SWAMI SHIVSHANKARGIRI CHELLA SWAMI & ANR. A

v.

SATYA GYAN NIKETAN & ANR.

(Civil Appeal No. 3166 of 2017)

FEBRUARY 23, 2017 B

[PINAKI CHANDRA GHOSE AND ASHOK BHUSHAN, JJ.]

Code of Civil Procedure, 1908 – s. 92 – Public charities – Permission to grant leave u/s. 92 to interested persons to initiate a suit – On facts, property transferred-waqfed to respondent no. 2 by a deed – Appellant interested in achieving the purpose for which the property was transferred – Application by appellant u/s. 92 to obtain permission to institute a suit, allowed – However, the High Court set aside the order – On appeal, held: Property was waqfed/ gifted for a lawful purpose-a 'trust' – Thus, the application filed by appellants was within the required ambit of s. 92 and the District Judge rightly permitted the appellants to institute a suit – High Court erred in setting aside the well reasoned order and in not diligently examining the facts and circumstances in the light of the registered deed – Furthermore, it was the statutory duty of the Court to examine that whether the plaint is so annexed with the application u/s. 92 which is pre-requisite for filing the application for leave to file a suit – High Court also erred in neglecting this fact – Allegations put forth could only be determined by way of evidence in a special suit u/s. 92 and respondent No.2 is enjoying the ownership of the immovable property while acting as a trustee – Thus, for the ends of justice, appellants granted liberty to move appropriate application. C D E F

Disposing of the appeal, the Court

HELD: 1.1 A bare perusal of the Section 92 CPC 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 G H

A **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. [Para 12] [371-C-D]**

1.2 On considering the trust deed executed in the favour of respondent No.2-Prachaarini Sabha, it is noticed that the
B **purpose of transferring ownership of the property was subject to certain conditions and purposes which cast duties on respondent No.2, including development of the Hindi Language and opening a library. Hence, the purpose is rendering the nature of Sabha to be a trust. It can be inferred from the perusal of the application made that plea was sought to seek permission only to institute a**
C **suit alleging the Sabha to be acting as a trust. [Paras 13, 14] [371-E-G]**

1.3 It appears that the property was waqfed/gifted for a lawful purpose i.e. a 'trust' is an obligation annexed to the ownership of the property, and arising out of a confidence reposed
D **in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another owner, (Act II of 1882 Trusts, Section 3]. Accordingly, the application filed by the appellants was falling within the required ambit of Section 92 CPC and the District Judge rightly permitted the appellants to institute**
E **a suit. The High Court erred in setting aside the well reasoned order of the Judge and grossly erred in not diligently examining the facts and circumstances in the light of the registered deed. [Para 18] [377-D-F]**

1.4 The plaint was not annexed with the application filed
F **under Section 92 CPC which is pre-requisite for filing the application for leave to file a suit. Based on the averments in the plaint only, it can be inferred that whether an application under Section 92 is maintainable or not. [Para 19] [377-G-H]**

1.5 After the amendment was brought to the Code of Civil
G **Procedure in 1976, duty was cast upon the Court, instead of Advocate General, to take into account these considerations for granting leave under this section. Prior to the 1976 amendment, all these considerations were to be kept in mind by the Advocate General before granting consent to institute a suit against a public trust. It was the statutory duty of the Court to examine that**
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whether the plaint is so annexed with the application under Section 92 CPC or not. The High Court also erred in neglecting this fact. [Para 20, 21] [378-D-E]

1.6 The allegations put forth could only be determined by way of evidence in a special suit under Section 92 and respondent No.2 is enjoying the ownership of the disputed immovable property while acting as a trustee. Hence, for the ends of complete justice, the appellants are granted liberty to move appropriate application in accordance with law, within a period of 30 days from the date of pronouncement of this judgment. The civil courts having jurisdiction to entertain any suit in this country are expected to carefully examine applications of such kind. [Para 22] [378-F-G]

Sukumaran v. Akamala Sree Dharma Sastha **AIR 1992 Ker 406**; *Sugra Bibi v. Haji Kummu* **[1969] 3 SCR 83**; *Additional Commissioner of Income Tax, Gujarat, Ahmedabad v. Surat Art Silk Cloth Manufacturers' Association, Surat* **(1980) 2 SCC 31 : [1980] 2 SCR 77**; *M/s. Shanti Vijay and Co. & Ors. v. Princess Fatima Fouzia & Ors.* **(1979) 4 SCC 602 : [1980] 1 SCR 459**; *Harendra Nath Bhattacharya & Ors. v. Kaliram Das (dead) by his Heirs and Lrs. & Ors.* **(1972) 1 SCC 115 : [1972] 2 SCR 492**; *Swami Parmatmanand Saraswati & Anr. v. Ramji Tripathi & Anr.* **(1974) 2 SCC 695 : [1975] 1 SCR 790**; *R.M. Narayana Chettiar & Anr. v. N. Lakshmanan Chetfiar & Ors.* **(1991) 1 SCC 48 : [1990] 2 Suppl. SCR 266**; *B.S. Adityan & Ors. v. B. Ramachandran Adityan & Ors.* **(2004) 9 SCC 720 : [2004] 1 Suppl. SCR 216 – referred to.**

Case Law Reference

AIR 1992 Ker 406	**referred to**	**Para 9**
[1969] 3 SCR 83	**referred to**	**Para 9**
[1980] 2 SCR 77	**referred to**	**Para 14**
[1980] 1 SCR 459	**referred to**	**Para 14**
[1972] 2 SCR 492	**referred to**	**Para 15**

A	**[1975] 1 SCR 790**	**referred to**	**Para 15**
	[1990] 2 Suppl. SCR 266	**referred to**	**Para 16**
	[2004] 1 Suppl. SCR 216	**referred to**	**Para 17**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3166 of 2017.

From the Judgment and Order dated 01.08.2011 of the High Court of Uttarakhand at Nainital in Civil Revision No. 69 of 2008.

Dinesh Dwivedi, Sr. Adv., Ms. Preetika Dwivedi, Krishnam Mishra, Yasharth Kant, Nishant Singh, Manish Shankar S., Garvesh Kabra, Advs. for the Appellants.

Pramod Swaroop, Sr. Adv., Jatinder Kumar Bhatia, Krishna Prakash Dubey, Advs. for the Respondents.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

2. This appeal, by special leave, has been filed by the present appellants against the judgment and order dated August 1st, 2011 passed by the High Court of Uttarakhand at Nainital in Civil Revision No.69 of 2008, whereby the revision petition filed by the respondents herein was allowed and consequently the application filed by the appellants under Section 92 of the Code of Civil Procedure (in short 'CPC') for obtaining permission to institute a suit was rejected.

3. The question which comes up for consideration of this Court in the present matter is whether the High Court, on the basis of analysis of the facts and circumstances of the case and findings of the Court below, while exercising its jurisdiction under Section 115 of CPC, was justified in setting aside the order granting permission to initiate suit.

4. The facts of the case succinctly stated are that in the year 1936, one Sri Swami Satya Dev purchased some land and constructed a building thereon. Thereafter on 30.11.1940, he *waqfed* (gifted) the disputed property to Respondent No.2, vide registered deed, with the express condition that Respondent No.2 will not have a right to mortgage or right of sale of the property. The property was *waqfed* for the development and publicity of the 'Hindi Language' in western India and to establish a centre for publicity of Hindi. There was also a recital in the

deed to establish a library and to start a 'Bhyakhan Mala' etc. and the property was to be managed by a sub-samiti constituted by respondent No.2.

5. It appears that objective of transferring the property was to achieve a specific purpose i.e., publicize and develop the Hindi Language. When it was felt that respondent No.2 was not taking any interest in achieving the purpose for which the property was dedicated, the appellants desired to initiate civil proceedings against the respondent. One Sri Mukund Ram and Sri Krit Ram filed Application No.23/2004 under Section 92 of CPC and the appellants herein filed Application No.07/2006 under the same provision, respectively, seeking permission to file a suit against the respondents herein in connection with the disputed property. Since same relief was sought in both the petitions, both applications were consolidated and Misc. Case No.23/2004 was made the leading case. The learned District & Sessions Judge vide his order dated 12.11.2008 observing that the word "trust" is to be liberally construed, and in a sense as favourable as possible to the assumptions of jurisdiction by a Court under Section 92, allowed both the applications and permitted the appellants to file suit under Section 92 of CPC. The learned District & Sessions Judge observed that the object of dedication of the property shall decide the nature of it being considered a trust. Relevant part of the order is reproduced as follows:

> *"Hence perusal of the deed reveals the purpose to waqf the property was charitable and for the benefit of public at large. Hence prima facie it appears that a constructive trust was created by Swami Satya Dev by gifting the property to O.P. No.2, in which all the objects of the waqf and the management of property was given."*

In the later part of the order it was observed that:

> *"Having gone through the entire evidence on record, I am of the view that prima facie it appears that property in suit was waqfted to the O.P. No.2 for a particular object and purpose i.e. publicity and development of Hindi. The property is to be managed by O.P. No.2 as per directions of Swami Satya Dev – recitals of the deed prima facie proves that Sri Satya Dev created a constructive trust by gifting the property to O.P. No.2 has not become exclusive owner of the same,*

A *because it was gifted with conditions i.e. O.P. No.2 has no right to sale or mortgage the property.*

So far as this fact is concerned that O.P. No.2 is the registered society under the Indian Registration Act, 1960, does not affect the maintainability of the suit as held by the B *Kerala High Court in 1992 (2) page 429, Sukumaran Vs. Akamala Sree Dharma Sastha."*

6. Being aggrieved by the order of the learned District & Sessions Judge, the respondents filed civil revision under Section 115 of CPC before the High Court of Uttarakhand at Nainital, being Civil Revision C No.69 of 2008, for quashing the order dated 12.11.2008 passed by learned District & Sessions Judge, Haridwar. The said revision petition was allowed by the High Court vide its judgment dated August 1st, 2011, whereby the order granting permission under Section 92 CPC to institute suit was set aside and quashed. Hence, this appeal by special leave.

D 7. We have carefully examined the registered deed dated 30.11.1940 whereby the disputed property was transferred on certain conditions. The very first question after the perusal of the deed comes before us is whether a trust can be created by virtue of a conditional gift.

E 8. We have heard learned counsel for the parties at length. Since the appellant was interested in achieving the purpose for which property was transferred and therefore he approached the Court of learned District Judge for seeking permission to file a suit against the Respondents. It is also not disputed that the property was transferred (*waqfed*) to Respondent No.2 vide registered deed dated 30.11.1940.

F 9. It is submitted by the counsel of the petitioners that the mere fact that Respondent No.2 is a registered society does not affect the maintainability of the suit in view of the judgement given in the case of ***Sukumaran Vs. Akamala Sree Dharma Sastha***, AIR 1992 Ker 406; ***Sugra Bibi Vs. Haji Kummu***, [1969] 3 SCR 83; 1940 PC (10).

G 10. Lastly, it was a case of breach of administration of trust and the same can be decided by way of evidence and that while granting leave the Court does not decide the right of the parties or adjudicate upon the merits of the case. The only consideration relevant at such juncture is whether there is a *prima facie* case for granting leave to file

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a suit and in the light of this submission the High Court was not justified in neglecting the *prima facie* case of the appellants. A

11. Per contra, it is argued by the counsel for Respondents that society Kashi Nagari Sabha is a registered society and is also the absolute owner of the property of Satya Gayan Niketan Ashram, Jwalapur and cannot be considered as a trust and the High Court has rightly allowed the revision of the respondents. However, it appears to us that the present case deals only with the issue of granting leave under Section 92 of CPC to interested persons to initiate a suit. B

12. The present Section 92 of the 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. C D

13. After considering the deed executed in the favour of respondent No.2 (Prachaarini Sabha), which is not in dispute, we have noticed that the purpose of transferring ownership of the property was subject to certain conditions and purposes which cast duties on respondent No.2, including development of the Hindi Language and opening a library. Hence, the purpose is rendering the nature of Prachaarini Sabha to be a trust. E F

14. In the present facts and circumstances, it can be easily inferred from the perusal of the application made that plea was sought to seek permission only to institute a suit alleging the Sabha to be acting as a trust. This Court in ***Additional Commissioner of Income Tax, Gujarat, Ahmedabad Vs. Surat Art Silk Cloth Manufacturers' Association, Surat***, (1980) 2 SCC 31, *in* paragraph 17, observed: G

> "...*Every trust or institution must have a purpose for which it is established and every purpose must for its accomplishment involve the carrying on of an activity.*"

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A Further, this Court in ***M/s. Shanti Vijay and Co. & Ors. Vs. Princess Fatima Fouzia & Ors.***, (1979) 4 SCC 602, observed:

> *"The law governing the execution of trusts is well settled. In the case of a private trust, where there are more trustees than one, all must join in the execution of the trust. The*
> B *concurrence of all is in general necessary in transaction affecting the trust property, and a majority cannot bind the trust estate. In order to bind the trust estate, the act must be the act of all. They constitute one body in the eye of law, and all must act together. This is, of course, subject to any express direction given by the settlor."*
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15. This Court while discussing the scope and applicability of Section 92 of CPC in the case of ***Harendra Nath Bhattacharya & Ors. Vs. Kaliram Das (dead) by his Heirs and Lrs. & Ors.***, (1972) 1 SCC 115, observed in para 13:

> D *"It is well settled by the decisions of this Court that a suit under Section 92 is of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the Court are necessary for the administration of the trust. In*
> E *the suit, however, there must be a prayer for one or other of the reliefs that are specifically mentioned in the section. Only then the suit has to be filed in conformity with the provisions of Section 92 of the Code of Civil Procedure. It is quite clear that none of the reliefs claimed by the plaintiffs fell within*
> F *the section. The declarations which were sought could not possibly attract the applicability of Section 92 of the Civil Procedure Code. The High Court was, therefore, right in holding that non-compliance with that section did not affect the maintainability of the suit."*

G Further, in the case of ***Swami Parmatmanand Saraswati & Anr. Vs. Ramji Tripathi & Anr.***, (1974) 2 SCC 695, while precluding the application of Section 92 of CPC on suits to vindicate personal or individual rights, this Court pointed out as under:

> *"10. A suit under Section 92 is a suit of a special nature*

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which presupposes 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. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under Section 92 are made out, 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. A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. 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 right, 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. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92."

16. Moreover, while discussing the giving of notice to the proposed defendants in any matter before the granting of leave under Section 92 of CPC, this Court in ***R.M. Narayana Chettiar & Anr. Vs. N.***

A ***Lakshmanan Chetfiar & Ors.***, (1991) 1 SCC 48, noted in *para 17* that –

> "*A plain reading of Section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the* B *reliefs set out in the said section: unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying section 92 and the language thereof, it appears to us that, as a rule caution, the court should normally, unless it is impracticable or inconvenient* C *to do so, give a notice to the proposed defendants before granting leave under Section 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point* D *out that the persons who are applying for leave under Section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. 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* E *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 a construction of the provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the* F *court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, 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* G *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*

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file an application for revocation of the leave which can be considered on merits and according to law." A

17. It is also pertinent to mention the case of ***B.S. Adityan & Ors. Vs. B. Ramachandran Adityan & Ors.***, (2004) 9 SCC 720, wherein this Court opined:

"*5. In the normal course if an appeal is filed against an order granting permission to a party to file a suit as falling under Section 92 CPC, we do not normally interfere with an order made by the High Court nor do we think of entertaining a proceeding of this nature under Article 136 of the Constitution because the order made thereunder will not determine the rights of the parties, but only enable a party to initiate a proceeding."* B C

Later in para 7 it was held:

"*7. The learned counsel for the appellants urged that the order that was passed under Section 92 CPC granting permission to file a suit is whether administrative in character or otherwise; that this does arise when the objections of the defendants are considered; that as to scope of the meaning of the expression "order, judgment, decree and adjudication". He drew our attention to decision in Pitchayya v. Venkatakrishnamacharlu,* (AIR 1930 Mad. 129) *to the effect that the object of Section 92 CPC is to safeguard the rights of the public and of institutions under trustees. In this regard, he specifically drew our attention to National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd.,* (1953 SCR 1028). *He also adverted to decision in R.M.A.R.A. Adaikappa Chettiar v. R. Chandrasekhara Thevar* (AIR 1948 PC 12) *to contend that where a legal right is in dispute and the ordinary courts of the country are seized of such dispute, the courts are governed by ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special stature which does not in terms confer a right of appeal. In R.M. Narayana Chettiar v. N. Lakshmanan Chettiar* (1991) 1 SCC 48, *this Court has examined in detail the scope of Section 92 CPC and explained the object* D E F G H

A *underlying therein in granting permission to file a suit. In this case, this Court held that court should normally give notice to the defendants before granting leave as a rule of caution but court is not bound to do so in all circumstances and non-issuance of notice would not render the suit bad or non-maintainable and the defendants can at any time apply for revocation of the leave, and provision under Section 104(1)(ffa) for appeal against refusal of grant of leave does not lead to a different conclusion. In the light of this decision, we do not consider it necessary to advert to other decisions cited by the learned counsel. More so, the matter was considered by the Law Commission in its report submitted in April 1992 on this aspect of the matter. After noticing various decisions of different courts and the decision in R.M. Narayana Chettiar case the Law Commission recommended that to expect the court to issue notice and then to try the several points of detail before granting leave in the light of the objections put forth by the respective defendants, would mean that there will be a trial before trial and this would not be desirable. The recommendation of the Law Commission was, therefore, to insert an explanation below Section 92 CPC to the effect that the court may grant leave under this section without issuing notice to any other person, but this does not, of course, mean that the court will grant leave as a matter of course. Particular emphasis is made and heavy reliance is placed on the decision of this Court in Shankarlal Aggarwala v. Shankarlal Poddar* (1964) 1 SCR 717, *to emphasise distinction between administrative and judicial orders. It is urged that order from which the appeal was preferred was not a judgment within the meaning of clause 15 of the Letters Patent and so no appeal lies to the Division Bench. Reference is made to the decision of this Court in Institute of Chartered Accountants of India v. L.K. Ratna* (1986) 4 SCC 537, *to bring out distinction between administrative and judicial order. Scope of Section 92 CPC was examined in Charan Singh v. Darshan Singh* (1975) 1 SCC 298, *where the whole case turned on the facts arising in that particular case."*

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And lastly, it was opined by this Court in para No.9: A

"*...Although as a rule of caution, 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* B *be rendered bad in law or non-maintainable. 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* C *according to law or even in the course of suit which may be established that the suit does not fall within the scope of Section 92 CPC. In that view of the matter, we do not think, there is any reason for us to interfere with the order made by the High Court*".

18. We have noticed that the trust deed was executed in favour D of the respondents. But it appears in view of the facts and circumstances of this case and the submissions made on behalf of the respondents, that it was waqfed/gifted for a lawful purpose i.e. a "trust" is an obligation annexed to the ownership of the property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, E for the benefit of another, or of another owner, (Act II of 1882 Trusts, Section 3]. Accordingly, in our opinion, the application filed by the appellants was falling within the required ambit of Section 92 of CPC and the learned District Judge had rightly permitted the appellants to institute a suit. We are of the considered opinion that High Court has erred in setting aside the well reasoned order of the learned Judge and F grossly erred in not diligently examining the facts and circumstances in the light of the registered deed dated 30.11.1940.

19. Apart from the above discussion, we have also taken notice of the fact that plaint was not annexed with the application filed under Section 92 of the CPC which is pre-requisite for filing the application for G leave to file a suit. Based on the averments in the plaint only, it can be inferred that whether an application under Section 92 is maintainable or not. This Court in the case of *R.M. Narayana Chettiar (supra)* at para No.10 observed:

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A *"Neither of the aforesaid decisions of this Court deal with the question as to whether, before granting leave to institute a suit under section 92, Advocate-General, or later the Court, was required to give an opportunity to the proposed defendants to show cause why leave should not be granted. What learned counsel for the appellants urged, however, was* B *that these decisions show that at the time when the Advocate-General or the Court is required to consider whether to grant leave to institute a suit as contemplated under section 92, it is only the averments in the plaint which have to be examined and hence, the presence of the defendant is not necessary.* C *We may now consider the High Court decisions relied on by the learned counsel for the appellants."*

20. After the amendment was brought to the Code of Civil Procedure in 1976, duty was cast upon the Court, instead of Advocate General, to take into account these considerations for granting leave D under this section. Prior to the 1976 amendment, all these considerations were to be kept in mind by the Advocate General before granting consent to institute a suit against a public trust.

21. Accordingly, in this factual matrix and the law laid down by this Court and other relevant judicial precedents, we hold that the learned E Single Judge erred while granting leave to the appellants. It was the statutory duty of the Court to examine that whether the plaint is so annexed with the application under Section 92 CPC or not. We have noticed that High Court has also erred in neglecting this fact.

22. From a perusal of the compete material on record, in our F opinion, the allegations put forth could only be determined by way of evidence in a special suit under Section 92 and respondent No.2 is enjoying the ownership of the disputed immovable property while acting as a trustee. Hence, for the ends of complete justice, the appellants are granted liberty to move appropriate application in accordance with law, within a period of 30 days from the date of pronouncement of this judgement. G Civil Courts having jurisdiction to entertain any suit in this country are expected to carefully examine applications of such kind as discussed above. This appeal is disposed of in above-noted terms.

Nidhi Jain Appeal disposed of.

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