

ASHOK KUMAR GUPTA & ANR.

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v.

M/S SITALAXMI SAHUWALA MEDICAL TRUST AND  
OTHERS

(Civil Appeal No. 1917 of 2020)

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MARCH 03, 2020

**[UDAY UMESH LALIT AND VINEET SARAN, JJ.]**

*Code of Civil Procedure, 1908 – s.92 – Suit filed by appellants-plaintiffs (husband and wife) who are Trustees of 1st defendant Trust, a Public Charitable Trust – Four trustees under the Deed of Trust are both the plaintiffs and defendant nos.2 & 3 (parents of 1st plaintiff and his brother-4th defendant) – Suit was filed for framing scheme for administration of the Trust – It was inter alia pleaded that 1st plaintiff is a qualified surgeon and the 4th defendant who did not have any medical qualification/expertise to run the hospital and manage the Trust had been in control of the Trust and the objects of the Trust were not getting fulfilled; and that the plaintiffs were sought to be removed from the board of trustees – Along with the aforesaid Suit, plaintiffs also filed application seeking leave to institute the suit u/s.92, CPC – Leave granted u/s.92 – Respondent no.2 sought revocation – Leave granted not revoked – Respondents filed revision petition – Allowed – Held: Three conditions are required to be satisfied for invoking s.92 – Admittedly, the concerned Trust is created for public purposes of charitable nature – Also, plaint made out a case that the trust was being run as a private family trust; its object was being ignored; and that there was necessity to frame a proper scheme for its administration through competent persons – Further, what was complained was that the appellants were removed from the board of trustees and none of the present trustees are from medical profession – It is in that context that the principal relief prayed was for framing of a proper scheme of administration and appointing trustees including the first plaintiff along with other trustees from medical profession and from the public – Relief prayed for cannot be said to be in the nature of vindicating personal rights of the first plaintiff – Aforesaid relief was prayed so that the Trust which was founded*

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- A *with the object of making available medical and related services to the general public could achieve its objectives through trustees who are well qualified to undertake such responsibility – If in respect of a trust which had set up a hospital, a request was made for framing of a proper scope of administration by appointing trustee from medical profession and from public for proper administration of*
- B *the Trust, the matter would definitely fall within the scope of s.92 – View taken by High Court is set aside – Decision of District Court restored.*

**Allowing the appeal, the Court**

- C **HELD: 1.1 Three conditions are required to be satisfied in order to invoke Section 92 of the Code and to maintain an action under said Section, namely, that the Trust in question is created for public purposes of a charitable or religious nature; there is a breach of trust or a direction of Court is necessary in the administration of such a Trust; and the relief claimed is one or**
- D **other of the reliefs as enumerated in said Section. Consequently, if any of these three conditions is not satisfied, the matter would be outside the scope of said Section 92. In the instant case, it is admitted that the concerned Trust is created for public purposes of charitable nature. The matter on that front is beyond any doubt.**
- E **As regards the second condition, paragraph 21 of the plaint makes out a case that a public charitable trust was being run as a private family trust; that the object of the Trust was being ignored; and that there was necessity to frame a proper scheme for administration of the Trust through competent persons. The second condition also stands satisfied. Insofar as the third**
- F **condition is concerned, the reliefs prayed for are diverse which include *inter alia* framing of a proper scheme of administration, for removing certain trustees and appointment of fresh trustees from medical profession and from public and for other ancillary reliefs. [Paras 13, 14][995 E-H; 996 A-D]**
- G **1.2 In the present matter, the appellant No.1-first plaintiff, as a qualified medical professional, was associated with the Trust and what is being complained is that the appellants have been removed from the board of trustees and none of the present trustees are from medical profession. It is in that context that**
- H **the principal relief prays for framing of a proper scheme of**

administration and for appointing trustees from medical profession and from the public for proper and effective administration of the Trust. The expression “including the first plaintiff” has to be understood in the context that the first plaintiff, as a qualified medical professional, was associated with the Trust right since the inception but now stands removed. The relief prayed for cannot be said to be in the nature of vindicating personal rights of the first plaintiff. What was prayed was for framing of a proper scheme of administration so that the Trust which was founded with the object of making available medical and related services to the general public could attain and achieve all its objectives through trustees who are themselves well qualified to undertake such responsibility. The substance of the matter discernible from para 21 as well as the principal relief claimed in the suit is quite clear that what was being agitated were the public rights. If in respect of a trust which had set up a hospital, a request was made for framing of a proper scope of administration by appointing trustee from medical profession and from public for proper and effective administration of the Trust, the matter would definitely fall within the scope of Section 92 of the Code. The view taken by the High Court is set aside and the decision arrived at by the District Court is restored. [Paras 16-18][999 E-H; 1000-A; C-D]

*Chairman Madappa v. M.N. Mahanthadevaru and Others* [1966] 2 SCR 151 – followed.

*Bishwanath and Anr. v. Shri Thakur Radhaballabhji & Ors.* [1967] 2 SCR 618; *Sugra Bibi v. Hazi Kummua Mia* [1969] 3 SCR 83 – relied on.

#### Case Law Reference

[1966] 2 SCR 151	followed	Para 11	
[1967] 2 SCR 618	relied on	Para 12 (a)	
[1969] 3 SCR 83	relied on	Para 13 (b)	G

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1917 of 2020.

From the Judgment and Order dated 30.04.2019 of the High Court of Judicature at Madras in C.R.P. (PD) No. 2708 of 2013.

A K.V. Vishwanathan, Guru Krishna Kumar, Sr. Advs., Pradeep Aggarwal, Lal Pratap Singh, Shobhit Tiwari, Umesh Pratap Singh, Arjun Aggarwal, Yash Raj, Apoorv Singhal, Ms. Ruchi Kohli, Sridhar, B. Ragunath, Arun Mozhi, Vijay Kumar, Advs. for the appearing parties,.

The Judgment of the Court was delivered by

B **UDAY UMESH LALIT, J.**

1. Leave granted.

2. This appeal challenges the final judgment and order dated 30.04.2019 passed by the High Court of Judicature at Madras in C.R.P. (PD) No.2708 of 2013.

C 3. Original Suit No.566 of 2012 was filed by the present appellants in the Court of the District Judge, Coimbatore stating basic facts as under:-

D “III. The 2<sup>nd</sup> plaintiff is the wife of the 1<sup>st</sup> plaintiff. The 1<sup>st</sup> plaintiff is the elder son of defendants 2 & 3. The 4<sup>th</sup> defendant is the younger son of defendants 2 & 3 and the 5<sup>th</sup> defendant is his wife. The 6<sup>th</sup> defendant is the daughter of defendants 4 & 5. The 7<sup>th</sup> defendant is son in law of the family and he has married the sister of 1<sup>st</sup> plaintiff and the 4<sup>th</sup> defendant. The plaintiffs are Trustees of the 1<sup>st</sup> defendant Trust and are persons having interest in the affairs of the Trust and are filing the present suit for framing a scheme for the administration of the 1<sup>st</sup> defendant Trust, which is a Public Charitable Trust.

E IV) The 2<sup>nd</sup> defendant settled down in Coimbatore in 1959 and he was managing the firm called M/s India Roller Flour Mills. The 1<sup>st</sup> plaintiff was academically a good student and he secured admission on merit in medical college and he graduated from Coimbatore Medical College completing MBBS. He pursued his studies further in post-graduation and completed his M.S. from Madras Medical College, Chennai, and is thus a qualified surgeon who has graduated from the Madras University.

F V) Taking note of his future and his carrier as a Doctor, the 2<sup>nd</sup> defendant decided to construct a hospital, so as to enable the 1<sup>st</sup> plaintiff to carry on his profession. However, the hospital was envisaged as a charitable hospital. The 2<sup>nd</sup> defendant as author of the trust established the 1<sup>st</sup> defendant Trust, M/s Sitalaxmi

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Sahuwala Medical Trust, under registered Trust Deed dated 09.04.1980. A copy of Deed of Trust is produced herewith and the original is with the 2<sup>nd</sup> defendant as also the rest of the documents. A

VI) The objects of the Trust are set out in Clause I which briefly are to establish, maintain and render financial assistance and donations by establishing and assisting running of a hospitals, surgical homes; health trainings, nursing homes, maternity homes and dispensaries and to equip the hospitals and provide accessories and instruments etc. B

VII) The plaintiff respectfully states that the 1<sup>st</sup> defendant Trust was established with the aim and object of providing medical aid to the needy citizens. This was contemplated taking note of the fact that the 1<sup>st</sup> plaintiff who became a qualified medical practitioner would look after the institution and administer the hospital where a part of the hospital can be run for charity and the 1<sup>st</sup> plaintiff can have his consultations and in patients admitted to serve the people in society. C D

VIII) It is significant that the four trustees appointed under the Deed of Trust are both the plaintiffs and defendants 2 & 3 and they have been appointed for life. The 2<sup>nd</sup> defendant is the Managing Trustee and the 1<sup>st</sup> plaintiff was appointed as the Joint Managing Trustee, vide Clause 10. E

IX) There was an amendment to the Trust Deed dated 09.04.1980 by another deed dated 23.03.1981. In addition to the objects, further objects for providing free education and conducting orphanages and help poor people perform marriages were introduced to the objects. But nothing of these additional charities were ever performed. F

X) By another deed dated 15.03.1985, further objects were introduced to the Deed of Trust which have no relevance to the original objects. There was also an amendment to the Trust Deed by a registered deed dated 24.11.1986 providing for borrowing powers. G

XI) The Trust purchased land measuring 33 Cents in Cowly Brown Road by a sale deed dated 08.04.1985 and a hospital was constructed and it was established by the 1<sup>st</sup> defendant trust in H

A 1987-88. The 1<sup>st</sup> plaintiff was looking after administration of this hospital till the year 2003-04. The subsequent turn of events during the past one decade are narrated herein below.....”.

B 4. The events after 2003-04 were then adverted to, and it was elaborated that the 4<sup>th</sup> defendant – brother of appellant No.1 who did not have any medical qualification or any expertise to run the hospital and manage the Trust had been in control of the Trust and the objects of the Trust were not getting fulfilled; and that the appellants were sought to be removed from the board of trustees. Finally, it was stated:-

C “XXI. The plaintiffs submit that time has come for this Honorable Court to interfere with the affairs of the 1<sup>st</sup> defendant Trust and to frame a proper scheme for administration of the Trust through competent men, so that the objects of the Trust are implemented. The defendants are converting the public charitable trust into a private family trust with rubber stamp trustees so as to enable them to make a living out of the trust properties and income from the Trust. The defendants are guilty of ignoring the objects of the Trust and in misappropriating the income earned by the Trust by suppressing its real income by converting the hospital into a business venture. A scheme requires to be framed for the following reasons:

- E 1. The administration of the Trust should be in proper hands and the hospital should be administered by competent qualified Doctors.
- F 2. No charity is performed by the 1<sup>st</sup> defendant Trust and records are created and fabricated for the said purpose for the past 5 years. No free medical aid is provided and allowed to be provided. Only the 1<sup>st</sup> plaintiff gives free consultation to patients.
- G 3. No regular meeting of the Trust are conducted and no procedures are followed for proper conduct of meetings. No resolutions are passed and minutes are not recorded.
- H 4. The real income derived by the Trust is not accounted and this is siphoned off for the personal use by Defendants 2 to 5. Cash collected is not deposited immediately on the following day but used by the 4<sup>th</sup> defendant.
5. Trustees are appointed and removed according to the whims of defendants 2 & 4 and no democratic system is followed.

6. Complaints are frequently emerging from Doctors and Patients that the 4<sup>th</sup> defendant is demanding and receiving kickback of various amounts involved and the 1<sup>st</sup> plaintiff has been informed to watch out the activities of the 4<sup>th</sup> defendant and to direct him to mend his ways, to preserve the reputation of hospital. A

7. The defendants do not come and supervise the hospital on a day to day basis. The 1<sup>st</sup> plaintiff is prevented from taking part in the administration and management of the hospital. Proper accounts are not maintained. B

8. The defendants are thus guilty of mismanagement, misappropriation and they are guilty of committing breach of Trust and they are not fit to hold office. The 8<sup>th</sup> defendant is the Banker for the 1<sup>st</sup> defendant Trust and the 1<sup>st</sup> defendant is operating its accounts with the 8<sup>th</sup> defendant. The 8<sup>th</sup> defendant is thus a proper party as the operation of account and withdrawals can be.” C

5. In the circumstances, the appellants prayed for following reliefs in said Suit:- D

“a) By framing a proper scheme of administration for 1<sup>st</sup> Defendant Trust namely M/s Sitalaxmi Sahuwala Medical Trust by removing the defendants 2 to 6 and appointing fresh trustees including the 1<sup>st</sup> plaintiff and other trustees from the medical profession and from the public for proper and effective administration of the 1<sup>st</sup> defendant Trust by vesting the properties of the 1<sup>st</sup> defendant trust with the new trustees to be appointed. E

b) Declaring that the appointment of the 6<sup>th</sup> defendant as trustee is void and illegal and for consequential permanent injunction to restrain the 6<sup>th</sup> defendant from functioning as a Trustee of the 1<sup>st</sup> defendant trust. F

c) For declaration that the procedure adopted to remove the plaintiffs from the Trust Board is void, illegal and mala fide and for consequential permanent injunction restraining the defendants 2 to 6 from removing the Plaintiffs from the Trust Board or reconstructing the Trust Board without leave of the Court. G

d) For permanent injunction restraining Defendants from appointing the 7<sup>th</sup> defendant as a Trustee and to restrain the 7<sup>th</sup> defendant from acting as Trustees of the 1<sup>st</sup> defendant Trust. H

A e) Directing the accounts of the 1<sup>st</sup> defendant Trust to be audited by an independent Chartered Accountant and to surcharge defendants 2 & 4 to pay up to the 1<sup>st</sup> defendant Trust any amount that may be found due from them to the Trust.

B f) Appoint a Receiver to take charge of the assets of the 1<sup>st</sup> Defendant Trust and administer the same and entrust them to the Trustees appointed as per Scheme.

g) Award cost of the suit to the plaintiff.

C h) Grant such other and further relieves as this Honourable Court may deem fit and proper in the facts and circumstances of the case.”

D 6. Along with the aforesaid Suit, IA No.1416 of 2012 was filed by the appellants seeking leave to institute the Suit under Section 92 of the Code of Civil Procedure, 1908 (‘the Code’, for short). By order dated 31.07.2012, the District Judge, Coimbatore granted leave under Section 92 of the Code. Soon thereafter Respondent No.2 herein filed IA No.1435 of 2012 seeking revocation of leave granted to the appellants vide aforesaid order dated 31.07.2012. It was stated, *inter alia*, that neither the application nor an affidavit in support of the application disclosed any proper reason for grant of such leave. The matter was contested. The District Court vide order dated 27.11.2012 held that the appellants had made out a *prima facie* case and there was no necessity to revoke the leave already granted. The District Court, thus, dismissed IA No.1435 of 2012 holding *inter alia*:

F “18. In Para 18 of the plaint there is an allegation that the 4 defendant runs the hospital of the trust to earn his livelihood and siphoning off the income for his personal use. There was allegation to the effect that no meeting of trustees has been held for the past many years.

G The defendants are not competent and qualified to administer the hospital. In para 9 it was alleged that the 6<sup>th</sup> defendant was inducted as a trustee in violation of the provisions contained in the trust deed. No annual meeting was held for passing accounts and for appointment of auditor.

... ..

H 20. ... In the case at hand, admittedly the 1<sup>st</sup> plaintiff is a doctor. His qualification is Master of Surgery. 2<sup>nd</sup> plaintiff is his wife.



They are first trustees of the trust. It can be safely held that they are having interest in the trust. Therefore it cannot be said that the suit has been filed by irresponsible persons. Admittedly the trust was created for public purposes. It has been brought to the notice of the Court that the objects of the original trust have been amended without any authority. The validity of the amendment can be gone into after trial. Likewise the amendment with regard to appointment of trustees can also be decided after conclusion of trial. In “*V.Rajasekaran vs. M. Rajendran*”<sup>1</sup> it has been held that:

“Unless a strong case is made out, ordinarily the Court should grant leave so that the question can be considered in depth after evidence is recorded.”

... ..

21. It is well settled that public charity is perpetual and the Court is the guardian of a charity. Having regard to the whole facts and circumstances of the case, I hold that the plaintiffs have made out a prima-facie case. Therefore, the leave granted by this Court to institute the suit cannot be revoked. The point is answered accordingly.”

7. The respondents challenged the aforesaid decision of the District Court by filing Civil Revision being C.R.P. (PD) No.2708 of 2013 before the High Court. Soon thereafter another suit being OS No.1415 of 2013 was filed by the appellants along with their two sons seeking a decree for declaration that the amendment made under the Supplemental Deed of Trust dated 10.08.2012 be declared void and illegal. We are not presently concerned with said OS No.1415 of 2013.

8. The aforesaid Civil Revision was allowed by the High Court vide its judgment and order dated 30.04.2019 accepting the submission that the suit as framed was essentially to vindicate the private rights of the appellants and that the leave under Section 92 of the Code could not have been granted. It was observed by the High Court as under:

“22. From the above judgments, it is well settled that the main purpose of provision under Section 92 of CPC is to give a protection to public trust or charitable or religious nature, from

<sup>1</sup> (2007) 1 MLJ 683

A being subjected to harassment by suits being filed against them and the Courts also to see that there is a prima facie case either breach of trust or of necessity of obtaining direction from the Court on the basis of allegation made in the plaint. If the allegation of breach of trust is not substantiated and the very foundation of the suit is based on the private rights, leave cannot be granted under Section 92 CPC. Similarly, Court can also go beyond the relief and have regard to the capacity in which the plaintiff has sued on the purpose which the suit was brought. Mere colour of legitimacy was sought to be given by projecting as if the suit was vindicating the public rights, leave cannot be granted. From the judgments of the Apex Court only the allegation in the plaint that should be looked into at the first instance whether the suit fall within the ambit of Section 92.

23. In the light of the above settled position now it has to be seen whether the suit has been filed to vindicate the public right or private right. No doubt the Trust is charitable trust. Only the allegations in the plaint to be looked into find out as to whether the suit is for vindicating the private rights or public right. On entire perusal of the plaint para 5 of the plaint, it is the contention of the plaintiff that the 2<sup>nd</sup> defendant has decided to construct a hospital so as to enable the 1<sup>st</sup> plaintiff to carry on his profession. However, the hospital was envisaged as a Charitable hospital. In para 7 of the plaint it is the contention of the plaintiff that the 1<sup>st</sup> Plaintiff can have his consultations and in patients admitted to serve the people in society. The plaintiff was looking after the administration of the hospital till the year 2003 and 2004. In para 11 and 12 it is pleaded how the 4<sup>th</sup> defendant was inducted into the Trust and in para 13 it is pleaded as if 4<sup>th</sup> defendant slowly started to usurp powers and become a Joint Managing Trustee, though the plaintiff was looking after the administration of the hospital till the year 2003-2004. It is further alleged in para 13 that the 4<sup>th</sup> defendant has not allowed the defendant 2 and 3 to take independent decision. In para 14 it is stated that the 4<sup>th</sup> defendant is receiving part of the rent by cash and using it for his expenses. In para 15 of the plaint it is the contention of the plaintiff that 4<sup>th</sup> defendant has been looking after the affairs of the hospital which was intended for medical practice of the first plaintiff. In fact, this allegation is contrary to earlier pleadings that he was managing the hospital in

2003-2004. The entire pleadings clearly indicate that the defendants A  
have inducted the 3<sup>rd</sup> defendant's daughter and wife and there  
was also an agenda circulated by communication dated 23.07.2012  
for the meeting proposed to be held on 09.08.2012.”

9. In this appeal challenging the view taken by the High Court, we  
heard Mr. K.V. Vishwanathan, learned Senior Advocate for the appellants B  
and Mr. Guru Krishna Kumar, learned Senior Advocate for the  
respondents.

10. The basic issue involved in the matter is whether the appellants  
were rightly granted leave under Section 92 of the Code by the Trial C  
Court. We may at the outset quote relevant provisions of Section 92,  
which are to the following effect:-

**“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 D  
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 E  
to obtain a decree—

- (a) removing any trustees;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee; F
- (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; G
- (e) declaring what proportion of the trust property or of the  
interest therein shall be allocated to any particular object  
of the trust;
- (f) authorizing the whole or any part of the trust property to H  
be let, sold, mortgaged or exchanged;

- A (g) settling a scheme; or  
 (h) granting such further or other relief as the nature of the case may require.

B (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 1<sup>st</sup> 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.

C (3) .....

11. While considering the scope of Section 92 (1), as it existed then, a Constitution Bench of this Court observed in *Chairman Madappa vs. M.N. Mahanthadevaru and Others*<sup>2</sup>, as under:-

D “... Section 92(1) provides for two class 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.

E 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

F 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 the each 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

G 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

H <sup>2</sup>(1966) 2 SCR 151

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. ... ..”

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12. The statement of law so laid down was reiterated:-

A) In *Bishwanath and anr. vs. Shri Thakur Radhaballabhji & ors.*<sup>3</sup>

“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. ... ..”

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B) In *Sugra Bibi vs. Hazi Kummua Mia*<sup>4</sup>

“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.”

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13. Three conditions are therefore, required to be satisfied in order to invoke Section 92 of the Code and to maintain an action under 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

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(iii) the relief claimed is one or other of the reliefs as enumerated in said Section.

<sup>3</sup> (1967) 2 SCR 618

<sup>4</sup> (1969) 3 SCR 83

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

14. In the instant case, it is admitted that the concerned Trust is created for public purposes of charitable nature. The matter on that front is beyond any doubt. As regards the second condition, paragraph  
B 21 of the plaint makes out a case that a public charitable trust was being run as a private family trust; that the object of the Trust was being ignored; and that there was necessity to frame a proper scheme for administration of the Trust through competent persons. The second condition also stands satisfied.

C           Insofar as the third condition is concerned, the reliefs prayed for are diverse which include *inter alia* framing of a proper scheme of administration, for removing certain trustees and appointment of fresh trustees from medical profession and from public and for other ancillary reliefs. It is true that the reliefs prayed for include a relief where the  
D first plaintiff is also being sought to be included as one of the trustees along with other trustees from medical profession and from public, for proper and effective administration of the Trust. A question, therefore arises whether such relief along with other averments in the plaint would take the matter out of the scope of the Section 92 of the Code or not.

15. In *Sugra Bibi*<sup>4</sup>, the Wakf was created substantially for a public purpose and the reliefs prayed for in the suit *inter alia*, were i) for removal of the defendant from the office of Mutwalli and for appointment of the son of the plaintiff in his place and ii) for appointment of a receiver till said son attained majority. While considering the facts where the creation of Wakf was substantially for a public purpose, this Court  
E observed:-  
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“... .. The proper test for holding whether the Wakf would fall within the purview of Section 92, Civil Procedure Code is to examine whether the Wakf has been created substantially for a public purpose. Applying the test to the present case, we are of  
G opinion that the Wakf created by Haji Elahi Bux on November 18, 1936 falls within the purview of Section 92, Civil Procedure Code. This view is borne out by the decision of the Calcutta High Court in *S. Massirat Hossain v. Hossain Ahmad Chowdhury*<sup>5</sup>. That case related to a Wakf estate, the net annual income of which

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H   <sup>5</sup> 1897 SCC OnLine Cal 42 : (1896-97) 1 CWN 345

was about Rs 1300 and out of this a sum of Rs 353 was set apart for public purposes of a charitable or religious nature. It was held by the learned Judges that the amount by no means was a trifling or a disproportionate provision in favour of the public and consequently the suit was maintainable under Section 92 of the Civil Procedure Code. Reliance was placed by the High Court in support of its decision upon the pronouncement of the Judicial Committee in *Vaidya Nath Aiyar v. Swaminatha Ayyar*<sup>6</sup> where the founder of the trust directed by his will that two-thirds of the income of his property would go to his wife and the remaining one-third would go first towards the discharge of certain debts and thereafter to establish a Chatram for the feeding of the poor. There was a further provision that after the wife's death, two-thirds of the income given to her would be applied to charity and one-third to the members of the family. On these facts the Judicial Committee agreed with the findings of the court below that the Chatram so established was a public trust.”

In the context of the relief prayed for, the submission that “the Suit was brought not to vindicate or to establish a right of the public institution i.e., the trust, but to remedy an infringement of an individual right or to vindicate the private right of the appellant”, was considered as under:-

“... ..The reliefs prayed for are: (1) removal of the respondent from the office of Mutwalli and appointment of Soleman, appellant's son, as Mutwalli in his place, and (2) till the said Soleman attains majority appointment of a Receiver for the management of the Wakf estate. It is true that the facts that a suit relates to public trust of a religious or charitable nature and the reliefs claimed fall within clauses (a) to (h) of sub-section (1) of Section 92 Civil Procedure Code would not by themselves attract the operation of the section, unless the suit is of a representative character instituted in the interests of the public and not merely for vindication of the individual or personal rights of the plaintiff. As was stated by Woodroffe, J. in *Budreedas v. Choonilal*<sup>7</sup>:

“It is obvious that the Advocate-General, Collector or other public officer can and do sue only as representing the public,

<sup>6</sup> (1923-24) 51 I.A. 282

<sup>7</sup> I.L.R. 33 Cal. 789

- A and if, instead of these officers, two or more persons having an interest in the trust sue with their consent, they sue under a warrant to represent the public as the objects of the trust. It follows from this, that when a person or persons sue not to establish the general rights of the public, of which they are a member or members, but to remedy a particular infringement of their own individual right, the suit is not within or need not be brought under the section.”
- B

- C This principle was accepted as sound by a Full Bench of the Madras High Court in *Appanna v. Narasigna*<sup>8</sup>. In that case, a suit was instituted by a trustee of a public religious trust against a co-trustee for accounts and the Full Bench decided that it did not come within Section 92 of the Civil Procedure Code, the claim being to enforce a purely personal right of the plaintiff as a trustee against his co-trustees. The same view was taken by the Madras High Court in *The Tirumalai-Tirupati Devasthanams Committee v. Udiayar Krishnayya Shanbhagal*<sup>9</sup>. In this case the general trustees of a public temple filed a suit against the trustees for the recovery of moneys which the latter had collected on behalf of the former praying for a decree directing accounts and inquiries. It was held that the right to collect moneys was entirely independent of Section 92 of the Civil Procedure Code and no sanction of the Advocate-General was necessary for the institution of the suit. Leach, C.J. who delivered the judgment of the Court observed as follows:
- D
- E

- F “After hearing the arguments of learned Counsel in the present case we can see no reason for disagreeing with anything said in *Shanmukham Chetty v. Govinda Chetty*<sup>10</sup>. On the other hand we find ourselves in full agreement with the opinion of Varadachariar, J. that, in deciding whether a suit falls within Section 92, the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit is brought. The judgment of the Privy Council in *Abdur Rahim v. Mahomed Barkat Ali*<sup>11</sup> lends
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<sup>8</sup> I.L.R. 45 Mad. 113

<sup>9</sup> I.L.R. [1943] Mad. 619

<sup>10</sup> I.L.R. 1938 Mad. 39

H <sup>11</sup> (1927) I.L.R. 55 Cal. 519 (P.C.)



no support for the opinion expressed by the Full Bench in *Janki Bai v. Thiruchitrumbala Vinayakar*<sup>12</sup>.” A

Applying the principle laid down in these authorities, we are of opinion that in the present case the suit brought by the appellant must be treated as a suit brought by her in a representative capacity on behalf of all the beneficiaries of the Wakf. As we have already stated, the Wakf created by Haji Elahi Bux was a Wakf created for a public purpose of charitable or religious nature. The reliefs claimed by the appellant in the suit are not reliefs for enforcing any private rights but reliefs for the removal of the defendant as trustee and for appointment of a new trustee in his place. The reliefs asked for by the appellant fall within clauses (a) and (b) of Section 92(1) of the Civil Procedure Code and these reliefs claimed by the appellant indicate that the suit was brought by the appellant not in an individual capacity but as representing all the beneficiaries of the Wakf estate. ... ..” C

(emphasis added) D

16. Thus, though the reliefs prayed for removal of the defendant from the office of Mutwalli, for appointment of the son of the plaintiff and for appointment of receiver, in *Sugra Bibi*<sup>4</sup>, this Court found that the suit was brought by the plaintiff in representative capacity. E

In the present matter, the appellant No. 1-first plaintiff, as a qualified medical professional, was associated with the Trust and what is being complained is that the appellants have been removed from the board of trustees and none of the present trustees are from medical profession. It is in that context that the principal relief prays for framing of a proper scheme of administration and for appointing trustees from medical profession and from the public for proper and effective administration of the Trust. The expression “including the first plaintiff” has to be understood in the context that the first plaintiff, as a qualified medical professional, was associated with the Trust right since the inception but now stands removed. The relief prayed for cannot be said to be in the nature of vindicating personal rights of the first plaintiff. What was prayed was for framing of a proper scheme of administration so that the Trust which was founded with the object of making available medical and related services to the general public could attain and achieve all its F G

<sup>12</sup> (1935) I.L.R. 58 Mad. 988 (F.B.)

- A objectives through trustees who are themselves well qualified to undertake such responsibility.

17. Viewed thus, the conclusion arrived at by the Trial Court in para 21 as quoted hereinabove, was quite correct and the matter did not call for any interference by the High Court. It is true that certain paras of the plaint do indicate the grievances that the appellant were completely side-lined while the control of the Trust was in the hands of the concerned defendants. The allegations highlight that the Trust was not being managed properly, was not being managed by medical professionals and there was siphoning of funds. However, the substance of the matter discernible from para 21 as well as the principal relief claimed in the suit is quite clear that what was being agitated were the public rights. If in respect of a trust which had set up a hospital, a request was made for framing of a proper scope of administration by appointing trustee from medical profession and from public for proper and effective administration of the Trust, the matter would definitely fall within the scope of Section 92 of the Code.
- C
- D

18. In the circumstances, we allow this appeal, set aside the view taken by the High Court and restore the decision arrived at by the District Court. The appeal stands allowed without any order as to costs.

Divya Pandey

Appeal allowed.