpose and its entrustment is to a person or group of persons for carrying out the objective of such entrustment. It was held that once an endowment is made, it is final and irrevocable and it is onerous duty of the persons entrusted with such endowment to carry out the objectives of this entrustment. It was further held once an endowment, it never reverts even to the donor. The Supreme Court has also considered that endowment" means property or pecuniary means bestowed as a permanent fund, as endowment of a college, hospital or library, and is understood in common parlance as a fund yielding income for support of an institution. Having regard to the aforesaid, it is clear that donations, gifts etc. which were being received by the Appellant, and being vested in the committee, from various institutions would be endowment for public purpose."

17. Though the learned senior counsel for the Appellant is correct in contending that prayer (b) of the plaint agitates a personal/private grievance yet this Court is of the view that the reliefs sought in prayers (d) and (e) of the plaint fall within the reliefs mentioned in sub section (1) of Section 92 CPC.

18. Consequently, this Court is of the view that the impugned order calls for no interference. Accordingly, the present appeal along with the application is

dismissed." (Emphasis supplied) C. SUBMISSIONS OF THE PARTIES i. Submissions on behalf of the Appellant

15. Mr. Dama Seshadri Naidu, the learned Senior Counsel appearing for the appellant Society submitted that the appellant Society is a 'registered society' under the Societies Registration Act, 1960 and is not a 'Trust' for the purposes of Section 92 of the CPC. It was argued that it is a settled law that the governing body members of the society shall only become 'trustees' if a trust is created for the purpose of managing the assets of the society. The same not being the case in the present scenario, the suit cannot be held to be maintainable. To fortify his argument that a suit under Section 92 would not be maintainable against a 'registered society', the counsel placed reliance on the decision of the Delhi High Court in S.R. Bahugana v. All India Women's Conference and Ors. reported in (2009) ILR 7 Delhi 614 and that of the Kerala High Court in Abhaya vs. JA Raheem reported in 2005 SCC OnLine Ker 234.

16. The counsel submitted that as per the AoA of the appellant Society, the property of the society is not held in a 'trust', which is the fundamental requirement for the appellant Society to be termed as a 'constructive trust'. Specific reference was made to Clauses 12.1 and 12.3.8 of the AoA respectively to contend that the property of the society stands vested in the 'Committee' or Governing Body of the Society, as per the mandate of Section 5 of the Societies Registration Act, 1860. On this aspect, reliance was placed on the decision of the Madras High Court in K. Rajamanickam v. Periyar Self Respect Propaganda Institution, Thiruchirapalli reported in 2006 SCC OnLine Mad 379.

17. Taking recourse to the decision of this Court in Swami Paramatmanand Saraswati v. Ramji Tripathi reported in 1974 2 SCC 695, it was submitted that, while deciding an application under Section 92 of the CPC, the court must only look at the averments made in the plaint. The plaint, in the present case, is conspicuously silent on how the appellant Society falls within the definition of the term 'constructive trust'. Therefore, it was submitted that the underlying suit is clearly beyond the ambit of Section 92.

18. To further substantiate his submissions as regards the appellant Society not being a 'constructive trust', the counsel stated that "a constructive trust is another species of trust where a trust is automatically imposed by equity on an owner of property but in special circumstances where it is unconscionable for the owner of property to hold the property purely for his own benefit". To illustrate, where a trustee of a leasehold property at the termination of the lease renews the lease purportedly in his own personal favour or where a trustee has wrongfully gratuitously transferred trust property to an innocent donee who upon subsequently discovering the trust attempts to retain the property for himself. It was submitted that Mukherjee on the Indian Trust Act, 1881 (2021) also elaborated on the Doctrine of Constructive Trust by arguing that a 'constructive trust' arises not by the act of parties but by operation of

law. When a trustee gains some personal advantage by utilising his trusteeship, he becomes a constructive trustee in respect of the advantages gained.

19. The counsel submitted that the Halsbury Laws of India on the nature of a constructive trust remarks that a constructive trust attaches by law to a specific property which is neither expressly subject to any trust nor subject to a resulting trust but, which is held by a person in circumstances where it would be inequitable to allow him to assert full beneficial ownership of the property. In the present case, he argued that the factual situation is entirely different and the property of the appellant Society is vested in the governing body of the Society.

20. It was also submitted that the prayers made in the present suit demonstrate that the same has been filed solely for the purpose of vindication of personal rights of the respondent no. 1. More specifically, the prayers seek to declare the board decisions taken by the appellant Society from 01.06.2020 as null and void, since her employment/services were terminated during this time. The respondent no. 1 also seeks a declaration that her termination was bad in law along with a direction that the respondent no. 3 be removed from the appellant Society. These reliefs are clearly beyond the scope of Section 92 and smack of personal vendetta and enmity. No relief has been sought for the benefit of the society or to improve its functioning.

21. It was submitted that the provisions under Section 92 of the CPC can be invoked only when two conditions are satisfied i.e. (a) it should be with regard to a public trust to obtain a decree for the purposes mentioned in the said provision, and (b) the suit should be on behalf of the Advocate General or two or more persons having an interest in the trust. He submitted that both the aforesaid conditions have not been fulfilled in the present case since the appellant Society is not a public trust and there is no pleading in the plaint showing that the respondent no. 2 (original plaintiff no.

2) is a party having an "interest" in the society. Moreover, the respondent no. 2 has not even signed the plaint in the instant suit.

22. In light of the aforesaid, it was submitted that the impugned decision is upheld, it would obliterate the distinction carved out by law between a 'trust' and a 'society' for which two different legislations have been enacted. Therefore, it was prayed that the impugned decision be set aside and the underlying suit, pending before the High Court, be dismissed.

ii. Submissions on behalf of the respondent no. 1

23. On the other hand, Mr. Jai Anant Dehadrai, the learned counsel appearing for the respondent no. 1 submitted that the ingredients required to be satisfied before invoking Section 92 of the CPC was clearly laid down in Ashok Kumar Gupta (supra) as follows:

(a) There should be a breach of express or constructive trust;

- (b) The trust must have been created for a public purpose, either of a charitable or religious nature;
- (c) The suit must seek for reliefs as enumerated under Section 92(1) of the CPC.

24. The counsel submitted that the appellant society was formed with the specific aim to serve the underprivileged members of the society who are suffering from tuberculosis and who cannot afford its treatment. The same is evident from the MoA of the appellant Society. The donors, who are based in India as well as abroad, primarily the United States, were providing funds in order to further this very objective. Therefore, the appellant Society, being engaged in the social welfare of the general public, possesses the characteristics of an organisation with a 'charitable nature'.

25. In order to canvass the argument that a society registered under the Societies Registration Act, 1860 can be construed as a 'constructive trust', the counsel placed reliance on the decision of the Delhi High Court in The Young Mens Christian Association of Ernakulam and Ors. v. National Council YMCAS of India reported in 2018 SCC OnLine Del 9909 wherein it was opined that a society registered under the Societies Registration Act, 1860 can be construed as a constructive trust if its satisfies the elements mentioned in Section 3 of the Indian Trusts Act, 1882.

26. It was submitted that the appellant Society is being entrusted with the funds from the donors for public service. Upon a perusal of the Memorandum of Association, it is evident that all the earnings and income generated, or funds received by the society shall only be utilised for the betterment of the general public and to provide free health services, and no profits shall be transferred directly or indirectly to the members of the society. Additionally, Clause 112.1 of the AoA specifically provides that "All the properties, movable, immovable and other kind of assets shall stand vested in the Committee". Therefore, all the donor funds, gifts etc. are entrusted to the appellant Society to be utilised for the public purpose as enumerated in the aims and objectives contained in its MoA. For all these reasons, the society acquires the character of a 'constructive trust'.

27. It was submitted that the reliefs sought in the plaint are in complete consonance with Section 92(1) of the CPC and the impugned decision has specifically held that the reliefs sought by the respondent nos. 1 and 2 respectively in their plaint, in particular, prayers (d) and (e) fall within the reliefs mentioned under Section 92(1). Hence, the plaint satisfies yet another ingredient required under Section 92 of the CPC.

28. In light of the aforesaid, it was submitted that the appellant Society though registered under the Societies Registration Act, 1860 yet must be construed as falling within the expression of a 'constructive trust' under Section 92 of the CPC as it holds property for charitable work. Therefore, the impugned decision granting leave to institute the suit, suffers from no infirmity and may not be interfered with. iii. Submissions on behalf of the respondent nos. 3 and 4

29. The learned Counsel appearing on behalf of the respondent nos. 3 and 4 respectively, submitted that the application seeking leave to institute the present suit has been filed in complete disregard of the mandatory conditions stipulated under Section 92 of the CPC. Section 92 requires a suit of this

nature to be filed by at least two interested parties. While the respondent no. 2 (original plaintiff no. 2) has been included as one of the plaintiffs, it is pertinent to note that the plaint has not been signed by the respondent no. 2. Additionally, there is neither any verification on behalf of the respondent no. 2 nor an affidavit in support of the plaint, as required under Section 26(2) of the CPC. These substantial procedural breaches render the plaint non-est in the eyes of law, and consequently, make it liable to be rejected at the very threshold. It was further submitted that there is a strong likelihood that the signatures of the respondent no. 2 was fraudulently affixed in the suit documents.

30. The counsel vehemently submitted that the suit under Section 92 of the CPC is legally untenable as it fails to fulfil the requisite conditions as regards maintainability and also for the reason that it is completely based on false allegations and has been filed to wreck a personal vendetta against the respondent nos. 3 and 4 respectively. Therefore, it was prayed that the present appeal be allowed and the impugned decision be set aside.

D. ISSUES FOR DETERMINATION

31. Having heard the learned counsel appearing on behalf of the parties and having gone through the materials on record, the only question that falls for our consideration is whether in the facts and circumstances of the present case, the appellant Society registered under the Societies Registration Act, 1860 can be said to have fulfilled all the requirements stipulated under Section 92 of the CPC for the purpose of instituting a suit under the said provision?

E. ANALYSIS

i. The Object and purpose behind Section 92 of the CPC.

32. Section 92 of the CPC reads as follows:

" 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;

I 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;

I 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.

(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 is therein referred to except in conformity with the provisions of that sub-section.

[(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 cy pres 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 I 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 I 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.]” (Emphasis supplied)

33. A suit under this provision can be termed as a ‘representative suit of a special nature’ since the object behind the enactment of this provision is the protection of public rights in the public trust. Therefore, the parties filing a suit by invoking this section are considered to be representatives of the public.

34. A three-judge bench of this Court in Ahman Adam Sait and Others v. M.E. Makhri and Others reported in 1963 SCC OnLine SC 71 had elaborated on how a suit under Section 92 of the CPC is a ‘representative suit’ while deciding whether the second suit would be barred by constructive res judicata. It was stated that when a suit is brought under Section 92, by two or more persons interested in the trust, they could be said to have taken upon themselves the responsibility of representing all the beneficiaries in the trust and though, all the said beneficiaries may not be expressly impleaded in the suit, the action is essentially instituted on their behalf and the relief claimed is representative in character. While stating so, however, it was clarified that the plaintiffs bringing the second suit must have the ‘same interest’ as that of the plaintiffs or defendants of the earlier representative suit, for the principle of res judicata to apply. In other words, it must be examined if the interest of the plaintiffs in the second suit was represented in the earlier representative suit. The relevant observations are thus:

“16. In assessing the validity of this argument, it is necessary to consider the basis of the decisions that a decree passed in a suit under Section 92 binds all parties. The basis of this view is that a suit under Section 92 is a representative suit and is brought with the necessary sanction required by it on behalf of all the beneficiaries interested in the Trust. The said section authorises two or more persons having an interest in the trust to file a suit for claiming one or more of the reliefs specified in clauses (a) to (h) of sub-section (1) after consent in writing there prescribed has been obtained. Thus, when a suit is brought under Section 92, it is brought by two or more persons interested in the trust who have taken upon themselves the responsibility of representing all the beneficiaries of the Trust. In such a suit, though all the beneficiaries may not be expressly impleaded, the action is instituted on their behalf and relief is claimed in a representative character. This position immediately attracts the provisions of Explanation VI to Section 11 of the Code. Explanation VI provides that where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. It is clear that Section 11 read with its Explanation VI leads to the result that a decree passed in suit instituted by persons to which Explanation VI applies will bar further claims by persons interested in the same right in respect of which the

prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata. Where a representative suit is brought under Section 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matters directly and substantially in issue in the said earlier suit." (Emphasis supplied)

35. Similarly, in Shiromani Gurdwara Parbandhak Committee v. Mahant Harnam Singh reported in (2003) 11 SCC 377, this Court had opined that a suit under Section 92 is of a special nature and for the protection of public rights in public trust and charities. It is for the vindication of public rights since the suit is instituted fundamentally on behalf of the entire body of persons who are interested in the trust. It cannot be said that only those persons whose names are in the suit-title would be considered to be the parties to the suit. The named plaintiffs are only the representatives of the public at large who are interested in the suit and therefore, in the eyes of law, all such interested persons would be considered to be parties to the suit. The relevant observations are reproduced hereinbelow:

"19. As observed by this Court in R. Venugopala Naidu v. Venkatarayulu Naidu Charities [1989 Supp (2) SCC 356 : AIR 1990 SC 444] a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust 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 the public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 CPC and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are in 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 the law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation VI to Section 11 CPC 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 CPC." (Emphasis supplied)

36. In Vidyodaya Trust v. Mohan Prasad reported in (2008) 4 SCC 115, this Court had emphasised that it is not every suit which relates to a public trust of religious or charitable nature and which contains reliefs which fall within some of the clauses under sub-section (1) of Section 92 that can be brought under the ambit of Section 92 of the CPC. Those suits must also essentially be initiated by individuals as representatives of the public for the vindication of public rights. While opining so,

this Court also elaborated on the object behind requiring a ‘grant of leave’ from the appropriate court before the suit can be proceeded with. The same was said to have been mandated as a pre-requisite or a procedural safeguard in order to prevent the public trusts from being subjected to undue harassment through frivolous suits being filed against them. If the persons responsible for the management of the trusts are subjected to multiplicity of legal proceedings, then it would be the ultimate beneficiaries of the trust who would lose out since the trust would have to dedicate time to defend the suit and the funds which are to be utilised to further the objectives of the public trust would also have to be re-routed and wasted on litigation. In the opinion of the Court, this ordeal might also dissuade persons of high moral character and honest intentions from becoming trustees of public trusts. The pertinent observations are reproduced hereinbelow:

18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act (104 of 1976) the expression used was “consent in writing of the Advocate General”. This expression has been substituted by the words “leave of the Court”. Sub-

section (3) has also been inserted by the Amendment Act. 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.

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25. In Sugra Bibi v. Hazi Kummu Mia [AIR 1943 Mad 466] it was held that the mere fact that the suit relates to public trust of religious or charitable nature and the reliefs claimed fall within some of the clauses of sub-section (1) of Section 92 would not by itself attract the operation of the section, unless the suit is of a representative character instituted in the interest of the public and not merely for vindication of the individual or personal rights of the plaintiffs.

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. [...]” (Emphasis supplied)

37. In Swami Shivshankargiri Chella Swami v. Satya Gyan Niketan, reported in (2017) 4 SCC 771, while holding that a trust can be created by virtue of a conditional gift, this Court had also elaborated on the purpose behind requiring grant of leave from the court under Section 92 before a

suit can be instituted. It was opined that such a condition has been legislatively prescribed in order to prevent a public trust from being harassed or to obviate the institution of reckless or frivolous suits against its trustees. The relevant observations are as thus:

“11. The present Section 92 CPC corresponds to Section 539 of the old Code of 1883 and has been borrowed in part from 52 Geo. 3, c. 101, called Romilly’s Act of the United Kingdom. A bare perusal of the said section would show that a suit can be instituted in respect of a public trust by the Advocate General or two or more persons having an interest in the trust after obtaining leave of the Court in the Principal Civil Court of Original Jurisdiction. An analysis of these provisions would show that it was considered desirable to prevent a public trust from being harassed or put to legal expenses by reckless or frivolous suits being brought against the trustees and hence a provision was made for leave of the court having to be obtained before the suit is instituted.

(Emphasis supplied)

38. Thus, the grant of leave under Section 92 of CPC serves as a procedural safeguard, ensuring that public charitable trusts are protected from mala fide suits that may have the consequence of impeding their operations. At this stage, however, the court neither adjudicates upon the merits of the dispute nor confers any substantive rights upon the parties; what is established is merely the maintainability of the suit which is sought to be initiated by the plaintiffs.

ii. Conditions to be fulfilled for the applicability of Section 92 of the CPC

39. Section 92 of the CPC has been created for a specific purpose and to address a specific kind of grievance which has the impact of affecting public rights as enumerated above. Therefore, not all suits can be blindly brought within the fold of this provision. In the facts and circumstances of each case, the court granting leave must examine whether the suit qualifies certain conditions which align with the intent behind the creation of this provision. Courts must tread with caution so as to weed out those suits which are camouflaged as falling within its ambit just with a view to take an undue benefit of provision and for causing harassment to the public trust or for the vindication of personal rights.

40. This Court in Ashok Kumar Gupta (supra) had laid down three conditions which are a sine qua non in order to invoke Section 92 of the CPC and maintain an action under the said provision. Upon placing reliance on various decisions of this Court, the conditions were delineated as follows – (a) the trust in question must be created for public purposes of a charitable or religious nature; (b) there must exist a breach of trust or a direction of the court must be necessary for the administration of the trust; and (c) the relief claimed must be one or other of the reliefs as enumerated under Section 92(1) of the CPC. The relevant observations are reproduced as thus:

“**10.** While considering the scope of Section 92(1), as it existed then, a Constitution Bench of this Court observed in *Madappa v. M.N. Mahanthadevaru* [*Madappa v. M.N. Mahanthadevaru*, (1966) 2 SCR 151 : AIR 1966 SC 878], as under

: (AIR p. 881, para 10) ‘**10.**... Section 92(1) provides for two classes of cases, namely, (i) where there is a breach of trust in a trust created for public purposes of a charitable or religious nature, and

(ii) where the direction of the court is deemed necessary for the administration of any such trust. The main purpose of Section 92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General, or two or more persons having an interest in the trust with the consent in writing of the Advocate General. The object clearly is that before the Advocate General files a suit or gives his consent for filing a suit under Section 92, he would satisfy himself that there is a *prima facie* case either of breach of trust or of the necessity for obtaining directions of the Court. The reliefs to be sought in a suit under Section 92(1) are indicated in that section and include removal of any trustee, appointment of a new trustee, vesting of any property in a trustee, directing a removed trustee or person who has ceased to be a trustee to deliver possession of trust property in his possession to the person entitled to the possession of such property, directing accounts and enquiries, declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust, authorisation of the whole or any part of the trust property to be let, sold, mortgaged or exchanged or settlement of a scheme. The nature of these reliefs will show that a suit under Section 92 may be filed when there is a breach of trust or when the administration of the trust generally requires improvement.”

11. The statement of law so laid down was reiterated:

11.1. In *Bishwanath v. Radha Ballabhji* [*Bishwanath v. Radha Ballabhji*, (1967) 2 SCR 618 : AIR 1967 SC 1044] : (AIR p. 1046, para 7) “**7.** It is settled law that to invoke Section 92 of the Code of Civil Procedure, 3 conditions have to be satisfied, namely,

(i) the trust is created for public purposes of a charitable or religious nature; (ii) there was 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 enumerated therein. If any of the 3 conditions is not satisfied, the suit falls outside the scope of the said section.” **11.2.** In *Sugra Bibi v. Hazi Kummu Mia* [*Sugra Bibi v. Hazi Kummu Mia*, (1969) 3 SCR 83 : AIR 1969 SC 884] : (AIR p. 885, para 5) “**5.** It is evident that this section has no application unless three conditions are fulfilled : (1) the suit must relate to a public charitable or religious trust, (2) the suit must be founded on an allegation of breach of trust or the direction of the court is required for administration of the trust, and (3) the reliefs claimed are those which are mentioned

in the section.”

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.’ (Emphasis supplied)

41. As a natural corollary, it follows that in order to successfully establish that a suit is beyond the scope of Section 92 of the CPC, it would be sufficient to prove that any one of the conditions enumerated above has not been met. However, on the other hand, for a suit to be maintainable under this provision, the plaintiffs must be able to satisfy the court that all the conditions, or in other words, the necessary ingredients, under this section, have been fulfilled. A. The trust being created for a public purpose of a charitable or religious nature.

42. A trust can be said to have been created for a ‘public purpose’ when the beneficiaries are the general public who are incapable of exact ascertainment. Even if the beneficiaries are not necessarily the public at large, they must at least be a classified section of it and not a pre-ascertained group of specific individuals.

43. What constitutes “charitable purpose” has been defined under Section 2 of the Charitable Endowments Act, 1890 as follows:

“2. Definition.—In this Act “charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.” (Emphasis supplied) Therefore, the term includes relief to the poor, education, medical relief and the advancement of any other object of ‘general public utility’, while excluding activities whose purpose relates exclusively to religious teaching or worship.

44. There remains no doubt that the appellant Society in the instant case, working towards bringing equity in public health, with particular focus on providing for the education, treatment and prevention of tuberculosis, has been created for a ‘public purpose of charitable nature’. This is clearly evident from its objectives outlined in the MoA and the beneficiaries that it seeks to serve, amongst others. The same is an admitted position and we need not delve into the nitty-gritties of

whether the appellant society qualifies this aspect of the aforesaid condition. What remains contested, however, is that the appellant society which has been registered under the Societies Registration Act, 1860 cannot be construed to be a 'trust' or a 'constructive trust' in order to subject it to the jurisdiction under Section 92 of the CPC. I. Whether a Society can be construed to be a 'trust' or a 'constructive trust'?

45. A suit under Section 92 of the CPC being one of special nature, presupposes the existence of a public trust of a religious or charitable character. The existence of a public trust is essential, whether express or constructive. Therefore, a crucial condition that needs satisfaction is whether the institution/organisation in relation to which certain reliefs are sought can in fact be considered to be a 'trust' or a 'constructive trust'. Having said so, however, an express declaration clearly signifying that an entity is a trust or that the properties are trust properties would not be a sine qua non in order to render a suit under Section 92 maintainable. a. Circumstances under which the creation of a trust has been inferred

46. When no formal recognition has been given to the institution, the creation of a trust can be inferred from the relevant circumstances surrounding the coming into existence of and functioning of the institution/entity in question. The Privy Council in Babu Bhagwan Din and Ors. v. Gir Har Saroop and Ors. reported in 1939 SCC OnLine PC 47 was concerned with the question whether a public trust of a religious character existed in the facts and circumstances of the case. The decision also established when a private temple may become dedicated to the public by subsequent dealings. While negating the contention that the private temple constituted a public trust, emphasis was particularly laid on two aspects i.e., - First, the land in question granted by the then Nawab of Oudh in 1781 was not a grant to the idol or an endowment of a temple or a gift made by way of trust for a public religious purpose. Instead, it was a grant to a private individual and to his heirs in perpetuity. Therefore, the historical setting and the circumstances of the grant was given importance to. Secondly, While acknowledging that a private temple may become dedicated to the public and morph into a public trust of a religious nature over the course of years, it was held that such dedication has to be proved and the mere fact that the public were never turned away and that offerings from them were accepted would not by itself be sufficient proof of dedication, especially in the absence of an inference that the public user exercised any 'right' pertaining to the temple or had acquired any interest. Another pertinent factual aspect was also that the various forms of profit, whether by offerings or rents received by letting out portions of the lands in their own names, were divided amongst the family. The relevant observations are thus:

"Their Lordships agree with the Chief Court in holding that the grant of 1781 is not a grant to the idol or an endowment of a temple or a gift made by way of trust for a public religious purpose. The grant is to Daryao Gir and his heirs in perpetuity [...] The general effect of the evidence is that the family have treated the temple as family property, dividing the various forms of profit whether offerings or rents, closing it so as to exclude the public from worship when marriage or other ceremonies required the attendance of the members of the family at its original home, and erecting samadhs to the honour of its dead. In these circumstances it is not enough, in their Lordships' opinion, to deprive the family of their private property to show that

Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol : they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference, if made from the fact of user by the public, is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be, turned away; and as worship generally implies offerings of some kind, it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity. [...] The Chief Court have, in the opinion of the Board correctly estimated the particular facts of the case, before them and have rightly negatived the contentions that the temple is a public temple and that the property in suit is impressed with a trust of a public religious character." (Emphasis supplied)

47. On the other hand, the Privy Council in Gurunatharudhaswami Guru Shidharudhaswami v. Bhimappa Gangadrawappa Divate reported in 1948 SCC OnLine PC 43, the issue related to whether the Court under Section 92 could direct the removal of the head of the mutt while settling a scheme for the administration of public trust properties despite the fact that the previous swami desired the said person to succeed as the head of the mutt. The suit under Section 92, apart from the aforesaid relief, was also concerned with whether the institution in question could be called a 'public trust' of a religious or charitable nature. In deciding the aforesaid, particular reference was made to the circumstances in which the various properties used in connection with the institution was acquired. Predominantly, all the offerings made and gifts given by the public to the Swami was for the purposes of the 'Math' and additional properties were purchased out of the offerings initially given, except one property which was concluded as having been received as a gift by the Swami's for his own personal benefit since there was no evidence to show that the said solitary land was ever used for the benefit of the 'Math'. Therefore, all the suit properties with the exception of one, were regarded as accretions to the original foundation/institution, and subject to an express or constructive trust created for public purposes of a charitable or religious nature within the meaning of Section 92 of the CPC. The relevant observations are reproduced hereinbelow:

"The learned trial Judge discussed in detail and with much care the documentary and oral evidence, particularly in relation to the circumstances in which the various properties used in connection with the Math had been acquired. In appeal the High Court again discussed the evidence in considerable detail, and both Courts reached the conclusions that the institution, whether it be called a Math or a Temple, was founded by the public for a public, charitable and religious purpose, viz., the worship of the Swami during his lifetime and of his Samadhi (tomb) after his death, and for the purpose of the various festivals which had been started in connection with the

institution, and that the offerings made to the Swami, the properties purchased out of those offerings and those acquired by gifts after 1912 (when the Swami assumed control of the Math), must all be regarded as accretions to the original foundation, and that all the properties in suit form part of a trust created for purposes of a charitable or religious nature. Counsellor the appellant has referred their Lordships to all the relevant evidence and no useful purpose would be served by a further discussion of it in detail. Their Lordships can state shortly and in general terms their reasons for agreeing with the conclusions of the Courts in India.

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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 Section 92 of the Code of Civil Procedure. 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 Lordships' 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 Swami and take food there. The trust was plainly one for public purposes.

The only property in suit which in their Lordships' view the respondents have failed to show belonged to the Math is that comprised in Exhibit D.127 by which a piece of land expressed to be of the value of Rs. 400 situate in Mouji Harti in Taluka Gadag was conveyed to the Swami, the motive expressed being the spiritual good of the donor. There is nothing in the conveyance to suggest that the land was given to the Swami for the purpose of the Math. There is no evidence that this land, which is situate, their Lordships are told, some 40 miles from Hubli was ever used, or that its rents or profits were applied, for the benefit of the Math. The fact that the Swami received many gifts of property for charitable purposes does not disqualify him from receiving gifts for his own personal benefit, and their Lordships think that this small piece of land must be excluded from the decree in the present suit.

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. [...]” (Emphasis supplied)

48. This Court in Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das reported in (1971) 1 SCC 574 had to determine whether the entity in question constituted a religious trust so that it may be brought within the purview of a 'public trust' under Section 2(1) of the Bihar Hindu Religious Trusts Act, 1951. The Trial Court had also placed a lot of importance on ascertaining how the properties were originally acquired and since, the respondent did not produce the Sanads under which the founding Mahant had acquired the said properties and therefore, the nature of the gifts and the manner in which they were made could not be determined, an adverse inference was drawn against the respondent. However, this conclusion was held to be misplaced since the onus of proof to show that the properties were being held for public purposes of a religious or charitable character was said to rest on the appellant Board who alleged that it was so. In holding thus, this Court also observed as follows:

- i. First, that it is true that a charitable trust might either be created by a grant for an express purpose or a grant having been made in favour of an individual or a class of individuals, and that individual or that class of individuals might, after obtaining the grant, create a charitable trust.
- ii. Secondly, that a property can be granted solely for the 'grantee's' personal benefit too, without there being any intention on part of the grantor to fetter the grantee with any obligation in dealing with the property granted. Courts have arrived at a conclusion whether the grant was for the benefit of the public, or an unascertained section of the public, or for the benefit of the grantee himself, or for class of ascertained individuals, either by keeping the manner and conditions of the grant itself at the forefront or, from the other circumstances of the case. Further, 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 along with other established circumstances.
- iii. Lastly, that if a property is described as 'appertaining to an organisation/institution' then for those properties to be considered as properties of a public trust, the said organisation/institution must by itself first be a public trust for religious or charitable purposes.

49. The relevant observations in Bihar State Board (supra) are thus:

"8. It is true that the respondent Mahant did not produce the original Sanads whereunder certain lands had been gifted to the founding Mahant by the various zamindars. They were not produced because, as the respondent deposed, they could not be traced, but, as stated earlier, it was not impossible for the Board also, if it wanted to rely on them, to produce the record, such as that of Darbhanga Estate, and show therefrom the nature and the terms of those gifts. The trial court, however, was not entitled, as we shall presently show, from the mere failure of the Mahant to produce the original Sanads to draw an adverse inference which it did against him."

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10. Properties of the temple being thus admittedly in the possession of the Mahants ever since the time of Gaibi Ramdasji, the onus of proof that the respondent Mahant held them on trust for public purposes of a religious or charitable character was clearly on the appellant Board who alleged that it was so. The trial Judge was, therefore, clearly in error in holding that the respondent Mahant ought to have produced the Sanads and that on his failure to do so an adverse inference could be drawn, namely, that had they been produced they would have shown that the grants to Gaibi Ramdasji were for public purposes of a religious or charitable character. (See Parmanand v. Nihal Chand.) [1938 ILR 65 IA 252]

11. The Sanads not having been available, the appellant Board tried to establish through the oral evidence of six witnesses (DWs 1 to 6), that the temple was founded and the properties in question were acquired for the benefit of the public or a section thereof. [...]

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16. True it is that a charitable trust might either be created by a grant for an express purpose or a grant having been made in favour of an individual or a class of individuals, that individual or that class of individuals might, after obtaining the grant, create a charitable trust. [...]

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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 recognised. (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 grantees 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 grantees 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.

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21. Lastly, reference was made to some of the deeds of gifts made by the reigning Mahants in favour of their nominees as successors where the properties were described as appertaining to the Asthal. Assuming that the scribes of these documents used the expression “appertaining to the Asthal” in

the sense in which such expression is sometimes used in the deeds of conveyance, the expression means things which are appurtenant to and forming part of the principal property which is the subject-matter of the instrument. [See Stroud's Judicial Dictionary, (3rd Edn.), Vol. I, 177.] The expression "appertaining to the Asthal" in these deeds, therefore, would at best mean that the properties formed part of the Asthal and are not the properties of the Mahant as distinct from those of the Asthal. (See Sri Thakurji Ramji v. Mathura Prasad [AIR 1941 Pat 354 at 358].) But unless the Asthal itself is a public trust for religious or charitable purposes, the properties appertaining thereto would not be properties of a public trust for religious or charitable purposes. The use of the expression "appertaining to the Asthal", therefore, cannot lead to the conclusion that the properties in question were stamped with a trust for public purposes." (Emphasis supplied)

50. In another decision of this Court in Kuldip Chand and Another v. Advocate-General to Government of H.P. and Others reported in (2003) 5 SCC 46, it was held that the history of the institution, conduct of the parties and the user of the properties are all factors to be examined to arrive to a determination as regards a public trust. The issue related to whether by the mere use of the premises as a Dharamsala for about 125 years an inference could be drawn that the same belongs to a public trust. Answering in the negative and holding that the Dharamsala was a private property and not a public trust, this Court observed that a dedication for public purposes and for the benefit of the general public would involve the complete cessation of ownership on the part of the founder and vesting of the property for the religious object. However, in circumstances where this dedication is not made via a formal or express endowment, its character may have to be determined on the basis of the history of the institution along with the conduct of the founder and his heirs. A dedication would involve the complete relinquishment of individual right of ownership. The owner must intend to divest himself of his ownership in the dedicated property. The relevant observations are reproduced hereinbelow:

"37. From the materials brought on record by the parties, as noticed hereinbefore, the following facts emerge: (1) That the shops were let out to other people. (2) People could come and stay in the Dharamsala but for stay of more than three days, only upon seeking permission therefor. (3) Rent received from the shops was being used by the owners for their own purpose. (4) The Dharamsala was being managed/maintained from the personal funds of the owner. (5) The management and control of the Dharamsala was all along with the owners. (6) A school was opened in the Dharamsala. (7) A chowkidar was appointed by Ranzor Singh to look after the Dharamsala and his salary used to be paid by the owner from his own pocket. (8) The Dharamsala could be used for marriage purpose but only with the permission of the owners. (9) The first-floor rooms could be used only by the officers or by others with the permission of the owner. (10) The Dharamsala was ordinarily being used by the pilgrims only during fair. (11) The public never contributed anything for maintenance of the Dharamsala. (12) No member of the public had any say as regards management of the Dharamsala and had no legal right to use the same. (13) No member of public ever participated in the management of the Dharamsala. (14) No manager had ever been appointed to look after and manage the property. (15) The Dharamsala was not registered under the Sarais Act. (16) There is

no evidence to show that the owners acted as shebaits or trustees.

38. A dedication for public purposes and for the benefit of the general public would involve complete cessation of ownership on the part of the founder and vesting of the property for the religious object. In absence of a formal and express endowment, the character of the dedication may have to be determined on the basis of the history of the institution and the conduct of the founder and his heirs. Such dedication may either be complete or partial. A right of easement in favour of a community or a part of the community would not constitute such dedication where the owner retained the property for himself. It may be that right of the owner of the property is qualified by public right of user but such right in the instant case, as noticed hereinbefore, is not wholly unrestricted. Apart from the fact that the public in general and/or any particular community did not have any right of participation in the management of the property nor for the maintenance thereof any contribution was made is a matter of much significance. A dedication, it may bear repetition to state, would mean complete relinquishment of his right of ownership and proprietary. A benevolent act on the part of a ruler of the State for the benefit of the general public may or may not amount to dedication for charitable purpose.

39. When the complete control is retained by the owner — be it appointment of a chowkidar, appropriation of rents, maintenance thereof from his personal funds — dedication cannot be said to be complete. There is no evidence except oral statements of some witnesses to the effect that Raj Kumar Bir Singh became its first trustee. Evidence adduced in this behalf is presumptive in nature.

How such trust was administered by Raj Kumar Bir Singh and upon his death by his successors-in-interest has not been disclosed. It appears that the family of the donor retained the control over the property and, therefore, a complete dedication cannot be inferred far less presumed. Furthermore, a trust which has been created may be a private trust or a public trust. The provisions of Section 92 of the Code of Civil Procedure would be attracted only when a public trust comes into being and not otherwise.

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42. When a dedication to a charity is sought to be established in absence of an instrument or grant, the law requires that such dedication be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to charity. It must be proved that the donor intended to divest himself of his ownership in the dedicated property. The meaning of charitable purpose may depend upon the statute defining the same.”.

(Emphasis supplied)

51. In *Kuldip Chand* (supra), of the several factual circumstances that led this Court to reach the conclusion that the Dharamsala was not a public trust in addition to the owner's intention to not relinquish ownership of the property, some are especially pertinent – (a) in the premises of the Dharamsala, some portion was let out as shops to other people, unconnected with the religious or charitable purpose; (b) the income/rent received from those shops were not used to further the purpose of the alleged trust but was being used by the owners for their own purpose; (c) the maintenance of the Dharamsala was also being done from the personal funds of the owner and no contribution was made by the public for the maintenance of the Dharamsala. All these facts were taken into account in arriving at the decision that the Dharamsala was not a public trust.

52. On a conspectus of the aforesaid decisions, it could be said that the method of devolution of the property to the institution or its acquisition, the intention behind the grant of property i.e., whether it was for the benefit of the organization or for the personal benefit of any particular individual/family – in other words, the historical setting and the circumstances of the grant has been given considerable significance while concluding whether a trust of a public charitable or religious nature exists. Even if the grant was initially of a private nature, any subsequent dealings could transform the organization into a public trust, however, such a 'dedication' to the public must be sufficiently proved. That the public user or an unascertained class of individuals could exercise any 'right' over the organization and its properties, could also be a significant factor in concluding that a public trust has come into existence. The manner of use of the profits accrued, more particularly, whether it was applied towards the benefit of the organization or its objectives, could also lead to an inference as regards the nature of the organization or the creation of a public trust.

53. Bihar State Board (supra) has reiterated that a charitable trust may either be created by a grant for an express purpose or a grant having been made in favour of an individual(s), who might thereafter create a charitable trust. Due attention must also be paid to whether the grant is accompanied with any fetter/obligation or qualified with a condition, either express or implied, regarding its use by the grantee. Therefore, the trifecta i.e., the intention, manner and conditions of the grant might have to be scrutinized to see whether the grant was for the benefit of the public or an unascertained section of the public. The intention to create a trust must be indicated, either by words or acts with reasonable certainty. Other established circumstances, including the method of use of the property and customs of the institution or the mode and manner in which they have dealt with the properties in the past, could also prove to be relevant.

54. *Kuldip Chand* (supra) had also placed emphasis on the history of the institution/organization, the conduct of the parties and the beneficiaries of the properties as relevant factors. Whether the 'dedication' was complete i.e., whether there was an absolute cessation or complete relinquishment of ownership of the property on the part of the grantor and a subsequent vesting of the property for the said object, was also considered a key factor in determining if the dedication was for public purposes. Furthermore, how the properties are managed, more specifically, for whose benefit they are being managed; whether the profits are being re-routed to the public and for their benefit; whether any personal funds of any founder/proprietor are being applied for the running of the organization or is it maintained through funds sourced from the public, are also aspects that one might need to paid due attention to. Therefore, the overarching and fundamental purpose of the

organization, the mode in which properties are acquired and its beneficiaries could color it with the characteristics of a trust.

55. However, it must be noted that the aforementioned characteristics bear high significance, when, as mentioned previously, there has been no formal recognition of the entity in question and it has not been given a legal identity otherwise. Now, the next question would be, how an entity which satisfies the aforementioned criteria but has been, much later in time, registered as a society under the Societies Registration Act, 1860, would be treated in the eyes of law. The answer to this lies in the decision given by the Full Bench of the Kerala High Court in Kesava Panicker v. Damodara Panicker and others reported in 1974 SCC OnLine Ker 58.

56. In Kesava Panicker (supra), the Full Bench had to decide, on the face of it, a strikingly similar question i.e., whether a society registered under the Societies Registration Act, 1860 could be considered to be a trust or a constructive trust for the purposes of Section 92 of the CPC. However, the facts revealed that a public trust was formed much before the society was registered. It is in such circumstances that the Court arrived at the conclusion that the subject school, its properties and monies formed a public trust of a charitable nature and that the suit under Section 92 was maintainable. The High Court elaborated as follows:

i. First, several factors led to the conclusion that the trust had been created, – that the entire community in the area took an active interest and contributed funds for the purpose of creating a ‘trust fund’ in order that the school may be established; A committee was formed for collecting funds either as donations or as share capital; that long before the registration of the society, funds were collected from the public towards share money; and there were other forms of contributions as well. This according to the Full Bench reflected that there existed a clear intention to form a trust and also that a trust fund was created.

These funds were utilized for the construction of the school building and for other ancillary purposes including establishing and maintaining the other functions of the school.

ii. Secondly, referring to Tudor on Charities, Sixth Edition, pg 128, it was opined that a trust may be created by any language sufficient to show the intention, and no technical words are necessary. Further, it was stated that the use of words such as ‘intent’ or ‘purpose’ or a direction that a fund shall be applied by, or be at the disposal of a person for certain intended charitable purposes, may very well be as effective as the use of the word ‘trust’.

iii. Lastly, the mere factum of registration of a society under the Societies Registration Act, 1860 could not change the character of the properties which had already been constituted as trust properties and impressed with the trust, especially when a trust has clearly been created by the public for a public charitable purpose i.e., the establishing, maintaining and running of a school.

Any addition to the said properties would also possess the characteristics of a trust property.

57. The relevant observations of the Full Bench are reproduced hereinbelow:

“5. When once it has been found that the school building and the furniture etc. as well as the funds of the school did not belong to the appellant as is contended by him he was certainly liable to account for the property of the school including the monies and the direction to account cannot also be interfered with. Considering the nature of the contentions raised by the appellant the direction to remove him from management must also stand. It is further essential that a scheme must be framed for the management of the school and the decree permitting that being done cannot also be altered.

6. All this we have said on the basis that the school and its properties and its monies formed a public trust of a charitable nature and that a suit such as the one envisaged by Section 92 of the CPC and which was the type of suit that was instituted - it is not even suggested that this is not so would be permissible and that the suit in question was maintainable and that the plaintiffs were entitled to sue. Regarding those questions the appellant's Counsel vehemently argued that there has been no trust at all justifying such an action. [...] For a suit under Section 92 there must be a public trust of the religious or charitable character. *Herendra Nath Bhattacharya v. Kaliram Das*, (1972) 1 SCC 115 : AIR 1972 SC 246. The allegation in the plaint is that there is such a charitable trust and that the appellant acting as a trustee de son tort has misused the funds of the trust and have mismanaged the properties. If the existence of a trust as alleged is established the suit will have to be decreed. We shall presently consider whether there is such a trust as alleged. Before going to that question we shall refer to the other decisions as well relied on by counsel for the appellant.

7. Counsel very strongly relied on the decision in *G. Chikka Venkatappa v. D. Hanumanthappa*, (1970) 1 Mys LJ 296. The decision is authority for the proposition that the formation of a society under the Societies Registration Act to carry out any charitable or useful or social purpose cannot be regarded as amounting to creation of a trust for the application of Section 92 of the CPC. The effect of the Societies Registration Act is not to invest properties of the society with the character of trust property.

Even if the purpose for which the society was formed was charitable purpose the property acquired for this purpose will belong to the society and there is no trust and no trust can be predicated. So it was urged that even if the properties were acquired by the Keralasseri High School Society there was no trust which would enable a suit being instituted in accordance with the provisions of Section 92 of the CPC. If we may say so, with great respect, the position stated in the decision is the correct one. That was stated with reference to the facts of that case and the conclusion arrived at after discussing the facts is seen from paragraph 21 of the judgment which we shall extract.

“21. On the evidence, therefore, there cannot be the slightest doubt that the construction of this building was purely and exclusively an activity and concern of the registered society called the Devanga Sangha. It was not and cannot be described as a matter in which the entire Devanga Community as Community took any interest or any steps in such a way as to make it possible to suggest that a specified item of property was dedicated by it, or some members thereof, to public purpose, viz. some welfare of the community at large.”

8. On the other hand the facts of this case show that the entire community in the area took an active interest and contributed funds for the purpose of creating a “trust fund” in order that a school may be established. Though it was what was called the “Keralasseri Food Committee” that first made a move for the establishment of a High School by submitting Ext. A9 memorandum to the Chief Minister, Madras, the public took up the matter and there was a meeting of the public on the 1st February, 1947 and at that conference a resolution was passed to start a private school. A committee was formed for collecting funds either as donations or as share capital. Ext. A14 is the proceedings of that meeting embodying the decisions taken at the meeting. These proceedings clearly indicate that the intention was to create a trust fund. It is so specifically stated in Ext. A14. We shall extract the relevant part.

(Text in Malayalam Language.)

9. Long before the registration of the society funds were collected from the public towards share money is evidenced by Exts. A3, A4, A24 and B26 receipts. There have been contributions as well, has been established and this aspect has been discussed in the judgment of the court below. It is thus clear that there has been a clear intention to form a trust and that a trust fund was created and that the fund was utilised for the construction of the school building and for the ancillary purposes for establishing and maintaining the work of the school.

“A trust may be created by any language sufficient to show the intention, and no technical words are necessary. The use of such words as ‘intent’ or ‘purpose’ or a direction that a fund shall be applied by, or be at the disposal of, a person for the charitable purposes intended, may be as effectual as the use of the word ‘trust’. Even the words ‘authorise and empower’ may be enough, upon the true construction of the instrument”. (See Tudor on Charities, Sixth Edition, Page

128).

10. No corporation would be created within the meaning of the word “incorporated” occurring in Entry 44 of List 1 of the Seventh Schedule to the Constitution by the formation and registration of a society under the Societies Registration Act. The society would continue to remain as an unincorporated society though under the Societies Registration Act it would have certain privileges some of them being analogous to those of corporations. See Board of Trustees, Ayurvedic and Unani College, Delhi v. State of Delhi, AIR 1962 SC 458. If there was a trust created by the public for a public charitable purpose namely establishing, maintaining and running a school the fact of the registration of a society could not change the character of the properties which had already been constituted as trust properties and impressed with the trust and any addition to those properties

must also have the same character.

11. We have therefore no hesitation in reaching the conclusion that a trust has been created and the High School buildings, the land, all appurtenances, furniture, equipment and all other properties are trust properties.

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13. The suit is maintainable. By virtue of the registration of the society the nature of the trust properties has not been changed and on the allegations and the findings, a suit for the reliefs asked for is competent. We dismiss this appeal with costs." (Emphasis supplied)

58. As indicated above, a crucial factual aspect in Kesava Panicker (supra), was that the public trust was already created by the public and that it pre-existed the registration of the society. It was in such circumstances that it was held that a 'subsequent' registration of the same entity as a society under the Societies Registration Act, 1860 would not take away from its character as a public trust and affect the maintainability of a suit under Section 92 of the CPC. A trust was already created by the public for a public charitable purpose and the properties were already imbued with the character of trust properties and impressed with the trust. The mere registration as a society to alter or circumvent the status of things which was already present, was what was disallowed. However, whether this factual peculiarity has a bearing on the facts of the present matter remains to be seen.

b. Views of different High Courts on the issue

59. Over the period of time, several decisions of different High Courts have been faced with the same question which remains at the centre of the present litigation i.e., whether a society can be considered to be a public trust for the purposes of Section 92 of the CPC. The High Court of Mysore in C. Chikka Venkatappa & Another v. D. Hanumanthappa & Others reported in 1970 SCC OnLine Kar 16 was concerned with a suit filed under Section 92 in relation to 'Devanga Sangha', a society registered under the Mysore Societies Registration Act of 1904 whose object was to advance the educational, economic and social welfare of the members of the Devanga community who are a section of Hindus. The plaintiffs prayed that the defendants be removed from the office they held in the Devanga Sangha and that they also be directed to render true and proper accounts as regards the collections made by them on behalf of the Sangha in connection with the Silver Jubilee Building Fund of the Sangha. The suit was decreed and while the first prayer was not granted, the second prayer was granted only against two out of the five defendants. The High Court while holding that the suit was entirely misconceived on law and also wholly unnecessary on facts, observed as follows:

i. First, that the words 'creation of a trust' under Section 92 obviously has reference to similar phraseology employed in the Indian Trusts Act, 1882 although the same pertains to 'private trust'. 'Trust' is therefore, an obligation annexed to the ownership of property.

ii. Secondly, due regard was given to the object behind the enactment of the Karnataka Societies Registration Act, 1960 and the Mysore Societies Registration Act

of 1904 respectively, along with the express provisions in those legislations which provided that the property, whether moveable or immovable, belonging to a society shall be deemed to be vested in the Governing Body of the Society unless it is separately vested in trustees. While also referring to the provisions which provide that a society may sue or be sued, it was concluded that the obvious effect of these legal provisions would be that such property would belong to the society and be owned by the society like any other individual since the society by itself is invested with the character of a legal person. This is despite the fact that the society's object may be described as being one of a charitable nature and that it acquires property for the purpose of achieving those objects. The existence of a trust, an author of the trust and a transfer of the said property as trust property to any trustee cannot be predicated in such circumstances where a society is involved. Further, it cannot be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. On the contrary, the obligation to use the property for the purposes of the society is an obligation which is inherent or implicit in the MoA, which is the basic document constituting the society. The same cannot be construed as amounting to any declaration of trust in respect of a specified property.

iii. Thirdly, after clarifying the aforesaid differences in law between a trust and a society, it was stated that it would not be possible to begin with the assumption that there is a trust created for public purposes for the invocation of Section 92 of the CPC, unless some special circumstances are made out.

iv. Fourthly, it was stated that one must be able to draw a difference between an act which is purely and exclusively an activity or concern of the registered society in contrast to a matter in which an entire community takes any interest or steps, which may suggest that a specified item of property was dedicated for a public purpose or for the welfare of the community at large. Unless there are indications of a separate vesting of the society's property in a trust, effect must be given to the normal provisions of law which vest the property in the Executive Council.

v. Lastly, while agreeing that a trusteeship can be vested in a 'committee of persons' and that they can be treated as trustees for the purposes of Section 92, it was however, held that the same would be different from the vesting of properties in the governing body of a society registered under the Societies Registration Act, 1860.

60. The relevant observations in Chikka Venkatappa (supra) are reproduced hereinbelow:

'2. [...] There is in Bangalore an association called the Devanga Sangha, which was registered as a society on the 12th of February 1924 under the Mysore Societies Registration Act of 1904. Like all other societies of that nature, the Sangha is governed by a Memorandum of Association, a set of Articles of Association and subsidiary bye-laws framed by the Society. The objects of the Sangha set out in the

Memorandum are to advance the educational, economic and social welfare of the members of the Devanga community who are a section of Hindus. The membership is limited to those belonging to the said community and is subject to payment of donations or periodical subscriptions. There are, as in other cases, different classes of members like Patrons who are called by two different Kannada names 'Poshaka and Sahavaka', Life members, Hon. members and ordinary members. The management of affairs of the Sangha is vested in a body called the Executive Council consisting of a President, four Vice-Presidents, a Secretary, a Treasurer and 50 other members.

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16. It is clear that the trust referred to in this section is one actually created for a public purpose, whether that purpose be a charitable one or a religious one. The choice of the words 'creation of a trust' obviously has reference to the similar phraseology adopted in the Indian Trusts Act. 'Trust' is an obligation annexed to the ownership of property—vide S. 3 of the Act. A trust is created when the author of the trust indicates with reasonable certainty by any words or acts an intention on his part to create thereby a trust, the purpose of the trust, the beneficiary and the trust property and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee—(vide S. 6 of the Act).

17. The question is whether the formation of a society under the Societies Registration Act to carry out any charitable or useful or social purpose can at all be regarded as amounting to creation of a trust in the sense mentioned above. The Societies Registration Act is an Act promulgated for the ??? of making provision for regulating, controlling and improving the legal condition of societies established for the promotion of literature, science or fine arts or for the diffusion of useful knowledge or for any charitable purposes. The Act of 1960 which was substituted for the previous Mysore Act No. 3 of 1904, has, however, limited the object to the mere provision for registration of literary, scientific, charitable or other societies in the State of Mysore. The manner in which the said objects are given effect to in the two statutes is the same. They enable individuals to get themselves formed into an incorporated body, like Corporations or Companies with a separate legal personality conferred upon the incorporated body. And express provision is made (in S. 6 of the Act of 1904 and S. 14 of the Act of 1960) to the effect that the property, moveable or immoveable, belonging to a Society registered under the Act, unless it is vested separately in trustees, shall be deemed to be vested for the time being in the Governing Body of the society. S. 7 of the Act of 1904 corresponding to S. 15 of the Act of 1960 makes provision for the manner in which the societies may sue or be sued. The general provision is that every society registered under the Act may sue or be sued in the name of President or other office bearer specified for the purpose by the Rules and Regulations of the Society.

18. The obvious legal effect of these provisions is that although the object of a society may be described as a charitable purpose and by its regulations it is empowered to acquire property and use the same for achieving its objects, the property belongs to the society and is owned by the society like any other individual, because, the society is itself invested with the character of a legal person by virtue of the provisions of the statute. It is not property in respect of which it is possible to predicate a trust, an author of the trust and a transfer of the said property as trust property to any trustee, nor can it be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. The obligation to use the property for purposes of the society is an obligation which is inherent or implicit in the Memorandum of Association which is the basic document constituting the society.

That does not amount to nor can it be, by any stretch of imagination, read as amounting to any declaration of trust in respect of a specified property.

19. Such being the clear position in law in regard to trusts and in regard to registered societies and the clear difference between the two, the *prima facie* opinion in this case should necessarily be that unless some special circumstances are made out, it is not possible to start with an assumption that there is a trust created for public purposes, in regard to which the provisions of S. 92 CPC. could be invoked.

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25. On the evidence, therefore, there cannot be the slightest doubt that the construction of this building was purely and exclusively an activity and concern of the registered society called the Devanga Sangha. It was not and cannot be described as a matter in which the entire Devanga community as community took any interest or any steps in such a way as to make it possible to suggest that a specified item of property, was dedicated by it, or some members thereof, to public purpose, viz., some welfare of the community at large.

26. [...] All that happens is that the registered society acquires a certain item of property which, under the law, must be deemed to vest in the governing body unless they take steps to vest it separately in trustees. There is no suggestion here of any such separate vesting. Hence effect should be given to the normal provisions of law which vest the property in the Executive Council.

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29. The other four-decisions are relied upon to make out one general proposition, namely, that for the purpose of applying the provisions of S. 92 CPC., it is not obligatory that the trustees should be individual human beings, but may be statutory committees or statutory bodies including incorporated bodies. In T. Sitharama Chetty's case [ILR. 39 Mad. 700.], it was held that an Area Committee appointed under one of the provisions of the Madras Endowments Act, which was in management of a certain temple, may clearly be regarded as a trust for the purpose of S. 92 CPC. In Commissioner, Lucknow Division's case [AIR. 1937 PC. 240.], there was an unincorporated

informal committee of persons who collected subscriptions for a specific purpose. In Gomathinayagam's case [AIR. 1963 Mad. 387.], the founder of a certain school who had endowed properties for purposes of the school transferred those properties on trust to a Committee of persons who got themselves incorporated into a company without any motive of profits under S. 26 of the Indians Companies Act of 1913 (corresponding to S. 25 of the 1956 Act). In all these cases, it was held that the fact that the trusteeship vested in a Committee of persons, whether incorporated or not, made no difference to treating them as trustees for the purpose of S. 92 CPC. But that does not carry the plaintiffs' case any further in this case. In every one of these decided cases, there was a clear creation of a trust for public purposes within the meaning of S. 92 CPC. as explained by us. In every case, there was already either a temple with endowed properties managed by the Area Committee or an actual transfer of property on trust by the founder of the school in favour of the Committee or the collection of funds by an informal committee for a specified public purpose amounting in law to a declaration of trust by themselves.

30. But one case which comes very near the present case is that in P. Mahadevayya's case [53 Mys H.C.R. 167]. That was a case of a registered society formed for the educational advancement of the Veerasaiva community which became the victim of serious differences of opinion between its members resulting in a split threatening to put an end to the useful activities of the society. A suit was filed with the consent of the Deputy Commissioner of the relevant district under S. 92 CPC. for the framing of a scheme. The bulk of the reported judgment discusses the facts and there is no discussion of the legal principles adverted to by us above. The Court seems to proceed upon the assumption that the case was one to which S. 92, CPC. could be rightly applied. There is reference made to the case reported in T. Sitharama Chetty's case [ILR. 39 Mad. 700.] at page 175 of the Mysore High Court Reports. The contention disposed of by reference to the said decision was that according to one of the rules governing the society, no changes in the rules can be made without the consent of 3/4th of the members of the general committee and that as the rules themselves provided a proper procedure, it was not competent for the Court to interfere and frame a scheme. This is what the Court has stated in rejecting that contention:

“We do not think that there is much substance in this contention. The fact that there is a statutory body or committee which governs an institution does not bar the jurisdiction of the Court to frame a scheme because the Court is the ultimate protector of charities and it is the inherent right of the Court always to intervene to safeguard and preserve a charity whenever it is necessary to do so. In Sitharama Chetty v. S. Subramanya Iyer (ILR. 39 Mad.

700) where a similar contention was raised that the Court ought not to frame a scheme for a temple when there is a temple committee functioning under a statute, their Lordships Sir John Wallis and Seshagiri Ayyar repelled the contention and held that they had jurisdiction to do so.”

31. It will be seen that the analogy sought to be drawn between the case in Sitarama Chetty's case [ILR. 39 Mad. 700.] and the case before the erstwhile High Court of Mysore may not have been possible if the great distinction that existed between a temple governed by an Area Committee under

the Madras Endowments Act and a society registered under the Societies Registration Act had been brought to the notice of the Court. The Area Committee referred to in Sitharama Chetty's case [ILR. 39 Mad. 700.] is certainly not the same as the governing body of a society registered under the Societies Registration Act.

32. As the ruling relied upon did not discuss the principle of law ??? before us we do not consider it to be a clear authority in support of the proposition sought to be made by Mr. Nagaraja Rao on behalf of the plaintiffs. If the decision should be regarded as laying down by implication, that even in the case of an ordinary society registered under the Societies Registration Act, a matter exclusively and completely governed by the provisions of the said Act and the general law, can be brought within the scope of S. 92 CPC, as if the position is clearly one of creation of a trust for public purposes, with respect, we find ourselves unable to agree with it." (Emphasis supplied)

61. On the other hand, the High Court of Bombay in Shri Dnyaneshwar Madhuradwait Sampradayik Mandal, Amravati v. Charity Commissioner, Bombay and another reported in 1980 SCC OnLine Bom 120 while dealing with Section 2(13) of the Bombay Public Trusts Act, 1950 observed that a society registered under the Societies Registration Act, 1860 having an object which is religious or charitable or both, would be covered by the definition of a 'public trust' under Section 2(13). However, the said observation was made since the aforesaid State legislation which governed public trusts explicitly included societies functioning for a public purpose of a religious or charitable nature within the definition of a 'public trust'. The relevant observations are thus:

"7. Section 2(13) of the Bombay Public Trusts Act, 1950 which defines "public trust" is in the following terms:

"2(13) "public trust" means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, church synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860."

8. The present case falls under the last clause of this definition and satisfies both the conditions, namely, that it is a registered society under the Societies Registration Act and as pointed out above, the society was formed for a religious purpose." (Emphasis supplied)

62. In Board of Governors St. Thomas School and Others v. A.K. George and another reported in 1984 SCC OnLine Cal 56 leave to institute a suit under Section 92 of the CPC pertaining to St. Thomas School, a statutory body constituted under the St. Thomas School Act, 1923 was sought on the allegation that the Board of Governors were not properly constituted and that the trust property was not being properly managed by the trustees i.e., the Board of Governors of the said school. Leave was granted ex-parte on the ground that the school constituted a public charitable trust. While holding that the school was not a public charitable trust, the High Court of Calcutta observed

that the fact that a provision under the St. Thomas School Act, 1923 provided that all the property vested in the Governors by itself was not sufficient to lead to the conclusion that they were held in trust or that a charitable trust of a public nature was created. The relevant observations are thus:

“11. As regards the next contention that there is no public charitable trust in respect of the St. Thomas School which is expressly governed by the said St. Thomas School Act 1923, it was tried to be contended on behalf of the respondents by referring to Section 11 of the said Act that all the property vested in the Governors by or under this Act should be deemed to be held in Trust, thereby meaning constructive charitable trust of a public nature. This contention, in our opinion, is totally devoid of any merit in view of the fact that Section 11 of the said Act does not at all either expressly or impliedly purport to create a charitable trust of a public nature. St. Thomas School and its property have to be administered in accordance with the provisions of St. Thomas School Act 1923 and if there is any breach of the provision of the Act then the remedy is to be sought under the said Act. The mode of constitution of the Board of Governors had been specifically laid down in S. 2 of the said Act. In these circumstances the contention that the St. Thomas School is a public charitable trust cannot be sustained. Hence the instant suit filed under Section 92 of the Civil P.C. with the leave of the Court granted under the said section is not competent and the ex parte leave that was granted is liable to be revoked and withdrawn. [...] I have already held that the St. Thomas School and its properties do not constitute a public charitable trust at all but they are governed by the provisions of the St. Thomas School Act, 1923 (Bengal Act XII of 1923).” (Emphasis supplied)

63. In *The Advocate General v. Bhartiya Adam Jati Sewak Sangh and Ors* reported in MANU/HP/0182/2001, the High Court of Himachal Pradesh held that even if the defendant no. 1 and 2 societies respectively were performing charitable functions, the same by itself would not attract the provisions of Section 92 of the CPC since there was no evidence that any trust was expressly or impliedly created. In the said case also the societies functioning for a charitable aim, i.e., the social and economic upliftment of the weaker section of the society and money was being raised from various sources, including the public at large as well as in the form of grants-in-aid from the government. Further, the High Court interpreted Section 5 of the Societies Registration Act, 1860 to mean that if the properties were already vested in trustees, only then it shall not be deemed to be vested in the governing body of the society. In other words, the subsequent registration of a trust as a society would not have the effect of altering the properties belonging to the trust and the trustees would continue to be the legal owners of such properties. It adopted the interpretation given in *Kesava Panicker* (supra). In this context, it was held that there was no evidence to show that any funds were collected from the general public before the defendant nos. 1 and 2 societies respectively came to be registered as societies and therefore, no trust as such could be said to have been existed. Hence, all the monies received or collected by them would vest in the governing body of the society only. Therefore, there being no trust and the defendant nos. 1 and 2 respectively admittedly being societies, the suit under Section 92 was not maintainable. The relevant observations are reproduced hereinbelow:

“17. At this stage, reference is required to be made to Section 5 of the Societies Registration Act, 1860, which provides :

The property, movable and immovable, belonging to a society registered under this Act, if not vested in Trustees, shall be deemed to be vested, for the time being in the governing body of such society, and in all proceedings, civil and criminal may be described as the property of the governing body of such society by their proper title.

(Emphasis supplied in original)

18. Under the above provisions the properties shall not vest in the Society, if such properties were already with the trustees. In other words, the registration of a Trust as a Society under the Societies Registration Act, 1860 would not alter the position and the properties belonging to the trust would not vest in the society but the trustees would continue to be the legal owners of such properties.

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21. In the present case, there are neither pleadings nor evidence to show that any funds were collected from the general public before the Defendants No. 1 and 2 came to be registered as Societies under the Societies Registration Act, 1860. Therefore there was no trust as such and vide Section 20 of the Societies Registration Act, 1860, all moneys received by the Defendants No. 1 and 2 either by way of grants-in-aid or in the form of contributions from the public would vest in the societies, that is, Defendants No. 1 and 2.

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24. In the present case, the very first condition is lacking. As stated above, it is the admitted case of the Plaintiff that Defendants No. 1 and 2 are "societies" registered under the Societies Registration Act, 1860. There is no averment and/or evidence that any trust was expressly or impliedly created. Even if Defendants No. 1 and 2 are carrying on charitable purpose, the same by itself would not attract the provisions of Section 92, Code of Civil Procedure.

25. On the facts and circumstances of the case neither the Defendants No. 1 and 2 are public trusts nor the Defendants No. 3 to 7 are the trustees. The issue is decided against the Plaintiff.” (Emphasis supplied)

64. In Abhaya (supra), the Kerala High Court also refused to accept the contention that a society can be considered to be a public trust for the purposes of Section 92 of the CPC. The organisation therein was registered under the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act, 1955 and was constituted with the objectives of serving the mentally-ill, improving the social and non-social environment of the mental hospitals in Kerala, provision of facilities to improve the life-conditions of the mentally-ill, and rehabilitation of the recovered patients, especially those patients who have no familial support. The required capital of the society was also

raised by membership/subscription fees, donations, loans, grants and other voluntary contributions, including from the public. Allegations of mismanagement, misconduct and misappropriation were levelled against the defendants. While dismissing the original petition, it was held as follows:

i. First, that there was absolutely nothing in the Rules and Regulations of the Memorandum of Association which indicated that prior to the formation and registration of the society there was a trust having any property. In such a scenario, the formation of a society to carry out any charitable or social purpose would not ipso facto make the society a public trust, especially since the society is also empowered to acquire property to use for its purposes. Such a property which is then acquired will only be the property of the society which is a legal person by virtue of the provisions of the statute and will not be a property in respect of which a trust can be predicated. It cannot be said that whenever a society acquires property, it declares itself as a trustee in respect of that property.

While it does have a legal obligation to use the property for its prescribed purposes and strictly in accordance with the Rules and Regulations of the Memorandum of Association, by no stretch of imagination can it be considered as a declaration of trust.

ii. Secondly, on a reading of Section 8 of the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act, 1955, which is pari materia to Section 5 of the Societies Registration Act, 1860, it was inferred that unless the properties had already vested separately in trustees, they shall vest in the governing body of the society.

iii. Thirdly, it was opined that a procedure for the removal of the existing governing body, appointment of a fresh governing body and framing a scheme for the better and efficient management of the society was already contemplated within the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act, 1955. Such a relief could be availed by the members of the society as well, however, provided that a minimum of 10% of the members on the rolls of the society join together. It was opined that this express provision cannot be sought to be circumvented by the aggrieved members of the society by making an allegation that the society is a public trust and adopting the route under Section 92 of the CPC instead.

iv. Lastly, while acknowledging that it is the allegation in the plaint that determines the jurisdiction of the court under Section 92 of the CPC and that if a breach of trust is 'alleged', the grant of leave may be given, it was cautioned that when the very existence of a trust of any kind is seriously disputed/denied, the court must prima facie satisfy itself of the existence of the trust. It is true that if the contention is that there is no public trust but only a private one, a decision on whether the trust is of a public or private nature can only be made after taking in evidence. However, the same

principle would not apply when the issue is that a trust by itself is absent in the circumstances. There must be some material to convince the court that a trust has been created.

65. The relevant observations made in Abhaya (supra) are reproduced hereinbelow:

“7. In the 1st paragraph of the petition itself it is admitted that the first petitioner-organisation “Abhaya” was constituted with the objectives of serving the mentally ill-persons, improving the social and non-social environment of the mental hospitals of Kerala, providing the mentally ill-persons with facilities to improve their life conditions and rehabilitating the recovered patients, especially those who are unwanted by their families. It is also admitted that in a general body meeting of the 1st petitioner held on 5-1-1986 it was decided to register the 1st petitioner-organisation under the provisions of Act XII of 1955 and the same was registered with Reg. No. 71 of 1986 by the Registrar of Co-operative Societies having its registered office at “Varada” Nandavanam, Trivandrum. In paragraphs 3 to 13 the respondents 1 to 6 have extracted the various provisions of the Rules and Regulation of the Society. A copy of the Memorandum of Association is produced by respondents 1 to 6. The Memorandum of Association shows that the name of the Society is “Abhaya” and its registered office is at “Varada” Nandavanam, Trivandrum.

The area of activity of the Society is limited to State of Kerala. Clause 4 of the Rules and Regulations of the Memorandum of Association deals with the main objectives of the Society, which reads as follows:—

4. The main objectives of the Society shall be the service of the mentally ill, alcoholics and drug addicts, women in distress and children and other groups in distress. The society shall aim at—

(a) Improving the social and non-social environment of the mental hospitals of Kerala.

(b) Providing the mentally ill with facilities to improve their life conditions.

(c) Rehabilitating the recovered patients, especially those who are unwanted by their families.” [...] Clause 10 deals with the capital of the society, which reads as follows:— ‘10. The required capital of the society shall be raised by the membership and subscription fees and donations, loans, grants and other voluntary contributions from the public State and Central Governments and other institutions or organisations.’ [...]

8. It is true that Clause 4 of the Rules and Regulations shows that the Society is constituted with the main objectives of rendering service of the mentally ill, alcoholics and drug addicts, women in distress and children and other groups in distress. But, there is absolutely nothing in the Rules and Regulations of Memorandum of Association to show that prior to the formation and registration, of the society there was a trust having any property. On the other hand, a reading of the memorandum of Association shows that there were 7 promotees and they convened a General Body meeting on 5-1-1986. The General Body held on 5-1-1986 decided to register the 1st petitioner as a Society under

Act XII of 1955. Clause 10 shows that on the date of formation of the Society there was no property over which the Society had any ownership. A formation of a Society under the provisions of Act XII of 1955 to carry out any charitable or social purpose will not make the Society a public Trust. The Society is empowered to acquire property also to use for its purposes. But, that property which is to be Acquired will only be the property of the Society and it will not be a property in respect of which it is possible to predicate a trust. The preamble of the Act XII of 1955 is relevant. It states as follows:— “Whereas it is expedient that provision should be made for improving the legal condition of Societies, established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge or for charitable purposes.” Section 3 of the Act provides that any seven or more persons associated for any charitable purpose may by subscribing their names to a memorandum of association and filing the same with the Registrar, form themselves into a society. Section 32 of the Act provides that the following Societies may be registered under the Act:

“Charitable societies, societies established for the promotion of science literature or the fine arts, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art collections of natural history mechanical and philosophical inventions, instruments or designs.” Section 8 of the Act deals with the property of the Society. It reads as follows:— “8. Property of society how vested. The property, movable and immovable, belonging to a society, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.” A reading of Section 8 makes it clear that unless the properties had already vested separately in trustees, it shall vest in the governing body of the society. [...] Section 25 deals with application to court for dissolution framing schemes, etc. Section 25 reads as follows:— “25. Application to Court for dissolution, framing a scheme, etc. — (1) When an application is made by the State Government or ten per cent of the members on the rolls of a society to the District Court within the jurisdiction of which the society is registered, the Court may, after enquiry and on being satisfied that it is just and equitable pass any of the following orders:—

- (a) removing the existing governing body and appointing a fresh governing body; or
- (b) framing a scheme for the better and efficient management of the society; or
- (c) dissolving the Society.

(2) Where the application under sub-section (1) is by the members of the society, the applicant shall deposit in Court along with the application the sum of one hundred rupees in cash as security for costs.” Section 25 makes it very clear that a suit can be filed before the District Court by 10% of the members of the society against the Society for removing the existing governing body and appointing a fresh governing body or for framing a scheme for the better and efficient management of the society.

The right to file the suit to frame a scheme is not confined to the State Government alone. The relief that the District Court can grant is not restricted to ordering dissolution of the society only. Section 25 confers power on the members of the society to institute a suit for removing the governing body or for appointing a fresh governing body and for framing a scheme. The only condition is that to file such suit minimum 10% of the members on the rolls of the society shall join together and the suit is to be filed before the District Court, Sub-

section (2) of Section 25 provides that the plaintiff has to deposit Rs. 100/- as security for costs.

9. A reading of the various Sections of Act XII of 1955 shows that even if the object of a society formed under the provisions of Act XII of 1955 is a charitable purpose and even if it acquires property and use the same for achieving the object of the society, the property is owned by the Society and it belongs to it. The property is that of the society which is a legal person by virtue of the provisions of the statute. It cannot be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. The Society has a legal obligation to use the property for purposes of the society acquired strictly in accordance with the provisions contained in the Rules and Regulations of Memorandum of Association. By no stretch of imagination it can be considered as a declaration of trust in respect of a property acquired by the Society,

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11. The preamble of the Indian Trusts Act, 1882, states that it was enacted to define and amend the law relating to private trusts and trustees. Section 3 of the Indian Trusts Act defines "trust". It reads as follows:— "A "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." To constitute a trust, there must be an author of the trust, trustees, beneficiary, trust property and beneficial interest. The concept of trust involves four ingredients; a settlor or donor, a trustee or trustees, the beneficiaries and the subject matter. Of course, the beneficiaries may be a specified group or general public. Trust may be either express or constructive. But, a trust is created only when the author of the trust indicates with reasonable certainty by words or act the intention in his part to create a trust, beneficiary and the trust property. The subject matter of a trust must be a property transferable to the beneficiary. It must not be merely a beneficial interest.

12. In Kesava Panicker v. Damodara Panicker 1975 Ker LT 797:

(AIR 1976 Kerala 86) a Full Bench of this Court considered the effect of the subsequent registration of a society. [...] That principle was followed in Sukumaran v. Akamala Sree Dharma Sastha Idol (1992) 1 Ker LT 432: (AIR 1992 Kerala 406), but in both those cases there were materials to show that a public trust was in existence and later that trust got registered under the provisions of Act XII of 1955. I shall consider whether there is any material in this case to show that the 1st petitioner was a trust and later it got itself registered under the provisions of Act XII of 1955.

13. [...] A reading of various averments in the Original Petition shows that though the word "Trust" is used to describe the 1st petitioner, there is no averments in the pleadings to show the existence of a Trust, whether Public or Private. On the other hand, the materials on record clearly shows that the 1st petitioner is a Society registered under Act XII of 1955.

14. A comparison of Section 25 of the Act XII of 1955 and Section 92 of C.P. Code shows that the reliefs provided under Section 25 of the Act and under Section 92 of the C.P. Code are similar. The suit under Section 25 of the Act is also to be filed before the District Court. The main difference is that to file a suit under Section 25 of the Act a minimum 10% of the members of the Society must join together as plaintiffs. But they need not obtain any permission as contemplated under Section 92 of the C.P. Code. The minimum number of 10% of the members is insisted to see that the Society is not unnecessarily dragged to court of law. The member of the Society cannot be allowed to circumvent that provision by making an allegation that the Society is a Trust.

15. The learned counsel appearing for the contesting respondents has argued that when there are averments in the petition regarding the existence of a trust, the Court is bound to grant the permission sought for and the Court cannot consider whether the allegation regarding the existence of trust is true or not. It is argued that is a matter to be decided after taking evidence.

16. It is true that it is the allegation in the plaint that determines the jurisdiction of the Court under Section 92 of C.P. Code. If a breach of trust is alleged in the plaint, it is sufficient to confer jurisdiction to the Court. But, when the very existence of a trust of any kind is denied, the court must look into the pleadings and the documents produced by the plaintiffs to see whether there is any material to show a prima facie case of existence of the trust. Of course, if the contention is that there is no public trust but only a private trust, a decision as to whether the trust is public or private can be taken only after taking evidence.

17. The learned counsel for the respondents 1 to 6 has argued that if there are averments in the original Petition to the effect that the O.P. relates to a trust the District Court shall not reject the O.P. on the ground that there is no trust. It is argued that the Apex Court has held that it is not even necessary to hear the respondent before granting leave. It is true that in *B.S. Adityan v. B. Ramachandran* 2004 AIR SCW 3044: (AIR 2004 SC 3448), the Apex Court has held that leave can be granted without issuing notice to the respondent. But in the very same decision it was also held that the respondent after appearing in the suit, can file petition to revoke the leave already granted. So, there is no merit in the contention of the contesting respondent that if there are averments in the petition regarding the existence of trust, the District Court shall entertain the application and grant leave.

18. The learned counsel appearing for respondents 1 to 6 has argued that the scope of enquiry in an Original Petition is very limited and the District Court has merely to see whether there is prima facie case for granting the relief. [...] It is true that the plaintiff need only establish a prima facie case of existence of a trust. But, there must be materials to make a prima facie case of existence of a trust. There is total lack of any such materials in this case.

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21. The learned District Judge allowed the Original Petition on a wrong assumption that the 1st petitioner Society is a Trust. There is absolutely no material to show prima facie that 1st petitioner is a Trust, either public or private. There is also no material to show that there was a Trust of public nature, which subsequently got registered under the provisions of Act XII of 1955. Since there is no material to make out a prima facie case that the 1st petitioner is a public Trust and any person had settled any properties for the benefit of the beneficiaries, the provisions of Section 92 of C.P.C. cannot be invoked. So, the impugned order is illegal, unsustainable and liable to be set aside.” (Emphasis supplied)

66. While dealing with the same issue, the Madras High Court also in Periyar Self Respect Propaganda Institution (supra), took the view that the properties in question vested with a society and not a trust, thereby rendering the suit under Section 92 not maintainable. Therein, the fact that the institution was registered under the Societies Registration Act, 1860 and that the properties were vested in the President and Secretary of the institution who were empowered to purchase and sell properties on behalf of the institution, were, in the opinion of the High Court, factors which indicated that a trust neither existed nor was created. The relevant observations are as thus:

“9. In order to maintain the suit under Section 92 CPC the petitioners/plaintiffs should show the existence of a Trust and the alleged breach of the terms of the Trust; besides which the interestedness of the petitioners/plaintiffs in the running the Trust shall also be made known.

10. But as seen from the Memorandum of Articles of Association of the Periyar Self Respect Propaganda Institution (first defendant), Tiruchirapalli, it is found that it was incorporated and found to have been registered under the Societies Registration Act 21/1860. That Certificate number is 13/1952 with a Memorandum of Articles of Association containing 13 life members and 30 Rules; according to Clause 22, the life members of the Executive Committee alone shall be the Trustees of the properties already purchased. According to Clause 23, the properties of the Institution shall be in the names of the President and the Secretary and they shall have power to purchase and sell the properties on behalf of the Institution. If it is a Trust Property, there will not be a clause empowering the President to sell the properties. That itself indicates that it is not a Trust. The fact that it was registered under the Societies Act may also lend support to the above view.

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14. In this case also the property vest with the President and Secretary of the first defendant as per clause 23 of the Memorandum of Articles of Association of the first defendant Institution, which was registered under the Societies Registration Act 21/1860. Therefore, the property is vested with a society and not with a Trust and as per the observations made in the above cited case a suit under Section 92, CPC is not maintainable, (to) which Societies Registration Act is applicable, proceeding

with a suit under Section 92, CPC was deprecated in *Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik* ((1984) 2 SCC 50 : AIR 1984 SC 192). There is also no interestedness shown upon the plaintiffs in the running of the Trust." (Emphasis supplied)

67. In S.R. Bahuguna (supra), the Delhi High Court had held that the suit under Section 92 was not maintainable for not having satisfied two crucial ingredients i.e., the defendant no. 1 was a society and not a public charitable trust, and the plaintiffs were also not 'persons interested' in the trust. Therein, for the purpose of constructing a building on a plot of land belonging to defendant society and develop it, a board of five trustees was set up by the standing committee of the defendant society through a registered trust deed dated 01.09.1975 where the President of the defendant society was the Managing Trustee. However, the trust was revoked almost two years later since the construction was complete and the purposes for which it had been set up was fulfilled. In this context, the Delhi High Court emphasized that Section 5 of the Societies Registration Act, 1860 cannot be construed to mean that the governing body members of the society would automatically become trustees if no trust is created to manage the assets of the society. The relevant observations are as follows:

"12. The sum and substance of the suit averments is that the AIWC, a registered Society, constituted a trust on 01.09.1975 for the purpose of constructing upon a plot of land allotted to it in 1962. This was part of the avowed objectives that govern the Society. The AIWC had resolved that after construction, the building would be utilized to provide housing for as many working women as was feasible and also at the same time generate rental income to sustain its other welfare activities. The plaintiffs allege various acts of financial irregularities in relation to construction activity undertaken by the AIWC as well as alleged acts of embezzlement on part of the Treasurer. They also rely upon certain observations by the AIWC's Chartered Accountants or Auditors. Their claim to be persons interested for the purpose of obtaining leave is that they were associated with the Society having worked there for some time and are, therefore, 'interested for its proper management and functioning'.

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14. [...] Besides, there is no denial that the first defendant is a society, not a Trust; a Trust was set up for a limited period, for a special purpose, i.e., to construct a building. Apparently, after that objective was achieved, the Trust was dissolved or wound up. In these circumstances, the Court is of opinion that the suit is not maintainable.

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16. In view of the above discussion, the Court is of opinion that the suit is not maintainable, because two crucial ingredients, which are essential pre-requisites for action under Section 92 are lacking; the first, defendant is a society, and not a public charitable Trust. The Trust which had been set up earlier was dissolved in 1997; that has not been disputed. The suit was filed in 2001. Section 5 of the Societies Registration Act 1860, says that the property and assets of a registered society vest either

in a trust, set up for that purpose, or the society's governing council or body. This however, does not mean that the governing body members if no trust is created to manage the society's assets, become trustees. No authority was shown to advance such an argument. The second ingredient, i.e. the plaintiffs being 'persons interested' is also lacking, in this case.

17. For the above reasons, the plaintiffs cannot be granted leave to file a suit, under Section 92 of the CPC. The suit and all pending applications are, therefore, dismissed without any order on costs." (Emphasis supplied)

68. In Young Mens Christian Association of Ernakulam (supra), the plaintiffs alleged before the Delhi High Court that the defendant society owned a large number of movable and immovable properties across India and held in trust, various properties of its member associations. The High Court accepted such a contention and leave to institute a suit under Section 92 was granted by delineating the following:

i. First, emphasis was laid on several Articles of the Memorandum of Association of the defendant society of which one provided that certain properties were indeed held in trust by the defendant society on behalf of the member YMCAs.

Furthermore, the historical background indicated that the defendant society started administering and looking after existing member YMCAs which were formed even before it was registered as a society, quite similar to the factual scenario in Kesava Panicker (supra). The defendant society was not only holding properties in trust but also exercised the power to enter into transactions in respect of such properties. On a consideration of all the above, it was held that there remained no doubt that the defendant society was in both 'express' and 'constructive' trust of the properties belonging to its members.

ii. Secondly, by interpreting Section 3 of the Indian Trusts Act, 1882, the elements that were required to be fulfilled for an express or constructive trust were said to be – (a) ownership of a property, (b) a confidence reposed by the owner, and (c) the said confidence being accepted for the benefit of another. It was stated that if these elements are satisfied a trust could be said to be created. It was, however acknowledged that the term "express or constructive trust" in Section 92 of the CPC does not relate to a trust constituted under the Indian Trust Act, 1882 but any body or entity which holds in trust any property and is created for public purposes of a religious or charitable nature. Hence, a society might also be able to satisfy the test of an express or constructive trust, when the facts reveal the creation of a trust.

69. The relevant observations are reproduced as follows:

"11. A perusal of the above clauses of the Defendant's Memorandum reveals that the Society is one which possesses a public character. It is working for the people who constitute its members as also for the larger interest of the community. It is common