

ORISSA HIGH COURT : CUTTACK

C.R.P. NO. 52 OF 2005

From an order dated 16.9.2005 passed by Shri C.R. Dash, learned District Judge, Ganjam-Gajapati, Berhampur in C.S. No. 2 of 2005.

Sri Sangram Mudali & another Petitioners

-versus-

Dr. Sukant Mohapatra and others Opp. Parties.

For Petitioners : M/s. S.P.Mishra, Sr. Advocate,
B.D. Baug, S.Mishra,
S.Dash, S.Nanda,
B.S. Panigrahi &
A. Mukherjee.

For Opp. parties : M/s. R.K. Mohanty, Sr. Advocate,
D.K. Mohanty, A.P. Bose,
S.N. Biswal, P.K.Samantaray,
S.K.Mohanty & M.R.Dash
(For O.Ps 1, 2 & 5).

M/s. S.D.Das, Sr. Advocate,
D.P. Dash, B.K.Mishra,
S.K. Barik & D.R. Swain
(For O.Ps 3 & 4)

M/s. B.D.Pradhan,
O.P. Mohanty, S.Mohapatra &
Mrs. D.Mishra.

Decided on 23.02.2013.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. DAS, J.

This Civil Revision has been filed against the order dated 16.09.2005 passed by the learned District Judge, Ganjam-

Gajapati, Berhampur in C.S. No.2 of 2005, by which the learned District Judge granted leave to the plaintiffs to file the suit under Section 92 C.P.C.

2. It appears that the opposite parties filed an application for leave/permission under Section 92 (1) C.P.C. to file the proposed suit, plaint of which was enclosed to the application for leave. The learned District Judge, by the impugned order, having granted such leave to file the suit, the defendants – opposite parties in the said suit/leave application, have preferred the present Civil Revision.

3. Facts exposit that the opposite parties 1 and 2 as plaintiffs, have instituted the suit before the learned District Judge, registered as C.S. No.2 of 2005, for a declaration that the plaintiff No.2, who is the opposite party No.1 herein, is the founder/creator of the trust, i.e., the S.M. Charitable Educational Trust, which is the plaintiff No.1 and he is the perpetual Chairman of the trust and the Board of Governors of National Institute of Science and Technology (for short, called as “ NIST”); for a further decree, directing dispossession of the defendants from all movables and immovable properties of the trust and to appoint a receiver/administrator to take charge of the suit institution and its properties, manage the same till a new Board is formed by the Court, and for a further declaration that the Board of Trustees and Board of Governors framed in resolution taken in the 39th Meeting of the trust dated 29.07.2005, are contrary

to law and void. It was further prayed in the plaint to direct the defendants 1 to 3 to submit a detailed account of the trust and NIST, which is to be operated by the plaintiff or his authorized representative along with consequential relief of permanent injunction. The plaintiffs' claimed that the plaintiff No.2 (opposite party No.1 herein) - Dr. Sukanta Mohapatra is the author of the trust named as S.M. Charitable Education Trust, i.e., plaintiff No.1. His wife is the plaintiff No.3, whose father, mother and the brother are defendants 3, 4 and 1 respectively and the defendant No.2 is the wife of the defendant No.1. The Plaintiffs 2 and 3 are staying in United States of America since long and are Non-Resident Indians (NRIs) in status. They had the cherished ambition to promote social, cultural, economic, educational and scientific awareness among the people of Odisha. In order to materialize such ambition, the plaintiff No.2 created the trust and for management and control of the trust property, a Board was constituted with five members with the plaintiff No.2 as Chairman and plaintiff No.3 along with the defendants 1 to 3 as members. With a view to translate the objective of the trust, NIST at Berhampur was established in the year 1996 by the trust. The plaintiffs incurred all expenditure and provided all logistic support to create furnished infrastructure, so that the same shall come out as a Centre of excellence of international repute. Since the plaintiffs 2 and 3 were residing outside India, as it was not possible for them to be

present in Orissa always, defendants 1 to 3, being the members of the trust, were looking after the management of the trust on behalf of the trustees. In course of time, NIST set up by the trust became self sufficient and defendants 1 to 3 forming an unholy combination, created another trust in the name of S.J. Charitable Trust with similar objective, as the plaintiff No.1-trust. They established another institution called "Apex Institute of Science and Technology" at Bhubaneswar under the said S.J. Charitable Trust. It is further averred by the plaintiffs that the defendants 1 to 3 resorted to all illegal methods of admission in the NIST for illegal gain thereby defaming the trust and demeaning its objectives. The plaintiff No.2, in order to take stock of the situation, intimated the defendants about his arrival to NIST on 31.07.2005. On getting such intimation, the defendants managed to pass a resolution on 23.07.2005 dropping the plaintiff No.2 from the Board of Trustees. It is also stated that the plaintiff No.2 arrived in the premises of NIST, when he was physically restrained from entering into the campus. Due to such action of the defendants, the plaintiffs, finding no other way out, filed an application for leave under Section 92 C.P.C. In the leave application, the plaintiff No.2 further pleaded that the defendants 1 to 3 held a trust meeting on 29.07.2005 wherein, they removed the plaintiff No.2 from the Membership and Chairmanship of the Trust and the defendant No.4 has been inducted as a new trust member and the

defendant No.3 was elected as the new Chairman. The said resolution dated 29.07.2005 is totally unauthorized, illegal and void in law.

4. The plaintiffs further mentioned that since the plaintiffs 2 and 3 were not informed about the meeting, such resolution cannot be treated to be a valid one. Further more, all the members of the Board of Trustees have not been informed of the meeting and the agenda of such meeting, which was held on 29.07.2005. The resolution passed in such meeting is contrary to law as well as the principles of natural justice. The plaintiffs stated that the action of the defendants 1 to 3 in removing the plaintiff No.2 in a meeting not properly constituted and passing a resolution for removing him from the membership and Chairmanship of the trust, which was not passed by 2/3rd majority of the members of the trust and inducting another family member as trustee was only with a view to grab the property of the trust/institution for their personal gain, which has caused serious problem to the management/administration of the trust/institution.

5. The petitioner No.1, apprehending such action on the part of the plaintiffs, filed a Caveat before the learned District Judge. Prior to filing of the application for leave along with the plaint the opp. party no. 1 made an application under Section 34 of the Trust Act, which application was registered as SPJC No.9 of 2005. The present petitioner No.1, who is a defendant, entered appearance and

contested the said case. At that stage, when the matter was posted for hearing, the opposite party No.1, who is plaintiff No.2 in the suit, filed an application to withdraw the application under Section 34 of the Trust Act and accordingly, the learned District Judge allowed the said application. Since the petitioner No.1, who was one of the defendants, entered appearance, the leave application along with the copy of the plaint, was served on him and he was allowed to participate in the hearing on question of grant of leave.

6. Mr. Baug, learned counsel for the petitioners relied upon various decisions of the Hon'ble Supreme Court in support of his contention that the learned District Judge before granting leave under section 92 C.P.C. should have noticed all the defendants inasmuch as the reliefs sought for by the opp. parties as plaintiffs being not on behalf of the public and the trust being not a charitable trust, section 92 could not have any application to the facts of the present case. All the decisions cited by Mr. Baug have been taken note of by the learned District Judge, who has elaborately discussed the facts giving rise to such decisions, while concluding that the present suit comes under section 92 C.P.C. and leave should be granted.

7. It is a settled position of law now that a suit under section 92 C.P.C. is a suit of a special nature which pre-supposes the existence of a public trust of a religious or charitable character.

Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. Further, it is also well settled that if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of section 92. The Hon'ble Supreme Court in the case of **Swami Parmatmananda Saraswati and another v. Ramji Tripathy and another**, AIR 1974 SC 2141 referring to various earlier decisions of different High Courts as well as the Hon'ble Supreme Court also laid down that it is not every suit claiming the reliefs specified in the section 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 and 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 was brought. The Hon'ble Supreme Court in no uncertain terms has laid down in various cases that it is only the allegations in the plaint, which should be looked into in the first instance to see whether the suit falls within the ambit of section 92. If

after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in facts or reason, but is made only with a view to bring the suit under the section, then a suit purporting to be brought under section 92 must be dismissed. The Hon'ble Supreme Court in a series of decisions with regard to issuance of notice on an application for grant of leave under section 92 CPC to all the defendants has reiterated that although as a rule of caution, the Court should normally give notice to the defendants before granting leave under the said section to institute a suit, the Court is not bound to do so. If a suit is instituted on the basis of such leave granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants, because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave under section 92 can be granted as that would lead to unnecessary delay and in a given case, cause considerable loss to the public trust. Such construction of the provisions of section 92 would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders

from the court even though the circumstances might warrant such relief being granted. (See **R.M. Narayana Chettiar and another v. N.Lakshmanan Chettiar and others**, AIR 1991 SC 221)

8. Keeping the above position of law in view, the learned District Judge appears to have analyzed the averments of the plaint in rightly coming to the conclusion that the trust in question is a charitable trust and as per the settled position of law, it is not mandatory for issuance of notice to all the defendants before granting leave to proceed with the suit under section 92 CP.C. The learned District Judge has also taken note of the reliefs sought for along with the averments in the plaint holding that the suit is maintainable and according leave, as required under section 92 C.P.C. was granted. This Court, therefore, is of the considered view that the impugned order has not been passed by exercise of jurisdiction not vested with the learned District Judge nor the learned District Judge has failed to exercise such jurisdiction vested in him or has acted in exercise of his jurisdiction illegally or with material irregularity. Hence, the impugned order is immune from interference of this Court by exercise of its revisional jurisdiction under section 115 C.P.C.

9. In view of the above, the Civil Revision does not hold any merit and accordingly, stands dismissed.

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M. M. DAS, J.

***Orissa High Court, Cuttack.
February 23rd ,2013/Biswal.***