

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY 2018

BEFORE

THE HON'BLE MR. JUSTICE B. VEERAPPA

C.R.P. NO.373 OF 2017

BETWEEN:

1. SMT.G.S.PUSHPA
W/O G.S.SIDDESH
AGED ABOUT 50 YEARS
R/AT NO.573
6TH MAIN ROAD
P.J.EXTENSION
DAVANAGERE – 577 002.
2. SRI.NIKHIL
S/O G.S.SIDDESH
AGED ABOUT 23 YEARS
R/AT NO.573
6TH MAIN ROAD
P.J.EXTENSION
DAVANAGERE – 577 002.

... PETITIONERS

(BY SRI.VIGHNESHWER S SHASTRI, ADV.)

AND:

1. G.MAHADEVAPPA PUBLIC TRUST
A PUBLIC CHARITABLE TRUST
HAVING ITS REGISTERED OFFICE AT
NO.2615, BAPUJI DENTAL COLLEGE ROAD
M.C.C. 'B' BLOCK
DAVANAGERE – 577 004
REPRESENTED BY ITS
BOARD OF TRUSTEES.

2. SRI.G.S.RAMESH
S/O LATE G.M.SHARNAPPA
AGED ABOUT 57 YEARS
CHAIRMAN
G.MAHADEVAPPA PUBLIC TRUST
HAVING ITS REGISTERED OFFICE AT
NO.2615, BAPUJI DENTAL COLLEGE ROAD
M.C.C. 'B' BLOCK
DAVANAGERE – 577 004.
3. SRI.G.S.VIJAY
S/O LATE G.M.SHIVANANDAPPA
AGED ABOUT 44 YEARS
MANAGING TRUSTEE
G.MAHADEVAPPA PUBLIC TRUST
HAVING ITS REGISTERED OFFICE AT
NO.2615, BAPUJI DENTAL COLLEGE ROAD
M.C.C. 'B' BLOCK
DAVANAGERE – 577 004.
4. SRI.G.H.RAJASHEKAR
S/O LATE G.M.HALAPPA
AGED ABOUT 71 YEARS
MEMBER TRUSTEE OF
G.MAHADEVAPPA PUBLIC TRUST
HAVING ITS REGISTERED OFFICE AT
NO.2615, BAPUJI DENTAL COLLEGE ROAD
M.C.C. 'B' BLOCK
DAVANAGERE – 577 004.
5. SMT.G.P.USHA
W/O LATE G.H.PRAKASH
AGED ABOUT 58 YEARS
MEMBER TRUSTEE OF
G.MAHADEVAPPA PUBLIC TRUST
HAVING ITS REGISTERED OFFICE AT
NO.2615, BAPUJI DENTAL COLLEGE ROAD
M.C.C. 'B' BLOCK
DAVANAGERE – 577 004.
6. SMT.G.S.SUJATHA
D/O LATE G.M.SHAMBULINGAPPA
AGED ABOUT 61 YEARS

MEMBER TRUSTEE OF
G.MAHADEVAPPA PUBLIC TRUST
HAVING ITS REGISTERED OFFICE AT
NO.2615, BAPUJI DENTAL COLLEGE ROAD
M.C.C.'B' BLOCK
DAVANAGERE – 577 004.

7. SMT.G.M.SUNANDA
W/O LATE G.M.MURUGAPPA
AGED ABOUT 68 YEARS
MEMBER TRUSTEE OF
G.MAHADEVAPPA PUBLIC TRUST
HAVING ITS REGISTERED OFFICE AT
NO.2615, BAPUJI DENTAL COLLEGE ROAD
M.C.C. 'B' BLOCK
DAVANAGERE – 577 004.

8. SRI.G.S.VINAY
S/O LATE G.M.SHIVANANDAPPA
AGED ABOUT 51 YEARS
MEMBER TRUSTEE OF
G.MAHADEVAPPA PUBLIC TRUST
HAVING ITS REGISTERED OFFICE AT
NO.2615, BAPUJI DENTAL COLLEGE ROAD
M.C.C. 'B' BLOCK
DAVANAGERE – 577 004,

... RESPONDENTS

(BY SRI.H.R.ANANTHA KRISHNA MURTHY ADV. FOR R2 AND
R8
R1, R2, R4, R5, R6 and R7 ARE SERVED)

THIS CRP IS FILED UNDER SECTION.115 OF CPC
AGAINST THE ORDER DATED 11.07.2017 ON THE FILE OF
THE PRINCIPAL CIVIL JUDGE, DAVANAGERE, DISMISSING
THE IA NO.II FILED UNDER ORDER 7 RULE 11 (a) AND (d)
SECTION 96 R/W SECTION 151 OF CPC., FOR REJECTIONOF
PLAINT.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

ORDER

The defendant Nos.1 and 2 filed the present revision petition against the order dated 11.07.2017 on I.A.2 made in O.S.278/17 rejecting I.A.2 filed by the defendants under Order VII Rules 11 (a) and (d) of Code of Civil Procedure.

2. The respondents 1 to 8 who are the plaintiffs before the trial Court filed a suit for declaration that the act of the defendants in interfering with the peaceful possession and enjoyment of the suit schedule property and in conducting the affairs of the suit schedule property (Chowltry) is illegal and for permanent injunction restraining the defendants their agents from entering upon the suit schedule property, more fully, described in the schedule i.e., Gundi Mahadevappa Kalyanamandira measuring East-West 270 & North-South 262 feet, situated at Dental College Road, MCC 'B' Block, Davanagere raising various contentions. Even before filing written statement, the defendants filed the application under Order VII Rules 11 (a) and (d) r/w Section 92 of Code of Civil Procedure to reject the plaint as barred by law

mainly on the basis of the allegations made in para Nos.6, 8, 9 & 12. The said application was opposed by the plaintiff by filing objections reiterating the averments made in the plaint and contended that as per the provisions of Section 47 of the Indian Trust Act, 1988 wherein it is clear that a Trustee cannot delegate his office to co-trustee or to a stranger, unless the instrument of trust so provides. At any stretch of imagination it cannot be imagined that Smt.Pushpa was acting as a trustee without there being any amendment or name in the trust deed and the averments made by Pushpa are all false. The plaintiff has filed the certified copies of the trust deed where her name is not available. Therefore, sought for dismissal of the application.

3. The trial court considering the application and objection by the impugned order dated 11.07.2017 dismissed the application. Hence, the present writ petition is filed.

4. I have heard the learned counsel for the parties to the lis.

5. Sri.Vighneshwar S. Shastri, learned counsel for the petitioner vehemently contended that the impugned order passed by the trial Court rejecting the application filed under Order 7 Rule 11 (a) & (d) is erroneous. He would further contend that the Court at Davanagere had no jurisdiction to entertain the suit as the matter pertains to trust and its administration, without complying the provision under Section 92 of Code of Civil Procedure. Therefore, the trial Court ought to have allowed the application. He would further contend that the suit was filed for declaring injunction relating to the trust and its administration against its trustee stating that the petitioners are trespassers. On the other hand, the petitioner is also trustee of Gundi Mahadevappa Mandira trust. Since, the matter pertains to trust and its administration, suit against the trustee without complying the provisions of Section 92 of Code of Civil Procedure was not maintainable. Where there is a threshold bar to

entertain the suit, the learned judge ought to have allowed the application instead of rejecting the same. Therefore, he sought to set aside the impugned order passed by the trial Court allowing the present petition.

6. *Per contra*, Sri.H.R.Anantha Krishna, learned counsel for the petitioner by reading of the entire plaint averments submits that the plaintiff has not made out any case for non-disclosure of cause of action under Order 7 Rule (a) of CPC. By reading the statement where the suit appears from the statement in the plaint to be barred by law then only Order 7 Rule 11 (d) of CPC can be invoked. He further contended without filing written statement, the application was filed and on reading the entire plaint averments the defendants have not made out any case with regard to the maintainability of suit as contained under Section 92 of CPC, therefore, sought for dismissal of the revision petition.

7. Having heard the learned counsel for the parties it is undisputed fact that the plaintiffs filed the suit

for declaration. The act of the defendants in interfering with the peaceful possession of the suit schedule property and conducting affairs of the schedule is illegal and for injunction raising various allegations especially in para Nos.6, 8, 9 & 12. Even before disputing the averments in the written statement, the application came to be filed under provisions of Order 7 Rules 11 (a) and (d) of CPC. A plain reading of the provisions under Order 7 Rule 11 (a) & (d) clearly indicates where it does not disclose the cause of action and where the suit appears from the statement in the plaint to be barred by law, the defendants can invoke the provisions of Order VII Rule 11 (a) & (d) of CPC.

8. Admittedly in the present case at para 14 of the plaint, the plaintiff respectfully pleaded and disclosed that the cause of action arose on 29.02.2016 when the defendant No.1 had drawn a sum of Rs.4 Lakhs illegally without any authority from the account of the trust and also on 03.09.2015 & 12.06.2017 when the defendants have lodged a criminal case against the plaintiffs illegally, baselessly that they have started managing the affairs of

the Choultry on 24.05.2017 when they tried to interfere. Therefore, the contentions of the learned counsel for the petitioner that there is no cause of action cannot be accepted.

9. A plain reading of the entire plaint averments as whole, it clearly depicts that the defendants are unable to point out as to how the suit filed by the plaintiff from the statement in the plaint to be barred by in law. The contention of the learned counsel for the petitioner that in view of the provisions of Section 92 of CPC suit is not maintainable. It is for the defendants to take such defence in written statement and if such specific plea is pleaded in the written statement, it is for the Court to frame appropriate issues based on the pleadings of both the parties. Such occasion did not arise in the present case as of now.

10. It is well settled that plaint can be rejected by exercising powers under Order VII Rules 11 (a) to (d) CPC only on the basis of the plaint averments and not either on

the basis of the written statement or on the allegations made in the application. Therefore, the impugned order passed by the trial court rejecting the application filed by defendants is in accordance with law. The petitioner has not made out any ground to interfere with the impugned order passed by the trial court exercising the power under the provisions of Section 115 of CPC. Accordingly, the revision petition is dismissed. It is now brought to the notice of the Court that the defendant has already filed the written statement and counter claim. It is for him to pursue the defence taken in the written statement and the counter claim in accordance with law. With the above observation, petition stands disposed of.

**Sd/-
JUDGE**

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